

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-02/05-01/20
Date: 30 November 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")**

Confidential

**Prosecution's response to "*Requête en vertu de l'Article 67-2 du Statut
et/ou de la norme 23bis(3) du Règlement de la Cour*", 20 November 2020,
ICC-02/05-01/20-208-Conf**

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**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Chamber should reject the Defence's *Requête en vertu de l'Article 67-2 du Statut et/ou de la norme 23bis(3) du Règlement de la Cour* ("Request").¹ The Defence has failed to demonstrate any forensic purpose that would substantiate the Request.

II. CLASSIFICATION

2. This filing is classified as confidential in accordance with regulation 23bis(2) of the Regulations of the Court since it responds to a request filed as confidential.

III. SUBMISSIONS

3. On 20 November 2020, the Defence requested access to documents related to an internal investigation concerning corruption claims alleged by Mr David Nyekorach Matsanga against members of the Court and the Office of the Prosecutor.

4. This Request should be rejected because it is completely unsubstantiated and as the Defence acknowledges, the Independent Oversight Mechanism ("IOM") conducted an internal investigation and found the allegations of corruption to be baseless and not credible.²

5. Furthermore, Trial Chamber V(A) has previously found the allegations of Mr Matsanga to be unsubstantiated and inappropriate.³ The Appeals Chamber also dismissed those allegations.⁴

6. In any event, the Defence has failed to demonstrate, or even articulate, any forensic purpose for its request and has not shown any link between Mr Matsanga's allegations and the case against Mr Ali Muhammad Ali Abd-Al-Rahman. The Prosecution is compelled to note that submissions such as the Request, which are

¹ ICC-02/05-01/20-208-Conf.

² Paragraph 2 of the Defence's Request.

³ ICC-01/09-01/11-1859-Conf-Exp.

⁴ ICC-01/09-127-Red, ICC-01/09-111, ICC-01/09-96-Red.

almost wholly disconnected from issues central to the case, can only have a detrimental effect on the speedy conduct of the proceedings.

IV. CONCLUSION

7. For the foregoing reasons, the request should be rejected.



James Stewart
Deputy Prosecutor

Dated this 30th day of November 2020

At The Hague, The Netherlands