

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/05-01/20

Date: 11 June 2021

PRE-TRIAL CHAMBER II

Before:

**Judge Rosario Salvatore Aitala, Presiding Judge
Judge Antoine Kesia-Mbe Mindu
Judge Tomoko Akane**

SITUATION IN DARFUR, SUDAN

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

Public Document

**Observations on Behalf Of the Victims on the review of the Pre-Trial detention of
Mr Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")**

Source: Legal Representative of the Victims

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

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I. INTRODUCTION

1. Whereas in its Preamble of the Rome Statute indicated that the States Parties

Mindful that during this century millions of children, women and men have

been victims of unimaginable atrocities that deeply shock the conscience of

humanity. (Preambular Paragraph 2) and determined to put an end to

impunity for the perpetrators of these crimes and thus to contribute to the

prevention of such crimes, (paragraph 5 of the preamble).
2. Therefore, the Legal Representative of the Victims, see the necessity of

continuing the detention of the suspect and rejecting the Defence's request for

his Interim release for the following reasons:
 - A. The reasons that require the arrest of the suspect are still available,

especially those related to ensuring that the suspect does not obstruct

investigations or trial procedures, or endanger them, as well as to prevent

the commission of a related crime that falls within the jurisdiction of the

court and arises from the same circumstances, in accordance with the

provisions of Article (58/ B/2-3) of the Roma Statute.
 - B. The continued detention of the suspect represents the protection and safety

of victims and witnesses and their physical and psychological safety, in

accordance with the provisions of Article 68/1 of the Roma Statute.
 - C. The continued imprisonment of the suspect is the most important concern

of the victims, as it has a significant impact on their personal interests, in

accordance with Article (68/3) of the Rome Statute.

II. PROCEDURAL HISTORY.

3. On 31 March 2005, by adopting Resolution 1593 (2005) ('Resolution 1593') the United Nations Security Council (the 'UN Security Council' or 'UNSC') referred to the Prosecutor the situation in Darfur, Sudan, as of 1 July 2002, pursuant to article 13(b) of the Statute (the 'Referral')¹
4. On 27 April 2007, Pre-Trial Chamber I issued a warrant of arrest against Mr Abd-Al-Rahman 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 (the 'First Warrant of Arrest').² On 16 January 2018, Pre-Trial Chamber II, in its previous composition, issued a second warrant of arrest against Mr Abd-Al-Rahman 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 (the 'Second Warrant of Arrest').³
5. On 9 June 2020, Mr Abd-Al-Rahman surrendered himself to (the 'Court') ; on 15 June 2020, he made his first appearance before Judge Rosario Salvatore Aitala,⁴ acting as Single Judge on behalf of Pre-Trial Chamber II.⁵ Upon the

¹ S/RES/1593 (2005).

² Decision on the Prosecution Application under Article 58(7) of the Statute, ICC-02/05-01/07-1-Corr; Warrant of arrest for Ali Kushayb, ICC-02/05-01/07-3-Corr

³ Second warrant of arrest for Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), ICC-02/05-01/07- 74-Conf (public redacted version notified on 11 June 2020, ICC-02/05-01/07-74-Red).

⁴ Transcript of hearing, ICC-02/05-01/20-T-001-ENG.

⁵ Decision on the designation of a Single Judge, 9 June 2020, ICC-02/05-01/07-80.

Prosecutor's requests,⁶ the date for the commencement of the confirmation of charges hearing, initially set for 7 December 2020, was later postponed, together with all related time limits, first to 22 February 2021⁷ and then to 24 May 2021.⁸

6. On 1 July 2020, Mr Abd-Al-Rahman filed a request for interim release to the territory of the host State pending trial, pursuant to article 60(2) of the Statute⁹ (the 'First Request').
7. On 13 July 2020, the Prosecutor responded to the First Request.¹⁰
8. On 14 August 2020, the Pre-Trial Chamber, Judge Salvatore Aitala acting as Single Judge, issued the 'Decision on the Defence Request for Interim Release', rejecting the First Request¹¹ (the 'First Decision on Detention').
9. On 8 October 2020, the APPEALS Chamber issued its judgment confirming the First Decision on Detention¹² (the '*Abd-Al-Rahman OA2 Judgment*').

⁶ Corrected Version of "Prosecution's request to postpone the confirmation hearing", 16 September 2020, ICC-02/05-01/20-157-Conf-Exp-Corr (confidential and public redacted versions notified on the same day, ICC-02/05-01/20-157-Conf-Red-Corr and ICC-02/05-01/20-157-Corr-Red); Prosecution's second request to postpone the confirmation hearing and related deadlines, 3 December 2020, ICC-02/05-01/20-218-Conf (public redacted version notified on 4 December 2020, ICC-02/05-01/20-218-Red).

⁷ Decision on Prosecutor's Request for Postponement of the Confirmation Hearing and related deadlines, 2 November 2020, ICC-02/05-01/20-196.

⁸ Decision on the Prosecutor's Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits, 18 December 2020, ICC-02/05-01/20-238.

⁹ Requête en vertu de l'Article 60-2, 1 July 2020, ICC-02/05-01/20-12

¹⁰ Prosecution's Response to "Requête en vertu de l'Article 60-2" (ICC-02/05-01/20-12), 13 July 2020, ICC-02/05-01/20-95 with Annex 1 (ICC-02/05-01/20-95-Anx1), Annex 2 (ICC-02/05-01/20-95-Anx2), Annex 3 (ICC-02/05-01/20-95-Anx3).

¹¹ Decision on the Defence Request for Interim Release, 14 August 2020, ICC-02/05-01/20-115, p. 11.

¹² Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 14 August 2020 entitled 'Decision on the Defence Request for Interim Release', ICC02/05-01/20-177. See also Separate concurring opinion of Judge Luz del Carmen Ibáñez Carranza to the Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 14 August 2020 entitled 'Decision on the Defence Request for Interim Release', 8 October 2020, ICC-02/05-01/20-177-Anx.

10. On 2 November 2020, following a request by the Prosecutor, the Pre-Trial Chamber postponed the hearing on the confirmation of charges and set the date for it to commence on 22 February 2021.¹³
11. On 11 December 2020, the Pre-Trial Chamber ordered Mr Abd-Al-Rahman's continued detention, finding no changes of circumstances in the factors underlying the First Decision on Detention¹⁴ (the 'Second Decision on Detention').
12. On 18 December 2020, following a second request by the Prosecutor, the Pre-Trial Chamber postponed the hearing on the confirmation of charges and set the date for it to commence on 24 May 2021.¹⁵
13. On 5 February 2021, the Appeals Chamber issued its judgment confirming the Second Decision on Detention¹⁶ (the 'Abd-Al-Rahman OA6 Judgment').
14. On 18 March 2021, following an extension of time limit, the Prosecutor filed her observations on the second review of Mr Abd-Al-Rahman's Detention.¹⁷

¹³ Decision on the Prosecutor's Request for Postponement of the Confirmation Hearing and related deadlines, 2 November 2020, ICC-02/05-01/20-196, p. 20.

¹⁴ Decision on the Review of the Detention of Mr Abd-Al-Rahman pursuant to rule 118(2) of the Rules of Procedure and Evidence, 11 December 2020, ICC-02/05-01/20-230-Red (original confidential filed on the same date), para. 7, p. 10. See also paras 27-28

¹⁵ Decision on the Prosecutor's Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits, 18 December 2020, ICC-02/05-01/20-238 (hereinafter: 'Second Postponement Decision'), p. 15

¹⁶ Judgment on the appeal of Mr Abd-Al-Rahman against Pre-Trial Chamber II's 'Decision on the Review of the Detention of Mr Abd-Al-Rahman pursuant to rule 118 (2) of the Rules of Procedure and Evidence', 5 February 2021, ICC-02/05-01/20-279-Red.

¹⁷ Prosecution's observations on review of the pre-trial detention of Mr Ali Muhammad Ali Abd-AlRahman ("ALI KUSHAYB"), 22 March 2021, ICC-02/05-01/20-309-Red (original confidential version filed on 18 March 2021), p. 6.

On 1 April 2021, Mr Abd-Al-Rahman Submitted his observations on the matter of detention, including his reply to the Prosecutor's observations.¹⁸

15. On 26 March 2021, Mr Abd-Al-Rahman submitted a request to declare the Prosecutor's witness statements inadmissible (the 'Admissibility Request').¹⁹
16. On 9 April 2021, Mr Abd-Al-Rahman filed an urgent request to convene a hearing pursuant to rule 118(3) of the Rules of Procedure and Evidence (the 'Rules'), to discuss the conditions for his immediate release in the light of the Prosecutor's failure to respond to the admissibility Request (the 'Hearing Request').²⁰
17. On 12 April 2021, the Pre-Trial Chamber issued its decision finding no change in circumstances that requires it to modify its First Decision on Detention, rejecting the Hearing Request and remanding Mr Abd-Al-Rahman in detention.²¹ (the 'Impugned Decision')
18. On 2 June, the Appeal Chamber issued its judgment (the 'Abd-Al-Rahman OA7 Judgment')²² on the Appeal of Mr Abd-Al-Rahman against the Pre-Trial Chamber II Confirming the 'Decision on the review of detention'.

¹⁸ Observations relatives au second réexamen de la détention, 1 April 2021, ICC-02/05-01/20-329-Red (confidential version filed on the same date) (hereinafter: 'Defence Observations to the Second Review'), p. 20.

¹⁹ 1ère Requête aux fins d'exclusion de moyens de preuve, 26 March 2021, ICC-02/05-01/20-322, p. 18.

²⁰ Nouvelle Requête aux Fins de Convocation Urgente d'une Audience, 9 April 2021, ICC-02/05-01/20- 336, para. 9.

²¹ Decision on the review of detention, 12 April 2021, ICC-02/05-01/20-338, para. 37, p. 14.

²² Appeal Chamber judgment (the 'Abd-Al-Rahman OA7 Judgment') 2 June 2021.

III. OBSERVATIONS.

19. Victims that Council represent believe that the suspect has strong relations with many governmental and non-governmental parties, who participated with him in committing the criminal acts, which constitute the charges against him, and these parties are still free and not detained, and they have family and tribal extensions inside and outside Sudan and in the heart of displaced camps.
20. The victims whom Council represent have expressed to me their fears of participating in the proceedings for fear of reprisals from the suspect's family and members of his tribe who live inside and outside Sudan and who make threats to the victims wishing to participate in the proceedings and to testify so far.
21. The victims whom Council represent have expressed to him that they are in conflict areas and camps for displaced persons, still subjected to the same criminal acts until now without stopping by the Janjaweed militias led by the suspect, which can be described as a challenge to the progress made by the court in prosecuting those involved in committing atrocities in the Darfur region.
22. Council underlines that the release of the suspect would represent a great disappointment for the victims who encouraged and participated in the procedures at the current stage, it would also constitute intimidation for

others who wished to participate, and the release of the suspect would definitely lead to their reluctance to participate.

23. The victims' reception of the court's chief prosecutor during her visit to the camps for the displaced in the Darfur region on May 29 - June 3, which was published on social media, reflected the extent of joy and hope that returned to them after an absence, from the possibility of achieving justice and prosecuting those involved in committing crimes in Darfur, which will have a positive effect in encouraging the victims to participate in the proceedings during the trial and to give their testimony without fear. Therefore, releasing the suspect's release will be a demolition of all those efforts made in order to emphasize the effectiveness of the court's role in holding those involved accountable and reducing the phenomenon of impunity.
24. The victims that Council represent believe that releasing the suspect will obstruct the investigation and trial procedures and endanger them.
25. The victims that Council represent also believe that releasing the suspect will lead to him returning to commit the same crimes in retaliation against them and their families.
26. The victims whom the Council represent believe that releasing the suspect will lead to the commission of other related crimes that fall within the jurisdiction of the court due to the availability of the same circumstances in which the previous crimes occurred.

IV. CONCLUSION.

27. In the light of the above, The Legal Representative of the Victims respectfully requests from the Pre-Trial Chamber II continuing the detention of the suspect.



Nasser Amin

Legal Representative of Victims

Dated this 11th day of June 2021