



Original: English

No. ICC-02/05-01/20

Date: 13 August 2020

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

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

Public

Decision on the Defence Request pursuant to Rule 20 of the Rules of Procedure and
Evidence

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

The Office of the Prosecutor
Ms Fatou Bensouda
Mr James Stewart

Counsel for Mr Abd-Al-Rahman
Mr Cyril Laucci

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section
Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court,¹ issues this Decision on the Defence Request pursuant to Rule 20 of the Rule of Procedure and Evidence.

I. PROCEDURAL HISTORY

1. On 27 April 2007, Pre-Trial Chamber I granted the Prosecutor's application under article 58(7) of the Rome Statute (the 'Statute')² and decided³ to issue a warrant of arrest against Mr Ali Muhammad Ali Abd-Al-Rahman ('Mr Abd-Al-Rahman')⁴ for crimes against humanity and war crimes allegedly committed in the localities of Kodoom, Bindisi, Mukjar, Arawala and their surrounding areas (Darfur, Sudan) between August 2003 and March 2004.
2. On 16 January 2018, Pre-Trial Chamber II, in its previous composition, granted the Prosecutor's application to amend the first warrant of arrest pursuant to article 58(6) of the Statute⁵ by issuing a second warrant of arrest against Mr Abd-Al-Rahman⁶ for crimes against humanity and war crimes allegedly committed in the locality of Deleig and surrounding areas (Darfur, Sudan) between on or about 5 to 7 March 2004.
3. On 9 June 2020, Mr Abd-Al-Rahman surrendered himself and was transferred to the Detention Centre of the Court.
4. On 25 June 2020, the Defence submitted a request pursuant to article 67(1)(f) of the Statute for the Chamber to order the Registry to provide interpretation and translation services for communications between Mr Abd-Al-Rahman and the

¹ Decision on the designation of a Single Judge, 9 June 2020, ICC-02/05-01/07-80.

² Prosecutor's Application under Article 58 (7), 27 February 2007, ICC-02/05-55-US-Exp (public redacted version notified on the same day, ICC-02/05-56).

³ Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr.

⁴ Warrant of Arrest for Ali Kushayb, ICC-02/05-01/07-3-Corr.

⁵ Prosecution's application pursuant to article 58(6) of the Rome Statute to amend the warrant of arrest for ALI MUHAMMAD ALI ABD-AL-RAHMAN ("ALI KUSHAYB") by adding new crimes, 3 November 2017, ICC-02/05-01/07-73-Secret-Exp (confidential redacted and public redacted versions notified on 26 June 2020, ICC-02/05-01/20-6-Conf-Red and ICC-02/05-01/20-6-Red2).

⁶ Second warrant of arrest for Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), ICC-02/05-01/07-74-Secret-Exp (public redacted version notified on 11 June 2020, ICC-02/05-01/07-74-Red).

Defence team, as well as for the preparation of the Defence (the ‘Article 67 Request’).⁷

5. On 9 July 2020, the Defence submitted a request pursuant to Rule 20(1)(b) of the Rules of Procedure and Evidence (the ‘Rules’), seeking for the Chamber to order the Registry to immediately provide to the Defence the interpretation services that it requires, until such time as a final decision of the Court has been issued on the Article 67 Request (the ‘Request’).⁸

6. On 10 July 2020, the Single Judge issued the ‘Decision on Defence request under article 67(1)(f) of the Rome Statute’, rejecting the Article 67 Request, and noting, *inter alia*, that article 67(1)(f) of the Statute does not apply to private and privileged communications between a defendant and his Defence team (the ‘Decision’).⁹

7. On 16 July 2020, the Defence submitted a request for leave to appeal the Decision (the ‘Request for Leave to Appeal’).¹⁰

8. On 7 August 2020, the Chamber issued a decision granting the Request for Leave to Appeal on a reformulated issue.¹¹

II. SUBMISSIONS

9. The Defence submits that by declining to provide interpretation services on a provisional basis, pending the final decision of the Court on the Article 67 Request, the Registry has failed to meet its obligations under Rule 20 of the Rules. Without the requested interpretation services, the Defence submits that Mr Abd-Al-Rahman is prevented from communicating in a satisfactory manner with his Defence team. Considering that the Appeals Chamber may ultimately recognise a right to Court funded counsel-client communications, the Defence submits that the Registry’s decision risks violating the rights of the suspect. In the view of the Defence, the

⁷ Requête en vertu de l’Article 67-1-f, ICC-02/05-01/20-7.

⁸ Requete en vertu de la Regle 20-1-b, ICC-02/05-01/20-93.

⁹ ICC-02/05-01/20-94.

¹⁰ Demande d’autorisation d’interjeter appel de la ‘*Decision on the Defence request under article 67(1)(f) of the Rome Statute*’ (ICC-02/05-01/20-94), ICC-02/05-01/20-97.

¹¹ Decision on the Defence Request for Leave to Appeal the ‘Decision on Defence request under article 67(1)(f) of the Rome Statute’, ICC-02/05-01/20-109.

Registry's position on this matter does not serve to suspend or terminate its obligations to provide assistance to Defence counsel pursuant to rule 20 of the Rules, or to provide interpretation services, pursuant to rule 58 of the Regulations of the Registry (the 'RoR'). The Defence has relied on its case manager for interpretation matters for the time being, noting, however, that this is not an adequate substitute for the services of a professional interpreter.

10. Accordingly, the Defence requests that the Chamber direct the Registry to provide interpretation services for counsel-client communications on a provisional basis, pending the decision of the Pre-Trial Chamber and/or Appeals Chamber on the Article 67 Request.

III. ANALYSIS

11. It is noted that while the Single Judge's decision on the Article 67 Request was pending, the Defence asked the Registry to provide interpretation services for its meetings with Mr Abd-Al-Rahman. The Registry responded to Defence Counsel's request indicating that (i) the assistance requested is not provided for by either the Statute or the legal aid policies of the Court; (ii) Defence counsel did not follow proper procedure in making the request, and (iii) the request did not refer to regulation 58 of the RoR.¹²

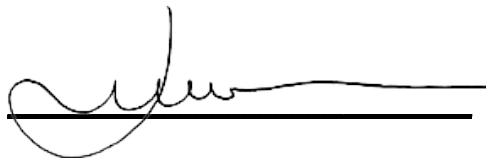
12. The Single Judge notes that, in seeking Court funded counsel-client interpretation services, the Defence has essentially attempted to litigate anew, or in parallel, the same matter that was ruled upon in the Decision on the basis of article 67(1)(f), currently pending before the Appeals Chamber. The only significant difference between the initial claim and the present Request is that this time, the Defence has relied on Rule 20(1)(b) of the Rules instead of article 67(1)(f) of the Statute. The Single Judge deprecates such practice, as it is incumbent upon parties to fully articulate the legal basis of their claims and arguments in their original submissions. The Single Judge does not countenance the prospect of parties engaging in similar practices in the future.

¹² Requete en vertu de la Regle 20-1-b, 9 July 2020, ICC-02/05-01/20-93, paras 2-4.

13. The Single Judge notes that, since the Request for Leave to Appeal has been granted, the issue of whether article 67(1)(f) provides a right to Court funded interpretation services for counsel-client communications is now currently pending before the Appeals Chamber.¹³ Recalling article 82(3) of the Statute, which provides that an appeal shall not have suspensive effect unless so ordered by the Appeals Chamber, the Single Judge considers that, in a similar vein, requests for interim measures affecting matters under consideration by the Appeals Chamber fall within the purview of the Appeals Chamber itself. On this basis, the Request is rejected.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY
REJECTS** the Request.

Done in both English and French, the English version being authoritative.



Judge Rosario Salvatore Aitala
Single Judge

Dated this Thursday, 13 August 2020

At The Hague, The Netherlands

¹³ Decision on the Defence Request for Leave to Appeal the 'Decision on Defence request under article 67(1)(f) of the Rome Statute', 7 August 2020, ICC-02/05-01/20-109.