

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 July 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 AL ABD-AL-RAHMAN ('ALI
KUSHAYB')**

**Public
with Annexes I and II confidential *EX PARTE*,
only available to the Defence**

Public redacted version of 'Registry's observations on the "Requête aux fins d'exécution du paragraphe 25 de la Décision ICC-02/05-01/20-123-Conf", ICC-02/05-01/20-183-Conf', 23 October 2020, ICC-02/05-01/20-192-Conf

Source: The Registry

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

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**Unrepresented Applicants
(Participation/Reparation)**

Unrepresented victims

**The Office of Public Counsel for
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**Victims Participation and Reparations
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Other

I. Introduction

1. On 20 August 2020, Pre-Trial Chamber II (“Chamber”) ruled that “Mr Abd-Al-Rahman may [...] request permission from the Registrar to use part or all of the funds [REDACTED], with the Chamber’s previous permission” (“20 August Decision”).¹

2. Following the Chamber’s email instruction on 19 October 2020,² the Registry hereby submits its observations on the “Requête aux fins d’exécution du paragraphe 25 de la Décision ICC-02/05-01/20-123-Conf” (“Request”) submitted by counsel for Mr Ali Muhammad Al Abd-Al-Rahman (“Defence” and “Mr Abd-Al-Rahman”, respectively).³

3. The Registry understands from the Chamber’s ruling that funds can be released in part or in full under the condition that the Defence demonstrates [REDACTED], with the Chamber’s previous permission. To date, the Registry is faced with the same difficulties in assessing [REDACTED] for the purpose of the 20 August Decision and in establishing Mr Abd-Al-Rahman’s indigence with certainty, as explained below.

II. Procedural history

4. Following the 20 August Decision, on 31 August 2020, the Defence requested “to transfer funds seized during [Mr Abd-Al-Rahman] surrender [REDACTED]”.⁴

5. On 17 September 2020, noting the 20 August Decision, the Registry replied to the Defence that “the Registrar will undertake an assessment on Mr Abd-Al-Rahman’s

¹ Pre-Trial Chamber II, “Decision on the Prosecution’s request for evidence in the custody of the Registry (ICC-02/05-01/20-9-Red2) and the Registry’s request for instructions (ICC-02/05-01/07-86-US-Exp)”, 20 August 2020, ICC-02/05-01/20-123-Conf (“20 August Decision”), para. 25.

² Email from Pre-Trial Chamber II to Registry on 19 October 2020 at 15.48.

³ Defence, “Requête aux fins d’exécution du paragraphe 25 de la Décision ICC-02/05-01/20-123-Conf”, 13 October 2020, ICC-02/05-01/20-183-Conf (“Request”).

⁴ Email from the Defence to the Registry on 31 August 2020 at 16.50.

situation in this context”, and requested further information for the purpose of verifying [REDACTED].⁵

6. On the same day, the Defence replied that “all information and documents available to [Mr Abd-Al-Rahman] have been shared [REDACTED].”⁶ The Defence further stressed that Mr Abd-Al-Rahman “has no means whatsoever to obtain additional documents”, and that the Defence’s “attempts to secure access to other documents have been unsuccessful so far.”⁷ In the same email, the Defence provided two documents [REDACTED] (“Two Documents”).⁸

7. On 7 October 2020, given that the Two Documents were of no assistance for the purpose of the Registry’s assessment [REDACTED], in response to the Defence’s request for the urgent transfer of funds [REDACTED],⁹ the Registry requested the Defence to provide further information, in particular [REDACTED].¹⁰

8. On the same day, the Defence replied that Mr Abd-Al-Rahman [REDACTED]. The Defence stated that it [REDACTED].¹¹

9. On 13 October 2020, the Defence requested the Chamber to order : (i) the Registry “de transférer la somme de [REDACTED] euros [REDACTED]; or (ii) [REDACTED].¹²

III. Classification

10. In accordance with regulation 23 *bis*(2) of the Regulations of the Court (“RoC”), the present observations are classified as confidential because they refer to the Request with the same level of classification.

⁵ Email from the Registry to the Defence on 17 September 2020 at 12.02. [REDACTED].

⁶ Email from the Defence to the Registry on 17 September 2020 at 13.25.

⁷ *Ibid.*

⁸ [REDACTED].

⁹ Email from the Defence to the Registry on 17 September 2020 at 13.25.

¹⁰ Email from the Registry to the Defence on 7 October 2020 at 09.53.

¹¹ Email from the Defence to the Registry on 7 October 2020 at 10.12.

¹² Request, p. 6.

IV. Applicable Law

11. The following provisions are of particular relevance to the present submissions: regulations 84 and 85 of the RoC, and regulations 130 and 132 of the Regulations of the Registry ("RoR").

V. Observations

A. The standards applied by the Registry in the context of determination of means

12. In the Request, the Defence draws parallels with the *Bemba* case,¹³ and claims that "[t]oute conclusion différente démontrerait un traitement inégal et discriminatoire [REDACTED]." [REDACTED]. The Registry, emphasising that such a comparison is inapposite for reasons that are classified confidential in another case, nevertheless reiterates that Mr Bemba correctly substantiated his request to release funds, and provided the appropriate documentation required by the Registry, in a timely manner.

B. Execution of the 20 August Decision

13. The Defence states that it has already submitted all the required information in support of Mr Abd-Al-Rahman's application for legal assistance.¹⁴ [REDACTED].¹⁵ This assertion is incorrect.

14. On 26 June 2020, following the submission of a first application for legal assistance by Mr Abd-Al-Rahman, in the context of his indigence assessment, the Registry requested specific information that would allow for, *inter alia*, establishing [REDACTED].¹⁶ The same information was requested again on 17 September 2020 in the context of the execution of the 20 August Decision.¹⁷ To date, no such information

¹³ Request, para. 18.

¹⁴ Request, paras. 6 and 17.

¹⁵ Request, para. 17. See also email from the Defence to the Registry on 7 October 2020 at 10.12.

¹⁶ Email from the Registry to the Defence on 26 June 2020 at 17.06. The requested information includes: [REDACTED].

¹⁷ See footnote 5.

which would assist the Registry to finalise the assessment of Mr Abd-Al-Rahman's indigence [REDACTED] for the purpose of the 20 August Decision, has been provided.

15. In particular, besides the fact that no supporting documentation has been provided with the first application for legal assistance, or indeed of Mr Abd-Al-Rahman's financial obligations, [REDACTED],¹⁸ the Registry notes that the details provided in the two application forms [REDACTED], are contradictory, particularly as regards [REDACTED].¹⁹

16. In addition, one of the Two Documents, [REDACTED]²⁰. None of the Two Documents [REDACTED]. Furthermore, in the event that the details Mr Abd-Al-Rahman gave in his second, updated legal aid form [REDACTED] are correct, these details indicate [REDACTED]. [REDACTED] this information indicates that what Mr Abd-Al-Rahman has claimed in the present context must be approached with caution.

17. To the extent that the Defence mentioned, as an example, [REDACTED],²¹ the Registry notes that he was unable to provide any evidence to support this claim. Similarly, the Registry also requested Mr Abd-Al-Rahman²² to confirm [REDACTED].²³ In making its assessment [REDACTED], the Registry intended to verify [REDACTED]; in this respect, the Defence, thus far, has not provided any justification or relevant information.

18. The Registry also notes that, [REDACTED], which underlines, as above, the need for a cautious approach as regard information provided by Mr Abd-Al-Rahman in the legal aid forms. In any event, the submitted legal aid forms alone, without supporting documentation requested by the Registry, are not sufficient to verify [REDACTED].

¹⁸ Request, para 17: [REDACTED].

¹⁹ Annex I and II.

²⁰ [REDACTED].

²¹ Request, para. 6. Email from the Defence to the Registry on 17 September 2020 at 13.25.

²² Email from the Registry to the Defence on 7 October 2020 at 09.53.

²³ [REDACTED].

VI. Conclusion

19. In light of the above, the Registry concludes, based on the documentation before it, that [REDACTED] have not yet been properly demonstrated. The Registry would like to highlight that the responsibility to demonstrate [REDACTED] lies with the Defence. Absent further information or documents to be provided by the Defence, the Registry is not at this stage in a position to establish [REDACTED], it cannot further determine whether to release part or all of the funds as requested.



p.p. Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Peter Lewis, Registrar

Dated this 16 July 2021

At The Hague, The Netherlands