



Original: English

No. ICC-02/05-01/20

Date: 19 August 2022

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
*THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI
KUSHAYB')***

Public

Decision on the Defence's submissions on the review of detention

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Unrepresented Victims

**Unrepresented Applicants for
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The Office of Public Counsel for Victims

**The Office of Public Counsel for the
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States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural history

1. On 25 October 2021, the Chamber held a hearing on the review of detention pursuant to Rule 118(3) of the Rules of Procedure and Evidence (the ‘Rules’).¹
2. On 11 February 2022, the Chamber issued a decision on the review of detention of the accused.²
3. On 5 April 2022, the trial against Mr Abd-Al-Rahman commenced.³
4. On 20 July 2022, the Defence made oral submissions requesting a hearing for the review of detention of the accused.⁴
5. On 22 July 2022, as instructed by the Chamber,⁵ the Defence filed a request to hold a hearing to review the detention of the accused (the ‘Request’).⁶
6. On 15 August 2022, the Prosecution filed its response (the ‘Response’).⁷

II. Analysis

7. The Defence submits that there has been no review on the detention of the accused since the aforesaid hearing and decision on 25 October 2021 and 11 February 2022.⁸ It argues that periodic review of detention (included under Chapter 5 of the Rules ‘in respect of restriction and deprivation of liberty’) applies irrespective of the phase of the case and that the trial phase is no exception.⁹ The Defence suggests holding a new hearing when the trial resumes in August 2022, thus advancing the annual hearing it submits should be held before 25 October 2022. The Defence proposes to make substantive submissions on the accused’s release at this hearing.¹⁰

¹ Transcript of hearing on 25 October 2021, ICC-02/05-01/20-T-015-ENG.

² Second decision on the review of detention, ICC-02/05-01/20-591-Conf. A public redacted version was notified on that same date, ICC-02/05-01/20-591-Red.

³ Transcript of hearing on 5 April 2021, ICC-02/05-01/20-T-026-CONF-ENG.

⁴ Transcript of hearing, 20 July 2022, ICC-02/05-01/20-T-066-CONF-ENG RT, p. 39, line 17 to p. 40, line 9.

⁵ Transcript of hearing, 20 July 2022, ICC-02/05-01/20-T-066-CONF-ENG RT, p. 40, lines 15-18.

⁶ Soumission relative au réexamen de la détention, ICC-02/05-01/20-718.

⁷ Prosecution’s response to “Soumission relative au réexamen de la détention”, 22 July 2022, ICC-02/05-01/20-718, ICC-02/05-01/20-719.

⁸ Request, ICC-02/05-01/20-718, paras 2-3.

⁹ Request, ICC-02/05-01/20-718, para. 4.

¹⁰ Request, ICC-02/05-01/20-718, para. 5.

8. The Prosecution opposes the Request. It submits that periodic review of detention only applies prior to the commencement of trial. The Prosecution submits that the Defence may nevertheless submit a request to review the accused's detention, if it meets the review of detention standard, namely new circumstances that would make it possible to grant the release of the accused.¹¹ The Prosecution argues that in its Request, the Defence has failed to meet the standard, 'other than the incorrect argument that such reviews are "automatic"'.¹²

9. The Chamber reiterates that review of detention after the start of trial is not automatic and that a hearing would only be warranted if the Defence states that, there are new circumstances that militate in favour of provisional release of the accused.¹³

10. As noted by the Prosecution, the Chamber's Practice Manual clearly has the same interpretation of Article 60(3) of the Rome Statute and Rule 118(3) of the Rules, stating that the Trial Chamber shall continue to review the accused's detention pursuant to these provisions 'up until the commencement of trial'.¹⁴ It further states that '[t]hese review no longer occur automatically after the trial's commencement, but the Trial Chamber may review a ruling pursuant to Article 60(3) at any time on its own initiative or at the request of the detained person or the Prosecutor'.¹⁵

¹¹ Response, ICC-02/05-01/20-719, paras 4-5.

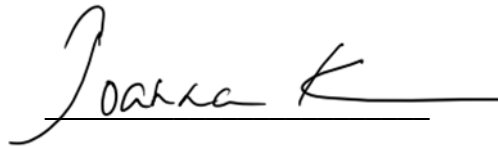
¹² Response, ICC-02/05-01/20-719, para. 6.

¹³ Transcript of hearing, 20 July 2022, ICC-02/05-01/20-T-066-CONF-ENG RT, p. 38, lines 10 *et seq.*

¹⁴ Chamber's Practice Manual, Fifth Edition, para. 85.

¹⁵ Chamber's Practice Manual, Fifth Edition, para. 85.

11. Accordingly, and on the basis of the information before it, the Chamber sees no reason to hold a hearing pursuant to Rule 118(3) of the Rules. Nonetheless, if there are any new circumstances that would justify a review of the detention of the accused, the Defence may file an application at the appropriate time.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 19 August 2022

At the Hague, The Netherlands