



Original: English

**No. ICC-02/05-01/20
Date: 11 February 2022**

TRIAL CHAMBER I

**Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor**

SITUATION IN DARFUR, SUDAN

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

**Public redacted version of the
Decision on the Defence request for cooperation
pursuant to Article 57(3)(b) of the Statute**

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

The Office of the Prosecutor

Karim A.A. Khan
Julian Nicholls

Counsel for the Defence

Cyril Laucci
Iain Edwards

Legal Representatives of Victims

Natalie von Wistinghausen
Nasser Mohamed Amin Abdalla
Anand Shah

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Government of Sudan

1. On 18 January 2022, the Defence filed its ‘Requête relative à la non-coopération du Soudan’ (the ‘Defence Request’).¹ In its request, the Defence submits that [REDACTED]. The requests in question pertain to [REDACTED]. The Defence argues that a cooperation request from Trial Chamber I (the ‘Chamber’) to the Government of Sudan pursuant to Article 57(3)(b) of the Rome Statute (the ‘Statute’) is warranted because [REDACTED] are essential for its preparation for trial and necessary in respect of Mr Abd-Al-Rahman’s rights under article 67 of the Statute.²
2. Upon instruction by the Chamber,³ the Registry filed its observations on the Defence Request on 31 January 2022.⁴
3. Pursuant to Regulation 23bis(1) of the Regulations of the Court, the present decision is classified as confidential *ex parte* only available to the Defence and the Registry, as it contains information pertaining to the Defence Request, which bears the same level of confidentiality. A public redacted version will be issued simultaneously.
4. Articles 57(3)(b), 87(5), 93, 96 and 97 of the Statute, and Rules 20, 116, 176 and 177 of the Rules of Procedure and Evidence (the ‘Rules’) provide the legal framework for the present decision.
5. The Chamber refers to the United Nations Security Council Resolution 1593, according to which Sudan has an obligation to cooperate with the Court.⁵
6. The jurisprudence of the Court mandates that cooperation may be sought by the Chamber only when the requesting party has demonstrated that the requirements of (i) specificity, (ii) relevance and (iii) necessity have been met.⁶

¹ ICC-02/05-01/20-557-Conf-Exp. A public redacted version was notified on the same day, ICC-02/05-01/20-557-Red (hereinafter: ‘Defence Request’).

² Defence Request, ICC-02/05-01/20-557-Conf-Exp, para. 17.

³ Email from the Chamber, 20 January 2022, at 14:51.

⁴ Registry’s Report pursuant to Trial Chamber I’s instruction dated 20 January 2022, ICC-02/05-01/20-569-Conf-Exp. A confidential redacted version was notified on the same day, ICC-02/05-01/20-569-Conf-Red. No responses were filed by the Prosecution or the Common Legal Representatives for Victims.

⁵ United Nations Security Council, Resolution 1593, S/RES/1593 (2005), 31 March 2005, para. 2.

⁶ Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Ngaïssona Defence Request pursuant to Article 57(3)(b) of the Statute, 1 November 2021, ICC-01/14-01/18-1159-Red, para. 6. See also Trial Chamber VIII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Second Mangenda Request for Cooperation, 5 April 2016, ICC-01/05-01/13-1768, para. 8 and jurisprudence cited therein.

7. The Chamber notes that, pursuant to Article 93(1)(i) of the Statute, the ‘provision of records and documents, including official records and documents’ may be the subject of a cooperation request. In relation to the documents sought by the Defence,⁷ the Chamber is satisfied that these documents are specific and relevant to the present case.

8. Moreover, the Chamber is satisfied that the Defence has taken the necessary steps to try and obtain these documents, including through communication with the Prosecution, prior to seeking this order from the Chamber.

9. Accordingly, the Chamber grants the Defence request for cooperation in respect of [REDACTED]:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]; and
- [REDACTED].

10. The Chamber notes that the trial against Mr Abd-Al-Rahman will commence on 5 April 2022. Bearing this in mind, the Chamber stresses that the documents sought, should be provided on a rolling basis, as they become available.

11. In respect of the remainder of the Defence Request, the Chamber finds that the Defence has provided insufficient information to fulfil the required criteria identified above.⁸

⁷ Defence Request, ICC-02/05-01/20-557-Conf-Exp, para. 15.

⁸ Transcript of hearing, 8 February 2022, ICC-01/25-01/20-T-022-CONF-ENG, p. 32, lines 15-18.

FOR THE FOREGOING REASONS, THE CHAMBER

- (i) **GRANTS** the Defence Request for cooperation in relation to the documents mentioned above in paragraph 9;
- (ii) **REJECTS** the remainder of the Defence Request;
- (iii) **ORDERS** the Registry (a) to transmit forthwith a cooperation request for the assistance of the Government of Sudan in this matter; and (b) to serve the request to the Government of Sudan through the proper channels of communication as provided for in the applicable legal framework;
- (iv) **INVITES** the representatives of the Government of Sudan to consult with the Court in case it identifies any problem in the execution of the request; and **INVITES** the Government of Sudan to do so without delay so as to resolve any such matter.



Judge Joanna Korner**Presiding Judge**

Judge Reine Alapini-Gansou

Judge Althea Violet Alexis-Windsor

Dated this 11 February 2022

At The Hague, The Netherlands