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No.: ICC-02/05-01/20
Date: 14 October 2020

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN

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

Public

**Prosecution’s Response to “Requête aux fins d’arrêt ou de suspension temporaire
des procédures” (ICC-02/05-01/20-174)**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr James Stewart

Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

Mr Xavier-Jean Keïta

Ms Marie O'Leary

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Esteban Peralta-Losilla

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

Mr Paddy Craig

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Pre-Trial Chamber (“the Chamber”) should dismiss Mr Abd-Al-Rahman’s “Requête aux fins d’arrêt ou de suspension temporaire des procédures”¹ *in limine* because the principal issues raised in it have already been determined, or are before the Chamber and will be addressed in the upcoming decision of the Chamber on the requested postponement of the confirmation hearing. In the alternative, the Chamber should reject the Defence’s Request because it does not meet the standard for a temporary or permanent stay of proceedings.

II. SUBMISSIONS

2. The Defence requests the Pre-Trial Chamber to temporarily or permanently suspend the proceedings in light of the Prosecution’s request to postpone the confirmation hearing from 7 December 2020 to 1 June 2021.²

3. In effect, the Defence has sought to respond to the Prosecution’s Postponement Request in two separate filings. Having been denied a page extension,³ the Defence supplements its submissions concerning the requested postponement, which it filed on the same date.⁴ This has created two parallel litigation lines concerning the same issue, which could delay the proceedings.⁵ All these arguments should have been made in a single filing, the Defence’s response to the Postponement Request, within the prescribed page limit. The Request should be dismissed *in limine* on that basis alone.

4. If, nonetheless, the Pre-Trial Chamber decides to consider the merits of the Request, it should reject it for failing to justify the exceptional remedy of a temporary or permanent stay of proceedings.

¹ ICC-02/05-01/20-174 (“Request”).

² ICC-02/05-01/20-157-Conf-Exp-Corr (“Postponement Request”).

³ ICC-02/05-01/20-164, para. 8. It reads, “Having considered the arguments submitted by the Defence and the Prosecutor, the Single Judge hereby [...] (ii) rejects the request to extend the page limit of the Defence response, as no exceptional circumstances have been demonstrated”.

⁴ ICC-02/05-01/20-173.

⁵ See ICC-02/05-01/20-180, para. 6, where the Presidency states that “duplication of proceedings is unwarranted, interferes with the expeditious administration of justice and may even be considered an abuse of process.”

5. The Appeals Chamber has stated that proceedings can be stayed “where the breaches of the rights of the accused are such as to make it impossible for [him] to make [his] defence within the framework of his rights.”⁶ This is not the case here. The Prosecution made its Postponement Request in light of the present circumstances, as well as its statutory duties towards the accused, victims and witnesses. It continues to make progress to the best of its ability on discharging its duties under the Statute and the Rules of Procedure and Evidence, which it detailed in its third progress report on the evidence review, translation and disclosure process.⁷

6. In requesting a postponement, the Prosecution has exercised its right under rule 121(7) of the Rules of Procedure and Evidence, which provide that “[t]he Prosecutor [...] may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing” and as reflected in the Chambers Practice Manual.⁸ Indeed, the Prosecution has requested and was granted postponement of confirmation in the past, for example in the *Yekatom & Ngaïssona, Ntaganda*, and *Ongwen* cases, as argued in paragraphs 5, 11, 13-14, 21, 24, and 29 of the Postponement Request. As in those cases, the Postponement Request, if granted, would not violate the rights of the accused to an expeditious trial.⁹

7. The Defence mischaracterises the Prosecution’s submissions concerning its cooperation with the Government of Sudan.¹⁰ The Prosecution has explained the steps taken to establish an effective cooperation relationship with the Government of Sudan in paragraphs 4, 14, 17-18, and 60 of the Postponement Request. Given that these arguments are based on a mischaracterisation, they should be dismissed.

8. The Defence suggests that the Prosecution would not be able to present a case against Mr Abd-Al-Rahman due to a lack of cooperation and resources. Whether the Prosecution is able to discharge its duties under article 61 of the Statute should be decided following the confirmation hearing, not before it. Doing so before the

⁶ ICC-01/04-01/06-772, para. 39; ICC-01/04-01/06-844, para. 10.

⁷ ICC-02/05-01/20-179.

⁸ Chambers Practice Manual, para. 13.

⁹ Postponement Request, paras. 7-8, 15, 59.

¹⁰ Request, paras. 2, 6, 17, 18, 25, 26, 30.

Prosecution has presented the charges and evidence for confirmation would undermine the very purpose of the confirmation proceedings as a filtering mechanism. As emphasised by the Appeals Chamber, “one of the purposes of [the confirmation] procedure is to prepare the case for trial and to filter out cases that should not go to trial.”¹¹ For these reasons, the Request is premature.

9. The Request attempts to re-litigate the issue of interim release, reparations and funding. Since these issues have been addressed in separate litigation,¹² the Prosecution will not address them again. The Appeals Chamber rendered its judgment on interim release on 8 October, three days after Mr Abd-Al-Rahman filed the Request.¹³ In it, the Appeals Chamber confirmed the Pre-Trial Chamber’s decision to deny an interim release.

10. Finally, the Prosecution notes that the Defence persists in refusing to correctly caption its submissions with the case name decided upon by the Single Judge.¹⁴ These repeated refusals to comply with the Single Judge’s decision, as in the Request, should be rejected.¹⁵

III. CONCLUSION

11. For the foregoing reasons, the Pre-Trial Chamber should dismiss the Request.



James Stewart
Deputy Prosecutor

Dated this 14th day of October 2020

At The Hague, the Netherlands

¹¹ ICC-01/04-01/07-2259, para. 40.

¹² ICC-02/05-01/20-161; ICC-02/05-01/20-180.

¹³ ICC-02/05-01/20-172; ICC-02/05-01/20-177.

¹⁴ ICC-02/05-01/20-8. The Single Judge decided “to refrain from amending the name of the case until the Chamber is in a position to make an informed decision on the matter”.

¹⁵ For example, ICC-02/05-01/20-173; ICC-02/05-01/20-182-Conf; ICC-02/05-01/20-183-Conf.