



Original: English

No. ICC-02/05-01/20

Date: 18 March 2021

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN DARFUR, SUDAN

IN THE CASE OF

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

Public

Decision on the Prosecutor's request for an extension of the page limit for the Document Containing the Charges

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
Ms Paolina Massidda

**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

JUDGE ROSARIO SALVATORE AITALA, acting as Single Judge on behalf of Pre-Trial Chamber II of the International Criminal Court (the ‘Court’),¹ in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, having regard to regulations 37(2), 38(3)(g), and 52 of the Regulations of the Court (the ‘Regulations’), issues this Decision on the Prosecutor’s request for an extension of the page limit for the Document Containing the Charges.

I. Procedural History

1. The Single Judge recalls the procedural history of the case as set out in previous decisions.²
2. On 2 November 2020, the Chamber issued a decision on the Prosecutor’s request to postpone the confirmation hearing and related deadlines in which it, *inter alia*, set instructions regarding the structure and content of the Document Containing the Charges (the ‘DCC’) and the pre-confirmation brief, and set the time limit for the submission of the DCC to 4 January 2021, and the time limit for the submission of the pre-confirmation brief to 15 January 2021.³
3. On 26 November 2020, the Single Judge informed the Prosecutor that (i) pursuant to article 67(1)(a), Arabic translations of the DCC and the pre-confirmation brief must be provided at the same time as the DCC and pre-confirmation brief are due; (ii) the applicable page limit for the DCC is 30 pages, pursuant to regulation 38(3)(g) of the Regulations, and (iii) the applicable page limit for the pre-confirmation brief is 120 pages, pursuant to regulation 38(1)(a) of the Regulations.⁴
4. On 18 December 2020, the Chamber issued a decision on the Prosecutor’s second request to postpone the confirmation hearing in which it, *inter alia*, revised the time

¹Decision on the designation of a Single Judge, 17 March 2021, ICC-02/05-01/20-307.

² See, for example, [Decision on the Defence Request to provide written reasoning for two oral decisions](#), 18 August 2020, ICC-02/05-01/20-118, paras 1-4.

³ [Decision on the Prosecutor’s Request for Postponement of the Confirmation Hearing and related deadlines](#), ICC-02/05-01/20-196, paras 41-42.

⁴ Email from the Chamber to the Prosecutor sent on 26 November 2020 at 16:57.

limit for the submission of the DCC to 29 March 2021, and revised the time limit for the submission of the pre-confirmation brief to 16 April 2021.⁵

5. On 26 February 2021, the Single Judge provided further instructions to the Prosecutor regarding the DCC.⁶

6. On 11 March 2021, pursuant to the request of the Prosecutor,⁷ the Single Judge granted an extension to 23 April 2021 for the Arabic translation of the pre-confirmation brief.⁸

7. On 12 March 2021, the Prosecutor submitted a request to extend the page limit for the DCC from 30 to 45 pages, pursuant to regulation 37(2) of the Regulations (the 'Request').⁹

8. On 12 March 2021, the Defence indicated via email that it does not object to the Request.¹⁰

9. On 16 March 2021, following the recomposition of the Chambers and assignment of certain situations and cases therein to Pre-Trial Chamber II by the Presidency of the Court,¹¹ the Judges of Pre-Trial Chamber II decided that Judge Rosario Salvatore Aitala will act as the Presiding Judge of Pre-Trial Chamber II with immediate effect. The Chamber issued a decision to this effect on 17 March 2021.¹²

10. On 17 March 2021, Pre-Trial Chamber II issued a decision designating Judge Rosario Salvatore Aitala as Single Judge responsible for carrying out the functions of the Chamber in the present case.¹³

II. Submissions and Analysis

11. The Single Judge recalls that according to regulation 38(3)(g) of the Regulations, the DCC shall not exceed 30 pages. The page limit may be extended in exceptional

⁵ [Decision on the Prosecutor's Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits](#), ICC-02/05-01/20-238, para. 43 and page 15.

⁶ Email from the Chamber to the parties sent on 26 February 2021 at 11:31.

⁷ Email from the Prosecutor to the Chamber received on 11 March 2021 at 15:07.

⁸ Email from the Chamber to the parties sent on 11 March 2021 at 16:19.

⁹ [Prosecution's request for an extension of the page limit for the Document Containing the Charges](#), ICC-02/05-01/20-301.

¹⁰ Email from the Defence to the Chamber received on 12 March 2021 at 16:38.

¹¹ [Decision assigning judges to division and recomposing Chambers](#), 16 March 2021, ICC-01/04-763.

¹² Decision on the Election of the Presiding Judge, ICC-02/05-01/20-306.

¹³ Decision on the designation of a Single Judge, ICC-02/05-01/20-307.

circumstances, pursuant to regulation 37(2) of the Regulations, at the request of a participant.

12. The Prosecutor submits that an extension of the page limit is necessary in order to fully comply with the Chamber's instructions regarding the structure and content of the DCC, including details surrounding alleged victims. In this respect, the Prosecutor refers to the Chamber's instructions that the DCC shall pinpoint the places, times, and number of victims corresponding to each charge. The Prosecutor submits that an extension of the page limit is necessary to provide the comprehensive level of detail required.

13. The Prosecutor indicates that the DCC is structured in a narrative style and details various major incidents, each with multiple charges and corresponding modes of responsibility. For each crime and each mode of criminal responsibility, the underlying legal and factual elements are specifically addressed in detail. The Prosecutor submits that the requested page extension will provide the Defence with greater clarity regarding notice of the charges and provide the Chamber, victims, and the general public with a better understanding of the case.

14. The Single Judge considers that the requested extension is necessary in order to allow the Prosecutor to prepare a DCC with a sufficient level of precision and detail, as required by regulation 52 of the Regulations, and pursuant to the instructions of the Chamber. In this respect, the Single Judge recalls the finding of the Appeals Chamber that '[s]imply listing the categories of crimes with which a person is to be charged or stating, in broad general terms, the temporal and geographical parameters of the charge is not sufficient to comply with the requirements of regulation 52 (b) of the Regulations of the Court and does not allow for a meaningful application of article 74 (2) of the Statute'.¹⁴ Noting that the DCC shall outline a number of major incidents, each with multiple charges and modes of responsibility, and that a high level of detail is required for the legal and factual elements for each crime and each mode of criminal

¹⁴ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute"](#), 18 June 2018, ICC-01/05-01/08-3636-Red, para. 110. A confidential version is also available, see ICC-01/05-01/08-3636-Conf.

responsibility, the Single Judge finds that exceptional circumstances exist within the meaning of regulation 37(2) of the Regulations.

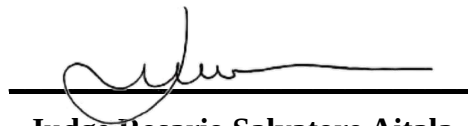
15. Lastly, the Single Judge recalls that both the DCC and the Arabic translation thereof shall be submitted by 29 March 2021, and stresses that the page limit for the pre-confirmation brief is firm.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request; and

EXTENDS the page limit for the Document Containing the Charges to 45 pages.

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



Judge Rosario Salvatore Aitala
Single Judge

Dated this Thursday, 18 March 2021

At The Hague, The Netherlands