

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Status Conference - Courtroom 1
9 Monday, 25 October 2021
10 (The hearing starts in open session at 4.35 p.m.)
11 THE COURT USHER: [16:35:37] All rise. The International Criminal Court is now in
12 session. Please be seated.
13 PRESIDING JUDGE KORNER: [16:35:59] (Microphone not activated).
14 THE COURT OFFICER: [16:36:12] Good afternoon, Madam President,
15 your Honours. The situation in Darfur, Sudan, in the case of The Prosecutor versus
16 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05/-01/20.
17 And for the record, we are in open session.
18 THE ARABIC INTERPRETER: [16:36:40] Message from the interpreters: if we can
19 be kindly directed whether we should interpret or not interpret? Or whether we
20 interpret but only the part that when Mr Amin speaks is the one that when we don't
21 interpret.
22 The instructions are not clear at the moment. Thank you.
23 PRESIDING JUDGE KORNER: [16:37:12] (Microphone not activated).
24 MR NICHOLLS: [16:37:13] Good afternoon, your Honours, I'm Julian Nicholls.
25 And I'm here today with Ghazaleh Meskoob, Octavio Sillitti and Claire Sabatini, our

1 case manager. Thank you very much.

2 PRESIDING JUDGE KORNER: [16:37:26] (Microphone not activated).

3 MR LAUCCI: [16:37:31](Interpretation) Good afternoon, your Honour,

4 Madam President. For the Defence, appearing: Nina Guilloux, assistant analysis of

5 evidence; Ahmad Issa, case manager; Vanessa Grée, legal adviser, [...] and myself,

6 Cyril Laucci standing for the defendant.

7 PRESIDING JUDGE KORNER: [16:38:04] Yes, the appearance on behalf of the

8 victims, please.

9 MR AMIN: [16:38:13](Interpretation) Good afternoon, sir, my name is Nasser Amin.

10 I am the LRV appearing here to present to you the views of my team. A member of

11 my team is present with me. Thank you, Mr President.

12 PRESIDING JUDGE KORNER: [16:38:38] "Mr"? All right, could you not translate

13 please, the next part.

14 Mr Amin, the official languages of the Court are French and English. Regrettably, it

15 does not include Arabic. There is Arabic interpretation going on for the purposes of

16 the defendant, the accused in this case. But I'm going to have to ask you to confirm

17 that you speak and can ask questions in and understand the answers either in French

18 or in English.

19 So would you like to confirm whether that you can, because you will not be able to

20 use Arabic during the course of the trial or any other proceedings. So could you

21 confirm, please, that you speak either French or English?

22 MR AMIN: [16:39:36] Yes, Mr President. I understand English and I can speak

23 English and I understand your questions, but in the first confirmation hearing

24 sessions, we request from the Chamber to allow us to -- to use the Arabic language

25 during our presentation, just our presentation. Not a -- one of language of the

1 working for the International Criminal Court. Just we request we can -- if we can
2 use the Arabic language as the language for the -- language for the victim and the
3 language for the accused. And the most of people in Sudan and the most of victims
4 in Sudan, they need to hearing them -- the presenters before the
5 International Criminal Court to use the language, which they understand for -- for
6 them to talking about them suffering. For that. The ...

7 PRESIDING JUDGE KORNER: [16:41:08] I'm sorry you're breaking up, Mr Amin.

8 MR AMIN: [16:41:20] I will repeat my mind, just we request from the President of
9 the hearing -- information here, this case is a very -- is a very important case in the
10 Arab region. This is the first case for -- this is a very (indiscernible) case in the Arab
11 region to ...

12 PRESIDING JUDGE KORNER: [16:41:56] Yes, all right. Can I cut this short;
13 otherwise, we're going to spend a long time and the interpreters have already been
14 working a full day.

15 As I understand it, you say that the Pre-Trial Chamber gave you leave to use Arabic,
16 is that correct?

17 MR AMIN: [16:42:16] Yes, that is right.

18 PRESIDING JUDGE KORNER: [16:42:23] All right. Well, I'm afraid we're going to
19 have to consider that a bit more carefully. As it is, you will be co-counsel in any
20 event, and I expect Ms Von Wistinghausen will be dealing with most of these
21 submissions, but we will see where we go.

22 Yes, finally, is there somebody here from the Registry?

23 MR TJONK: [16:42:56] Good afternoon, your Honours. On behalf of the Registrar,
24 Harry Tjonk, acting chief custody officer; with me, Marie Lucas, assistant legal officer
25 and Derek Green, head of the information security unit.

1 PRESIDING JUDGE KORNER: [16:43:10] Yes, thank you very much. One more
2 thing concerning counsel.

3 Mr Edwards, I understand having seen a recent decision that you are also acting in
4 the case of Al Hassan, is that correct?

5 MR EDWARDS: [16:43:25] Yes, on a very temporary basis.

6 PRESIDING JUDGE KORNER: [16:43:28] I see, I was going to ask you how you are
7 going to manage next year when, in theory, the cases will be running at the same
8 time.

9 MR EDWARDS: [16:43:41] The mandate is only until early December.

10 PRESIDING JUDGE KORNER: [16:43:43] Right.

11 MR EDWARDS: [16:43:44] It's just to assist the team with a very specific tranche of
12 evidence.

13 PRESIDING JUDGE KORNER: [16:43:50] Oh, I see. All right. Yes, well, that's
14 fine. Thank you very much.

15 All right. The hearing today is to review the detention of the accused in this case.

16 We've had the benefit of a very full submission - every line of the 12 pages allowed,

17 Mr Laucci - not to mention the earlier submissions. We've heard the Prosecution

18 response and we've also heard the views of the victims. We have read and carefully
19 considered all the matters.

20 Mr Laucci, is there anything further, and that by "further", I mean new information
21 that you would like to add at this stage?

22 MR LAUCCI: [16:44:41](Interpretation) Thank you, Madam President.

23 I will start by thanking the Chamber for today's hearing, which puts an end to

24 a situation which, to our mind, appeared to be illegal, and this was confirmed by the

25 Appeals Chamber. So this we appreciate very much, that this hearing can be held

1 under Rule 118(3) with you chairing.

2 Well, the agenda happens by happenstance at the point when, in Sudan, in Khartoum,
3 some very preoccupying events have occurred. We would think that these events
4 should not have an impact on today's discussions, but they are of such concern that it
5 would only be normal to point out that the civilian members of government have
6 been temporarily arrested. And, as you know, we, of the Defence, had reasons to
7 complain about the insufficiency or lack of cooperation from the Sudanese
8 government in this case so far and, in spite of that, I must say that with this new
9 development, we fear that the situation might even worsen in matters of cooperation,
10 but that's not the issue of our discussion for today.

11 Mr Abd-Al-Rahman is here before this Court and it is not thanks to cooperation from
12 the Sudanese government, irrespective of which government, it is simply because he
13 took the initiative to flee from the Sudanese authorities and place himself under the
14 protection of the Court.

15 Therefore -- therefore, we believe that the impact of the current events on cooperation
16 between Sudan and the Court is a bilateral issue, so to speak, and should therefore
17 not be taken into account when you consider his request for release and the review of
18 his detention.

19 And, therefore, in our submissions, we covered what we thought were the relevant
20 aspects, and we therefore used up all our 12 pages, as you said. But, however, we
21 identified in our submissions, some points which we felt that could be further
22 developed today at this hearing.

23 And so what I suggest is that we go to the crux of the matter by not necessarily listing
24 out the four new circumstances that I have referred to from the Defence's point of
25 view as being appropriate for the review of his detention and release of

1 Mr Al-Rahman -- I could do that if you wish me to. But maybe if it is not necessary, I
2 can immediately give the floor to my learned colleague, Mr Edwards, who will
3 directly speak to the issue which we want to raise with the Chamber pertaining to
4 additional information relating to what we refer to in our observations at annex 3, in
5 response to the Prosecutor's filing number 95 in relation to the document on release.
6 So I think we could directly address that issue if that is acceptable, your Honour? In
7 that --

8 PRESIDING JUDGE KORNER: [16:49:01] Mr Laucci, can I make it absolutely clear,
9 we've got your four points -- and, Mr Edwards, can we make it absolutely clear we've
10 got your four points well in mind. We understand those points very clearly.

11 But if there's anything, as I say, that you think Mr Edwards can help, then certainly.

12 MR EDWARDS: [16:49:19] Thank you, your Honour. I can be brief. The new
13 information that we have, the new circumstances as it were, are -- is the assessment of
14 information from January of this year. It's at annex 2 of our filing -- sorry annex A of
15 our filing from Friday. It's the investigator's report.

16 PRESIDING JUDGE KORNER: [16:49:59] Yes, this is about the conversation that
17 took place between your lay client and the OTP about his surrender?

18 MR EDWARDS: [16:50:14] Correct, exactly. And what's most relevant is the date,
19 26 December 2019, that is when there is first evidence of contact between the OTP and
20 my client. And we say that this is relevant and we say that it's a new circumstance
21 because it very much -- it powerfully corroborates our pre-existing instructions that
22 from late 2019 into early 2020, indeed until the date that my client surrendered
23 himself into the hands of the OTP, he was essentially on the run. He was in hiding.

24 PRESIDING JUDGE KORNER: [16:51:09] (Microphone not activated).

25 THE INTERPRETER: [16:51:12] Microphone.

1 PRESIDING JUDGE KORNER: [16:51:15] Thank you.

2 It simply says, on the 26th of December, some intermediary contacts the OTP and says
3 that the person - who, apparently, is not your client, according to your present
4 defence - Mr Ali Kushayb is willing to cooperate and become a witness.

5 MR EDWARDS: [16:51:41] Yes.

6 PRESIDING JUDGE KORNER: [16:51:42] Where does that say he's on the run?

7 MR EDWARDS: [16:51:50] I'm getting there, yes. Can I make it clear, it is our client
8 using the alias "Ali Kushayb" for a very particular purpose that we've gone into in
9 some detail in the course of the confirmation of charges hearing. We appreciate that
10 it doesn't say that he was in hiding in this document - and that's not surprising, how
11 would the investigator know that. But what we say, is, (a) it corroborates our
12 instructions; and (b) it's absolutely corroborative of a point made by the Prosecution
13 in their filing of 13 July 2020, their response to our request, our motion under Article
14 62, paragraph 17 of which makes reference to the fact that an arrest warrant against
15 Mr Abd-Al-Rahman had been issued on 2 December 2019.

16 Can I pause there for a moment and just put this into some sort of a context. Not
17 only is there this evidence that Mr Abd-Al-Rahman was the subject of an arrest
18 warrant, the very fact of him cooperating -- or seeking to cooperate with the Court left
19 him in jeopardy of prosecution and serious punishment in Sudan. Again, this is
20 a matter that has been ventilated in earlier submissions. I can certainly go into more
21 detail about why we say cooperation with the ICC was penalised. It was a criminal
22 offence under the crimes of treason and espionage at the time, but --

23 PRESIDING JUDGE KORNER: [16:53:38] No, you don't have to trouble us with that.
24 We've followed all that. But Mr Edwards, I think also, it's not perhaps your best
25 point, is it, because he was wanted already on a warrant issued in 2007.

1 MR EDWARDS: [16:53:51] True, yes.

2 PRESIDING JUDGE KORNER: [16:53:54] And so offering to act as a witness, that
3 could be said slightly optimistic, given that if he turned himself in, he was likely to be
4 arrested and find himself here.

5 MR EDWARDS: [16:54:05] Yes, that -- that may be a point that my learned friend
6 makes --

7 PRESIDING JUDGE KORNER: [16:54:10] Well, I think it's such an obvious point
8 that it doesn't really need making.

9 MR EDWARDS: [16:54:14] The -- really, the reason why we say that this is
10 important is because it blows out of the water the one piece of evidence that the
11 Prosecution rely on in their submission that Mr Abd-Al-Rahman represents a risk to
12 potential witnesses on the ground in Darfur. That's really the point. Now
13 (Overlapping speakers)

14 PRESIDING JUDGE KORNER: [16:54:37](Microphone not activated) annex 3.

15 MR EDWARDS: [16:54:41] This is annex 3, this is the Darfur network article from 28
16 February 2020. Although, the article is dated 28 February 2020, it purports to relate
17 to events of 23 January 2020, which of course postdates the contact that
18 Mr Abd-Al-Rahman made with the ICC in the first place. It also, I venture to
19 suggest, is relevant - although, I don't suggest that it's a new circumstance, but it's
20 relevant because it also postdates the date -- the 2 December 2019 date, on which the
21 Sudanese arrest warrant was issued.

22 It therefore -- why do I say it blows this out of the water? This article has
23 Mr Abd-Al-Rahman running around El Berdi -- Rahad El Berdi in Darfur with police
24 officers acting as a police officer and threatening human rights defenders. Not
25 potential witnesses in this case, but human rights defenders, so-called, who, in

1 January of 2020, were peacefully demonstrating, of course according to this document.

2 Nothing to do with the ICC. Nothing to do with indictments against my client or the
3 president or anyone like that, but protesting corruption at a very very local level.

4 That's all.

5 So we say that if there's an arrest warrant out for him, if he's made contact with the
6 ICC, placing him in the sort of peril that we say he was, it makes it far less likely that
7 this report of 28 February relating to 23 January is -- can have -- can be a true bill, can
8 be of any probative value.

9 Quite apart from the fact that that this is an article pulled off the Internet. It's
10 unsourced, it's unreferenced. This point has been made in the past, but just it bears
11 repeating, I would submit, that the source is anonymized. We have no idea where it
12 comes from, whether it's first-, second-hand hearsay or what have you.

13 So the evidential value of this document is essentially zero, but it's all that the
14 Prosecution have to rely on to say: This man poses a threat to potential witnesses,
15 whether in Darfur or elsewhere.

16 And that is such an important pillar on which the Prosecution base their arguments
17 that Mr Abd-Al-Rahman cannot be granted provisional release. That evidence is just
18 not worth the paper it's written on. Even if - and, I make this point because I don't
19 think the point has been made before - even if the Court were to conclude that, "In
20 fact, well, despite everything that you say, we think that there is some value to this
21 evidence, and, on the face of it, taking this document at its highest, we're happy to
22 accept it as being evidence of Mr Abd-Al-Rahman threatening human rights
23 defenders back in 2000 -- at the beginning of 2020" -- let's have a look at the context.
24 Again, nothing to do with the ICC. This is Mr Abd-Al-Rahman - taking the case at
25 its highest - acting as a police officer, essentially telling people who are accusing local

1 authorities of corruption and abuse of justice, coming up to them and
2 saying - admittedly, in -- really, in perhaps fairly robust terms, "Don't be going
3 around defaming local authorities. You're going to get into trouble."
4 And we say that whilst it might not be exactly the sort of behaviour that would -- one
5 would expect of a police officer in Paris or London or The Hague, he was acting
6 nevertheless as a police officer - taking the document at its highest.
7 If your Honour is looking further on in the document to the mention of what
8 happened on Friday, 24 January, there's no evidence at all that that has anything to do
9 with my client.

10 PRESIDING JUDGE KORNER: [16:59:50] (Microphone not activated) ... I'm
11 looking at the part (inaudible)...

12 THE INTERPRETER: [16:59:54] Microphone, your Honour.

13 PRESIDING JUDGE KORNER: [16:59:56] I'm looking at the part -- the paragraph
14 that begins, "While addressing the gathering ... "

15 MR EDWARDS: [17:00:02] Yes.

16 PRESIDING JUDGE KORNER: [17:00:04] -- "that he had previously killed more
17 than these two human rights defenders."

18 MR EDWARDS: [17:00:10] Yes, yes. It's unattract- -- if it's true, I accept that it's
19 unattractive. But is it really - I ask rhetorically - that much worse than the sort of
20 comments we hear coming from populist politicians in other parts of the world?
21 He's not a politician. He was a police officer. It's unattractive, we accept that, but
22 it's not evidence that killings have happened in the past.

23 PRESIDING JUDGE KORNER: [17:00:49] If it's him, isn't it the clearest possible
24 evidence?

25 MR EDWARDS: [17:00:55] Looking at it in its context, your Honour, you and your

1 colleagues would have to be satisfied that this goes beyond simply hyperbole in the
2 context of a meeting where he's dealing with some local troublemakers. That's all.

3 PRESIDING JUDGE KORNER: [17:01:16] All right, we've got the point, Mr Edwards,
4 now.

5 MR EDWARDS: [17:01:18] Yes. And then finally, the Court hasn't come to it in the
6 past because no Trial Chamber or Pre-Trial Chamber has yet got to this stage, but it's
7 our submission that if you're with us, but nevertheless have residual concerns, the
8 provisions of Rule 119 of the Rules relating to conditional release can and should be
9 very seriously taken into consideration in order to dispel any residual concerns that
10 the bench may have about either interfering with justice or fleeing the jurisdiction.

11 Rule 119 sets out a list of several robust bail conditions, as it may be described in
12 some jurisdictions, robust conditions, all of which are entirely appropriate in this
13 circumstance.

14 And so it's our submission that our client is a good candidate for interim release with
15 or without conditions and we leave that to your Honours to impose the sort of
16 conditions that might be necessary.

17 PRESIDING JUDGE KORNER: [17:02:48] Mr Laucci, unless you want to add
18 anything, I think Mr Edwards has said all that can be said on that, and, as I say, we
19 have the other matters well in mind.

20 MR LAUCCI: [17:03:00](Interpretation) Absolutely. I want to respond to your
21 question relating to the dates and just make one small observation. You said quite
22 correctly that Mr Abd-Al-Rahman was the subject of an arrest warrant from the Court
23 as early as 2007. That arrest warrant was made public. *But if you look closely at the
24 warrant of arrest, the name of Mr Abd Al-Rahman appears in it on one occasion, on
25 the cover page. The rest of it refers to M. Ali Kushayb. All the disclosures of the OTP

1 since 2007 to June, last June, mentioned only "Ali Kushayb." *So, what we have in the
2 file is that Mr Abd-Al-Rahman is a Sudanese citizen living in Raha Al-Birdi, selling
3 medication and that he is a police sergeant. And it doesn't require great expertise in
4 the Sudanese population accessing modern means of communication, in particular
5 the internet, to say to you that the fact that there was an arrest warrant mentioning
6 Ali Kushayb and that all the communication - I mentioned that of the OTP, but I will
7 add that of the media - mentions exclusively Mr Ali Kushayb, a name by which Mr
8 Abd-Al-Rahman does not identify himself, cannot be used to conclude that he knew,
9 from 2007, that the Court was looking for him. That cannot serve to conclude that he
10 was being sought by the Court ever since 2007. The second point is also an issue of
11 dates. My learned colleague said that annex 3, dated 28 *February 2020, was after 26
12 December 2019. This means it was after the information -- according to which
13 Mr Abd-Al-Rahman expressed his willingness to go to the Court as a witness or
14 otherwise, that information was available -- that information was available to certain
15 people. And, in the meantime, a document was produced by an anonymous NGO,
16 including only hearsay, and we can say that it is the only document on which the OTP
17 could rely to request the continued detention.

18 So that this document should have been issued between 26 December 2020 (sic) and
19 July (sic) -- 2019 and July (sic) 2020, should not be a sufficient element to be
20 a foundation for the continued detention. *But whatever the case, the OTP received
21 information from the Defence that we intended, once again, to challenge the validity
22 of Annex 3 with new elements. We provided that information in our Rule 118-3
23 request for a hearing and we saw that when the OTP had the opportunity to make
24 submissions on the matter of the detention review, it did not furnish any additional
25 more solid evidence. We are left with this Annex 3, which - for the reasons my

1 learned friend just mentioned and to which I have added - should not even have been
2 admissible before the Court because it is "devoid of any probative value". Thank you.

3 PRESIDING JUDGE KORNER: [17:07:26] I think we have got all those points.
4 Thank you very much both of you.

5 Yes, Mr Nicholls, anything you want to add to what has already been said?

6 MR NICHOLLS: [17:07:35] Ms Meskoob will address this, your Honour.

7 PRESIDING JUDGE KORNER: [17:07:42] Can I make the same point, we've read
8 your submissions, unless there's something new or you want to deal with a specific
9 point that Mr Edwards made.

10 MS MESKOOB: [17:07:55] Madam President, your Honours, good afternoon. The
11 Prosecution submits that Mr Abd-Al-Rahman's detention in this case has to be
12 maintained as the conditions warranting his detention under Article 58(1)(b) of the
13 Statute are still met.

14 As we've said in our written submissions, there are no change in circumstances under
15 Article 60(3) --

16 PRESIDING JUDGE KORNER: [17:08:19] I'll stop you there, there have been
17 a change in circumstances, whether it helps the Defence or not --

18 MS MESKOOB: [17:08:22] I was going to say --

19 PRESIDING JUDGE KORNER: [17:08:23] -- since just that last thing, but I can see
20 you're reading something out. Can you just deal, if you would be good enough - as I
21 say, the interpreters here have been here for a long time - with the point that's made
22 by Mr Edwards or anything else that you want to add.

23 MS MESKOOB: [17:08:42] Absolutely, your Honour. Let me then just respond
24 to -- let me just say that we stand by our written submissions and that we have
25 nothing else to add.

1 And then I would now like to respond to what the Defence has just said in relation to
2 the weight and reliability of annex 3, which they want reassessed by this honourable
3 Chamber.

4 First, I want to highlight that this issue has been litigated over and over many times.

5 I can refer your Honours to the Pre-Trial Chamber's decision, filing number 115,
6 dated 14 August 2020, at paragraph 28; or, to the Appeals Chamber's judgment,
7 which is filing number 177, dated 8 October 2020 at paragraphs 30 to 40, and, more
8 specifically, 33.

9 So as we can see, both the Pre-Trial Chamber and the Appeals Chamber have dealt
10 with the issue of the weight and reliability of this evidence. As you're aware,
11 according to Article 60(3) of the Statute under which the present review is conducted,
12 the Chamber does not conduct a *de novo* review. All your Honours need to do is to
13 determine whether there has been a change in circumstances or a new fact that would
14 warrant the changing of the Pre-Trial Chamber's previous decision.

15 This is not the case here. The Prosecution submits that the Defence has not come
16 forward with any new fact. In fact, the exhibit -- or I'm sorry, the evidence they
17 point to, should I say, and that they have annexed as annex A to their latest
18 submissions was known to them as early as December 7th, 2020. So they have had
19 more than nine months to raise the issue that we are now discussing or that they're
20 having us discuss because they have been aware of this fact since it was disclosed to
21 them in December 2020 -- on 7 December 2020 to be more precise.

22 And finally, the Defence said that the Pre-Trial Chamber relied solely on annex 3 to
23 determine, if I'm not mistaken, to determine that Mr Abd-Al-Rahman would
24 represent a risk to the investigation or court proceedings as per Article 58(b)(ii) --

25 MR EDWARDS: [17:11:46] Could I just -- before my learned friend starts making

1 a -- taking a bad point, I said the Prosecution relied only on this document.

2 PRESIDING JUDGE KORNER: [17:12:03] (Microphone not activated) Yes, I
3 thank you, Mr Edwards.

4 I think we've got all of that. The only question I've got about this whole document,
5 is, did the Prosecution -- the release refers to a video being made of all of this. Have
6 the Prosecution ever found that video?

7 MS MESKOOB: [17:12:33] Let me confer with my colleague, if you may,
8 your Honour.
9 (Counsel confer)

10 MS MESKOOB: [17:12:37] I believe we looked for the video and we couldn't find it,
11 your Honour.

12 PRESIDING JUDGE KORNER: [17:12:44] Yes. Well, unless there's anything else
13 you want to add, as I say, we appreciate what you said in your filing.

14 MS MESKOOB: [17:12:52] That is it, your Honour. Thank you very much.

15 PRESIDING JUDGE KORNER: [17:12:55] Thank you very much, yes. Mr Amin, do
16 you want to say anything else other than what's in your written filing?

17 MR AMIN: [17:13:03] Hello?

18 (Interpretation) Thank you, Madam President, for granting me this opportunity to
19 address the matter of pretrial detention. As LRVs, we confirm that we respect the
20 presumption of innocence as a principle. Yet we are - with the same level - adamant
21 to the right of the victims to take part in these proceedings. Their ability to take part
22 in these proceedings would be impacted should the defendant be released.

23 His release would present a tremendous risk --

24 PRESIDING JUDGE KORNER: [17:14:28] Mr Amin, stop. Stop please. Stop.

25 You've said all of this in your filing. You don't need to repeat it. We have the

1 point.

2 Is there anything you want to add to your filing that is not in it?

3 MR AMIN: [17:14:40](Interpretation) What I'd like to add is that this morning,

4 political developments in Sudan took place. These developments led to the arrest of

5 the civilian prime minister and to the detention of the civilian elements within the

6 government of Sudan by the military components of the Sudanese government to

7 whom the defendant, Mr Abd-Al-Rahman belongs.

8 This development has sent shock waves to all the victims We have been dealing with.

9 This presumed victory to the military component within the Sudanese government

10 would enable Mr Abd-Al-Rahman or his supporters to escape justice. His

11 supporters do push for that. There is a state of panic in light of this morning's

12 developments.

13 Therefore, the continued detention of Mr Abd-Al-Rahman would send a reassuring

14 message by the Court to all the victims. The essence of this message is that the

15 developments that occurred to date would not in any way undermine the continued

16 process of international justice and would not in any way make it possible for him or

17 for anybody to escape justice.

18 This is what I wished to add. There are certain developments happening in Sudan

19 that warrant every day for the continued detention of Mr Abd-Al-Rahman.

20 Thank you, Madam President, and my apologies if I took a bit more time than

21 originally allocated

22 PRESIDING JUDGE KORNER: [17:16:40] No, but I think we will have to consider,

23 Mr Amin - I'll come back to you, Mr Laucci - I think we will have to consider the

24 question of language here a bit more carefully.

25 But I'll leave that for another time.

1 Yes, thank you.

2 Yes, Mr Laucci?

3 MR LAUCCI: [17:16:57](Interpretation) Yes, Madam President, with all due respect
4 to the distinguished representatives of the victims who has just spoken, I cannot
5 accept that Mr Abd-Al-Rahman is on the side of any one Sudanese government. *I
6 would remind you that it is agreed, and there is evidence in the case file, that Mr
7 Abd-Al-Rahman had to flee the Sudanese authorities and place himself under the
8 protection of the Court. We cannot let it be said without reacting that he is part of any
9 government - the previous government, the subsequent government or the current
10 government.

11 PRESIDING JUDGE KORNER: [17:17:51] In fact, I did have just one question,
12 Mr Laucci. Part of your -- or Mr Edwards, part of your submissions concern the fact
13 that -- I think it's your paragraph 9, which is your third change of circumstance, his
14 right to family visits and the impossibility of implementing the Court's new policy on
15 video conferencing.
16 First, as you yourself say, Mr Laucci, he did receive a visit, I gather from one of his
17 many wives - and, you say it yourself in paragraph -- it's in your original, one of your
18 appendices. Yes, it's your letter to the Registrar. Yes, in your conclusion, Mr Laucci,
19 as I understand it, you say that there was a visit from, as you put it, one of his wives,
20 somebody -- a Ms Muhammad.

21 MR LAUCCI: [17:19:50](Interpretation) Thank you, Madam President, for giving me
22 the opportunity to make that important clarification, and I will do it in the presence of
23 the detention chief and -- who can confirm what I'm saying.
24 There was never any visit from a family member of Mr Al-Rahman to this date. The
25 letter, which is annex B to our submissions, is a response to a proposal that was made

1 to our Defence team, but in reality, to all the Defence teams before the Court during
2 a meeting of 2 July, to Mr Marc Dubuisson, and he explained to the Defence teams the
3 situation of the Registry, that is, the shortage of budgetary resources to finance family
4 visits, the shortage of funds --

5 PRESIDING JUDGE KORNER: [17:20:56] No, Mr Laucci, all I want to know is, did
6 your client receive a visit from his wife -- one of his wives or not?

7 MR LAUCCI: [17:21:04](Interpretation) No.

8 PRESIDING JUDGE KORNER: [17:21:06] It's as simple as that.

9 All right, the second matter then is this, that you complain about the impossibility of
10 video conferencing. But as I understand it - and I imagine that the representative of
11 the Registry can confirm - you haven't actually asked them to set this up?

12 MR LAUCCI: [17:21:33](Interpretation) Thank you also for giving me the
13 opportunity to answer this point. Annex C of our submissions - and, you would
14 have realised - is not the final document. It is a draft. And in that draft you have
15 the comments of the Defence team addressed to the Registry at their request and we
16 thank them for giving us the possibility to contribute. And we were saying that this
17 policy of video conferencing would be totally un-implementable for our client
18 because, first of all, you need a field office and you don't have one in Sudan.

19 *Secondly, the people have to travel to actually take part in the video conference and
20 in the prevailing security situation and the impossibility of the Court to protect the
21 members of Mr Al Rahman's family as well as victims and witnesses, it is impossible
22 to consider taking the family of Rahad-Al-Bardi to Khartoum for a 45 minute
23 videoconference; it is quite simply impossible at the current time.
24 So we were saying that in the absence of a legal framework - and I'm not coming back
25 to that - that policy could not apply to our client. It was not even worth making

1 a request because it is un-implementable from beginning to end. *It was not even
2 worth making a request, because it is unimplementable from beginning to end, and
3 there we have it - it was not challenged by the Registry. I would add that, as my
4 learned friend indicated, the information we have about the mobile network in Darfur
5 for a videoconference is not very encouraging, Quite simply put. The Court is not
6 responsible for the telephone network, but the result is that Mr Abd-Al-Rahman has
7 not had any contact nor videoconference with his family.

8 PRESIDING JUDGE KORNER: [17:24:04] I hear what you say, Mr Laucci, but the
9 reality is, you haven't asked and so no attempt has been made to see whether it could
10 be worked.

11 MR LAUCCI: [17:24:19](Interpretation) In light of the evidence, I cannot at the same
12 time submit before you that the legal framework for court operations in Sudanese
13 territory does not exist and endanger *those people who find themselves in that
14 situation whilst taking the risk of endangering the family of my client for a video
15 conference where one has only to read about the political situation to understand that
16 it will not be feasible for it to take place. Again, quite simply, it would be necessary to
17 have a field office in Sudan, and the Court doesn't have one. Period. It is not even
18 worth making a request.

19 PRESIDING JUDGE KORNER: [17:25:07] Well, I think we all hear what you say
20 Mr Laucci. I think it might be said that it's a bit difficult to argue that something is
21 not available if you haven't given anybody the opportunity to see if it is available. I
22 hear what you say about that, however.

23 Yes, right, I think - unless there's anything else that anybody wants to say - we're
24 going to reserve our decision on this.

25 We will give you a decision by the end of --

1 Oh, Mr Nicholls, yes?

2 MR NICHOLLS: [17:25:48] Thank you, your Honour. Very sorry to interrupt you
3 that way. We may have video of that meeting where we see in -- that you asked
4 about, at least, the second part that you addressed talking about the late January 2020
5 meeting. So we're looking at that just now.

6 This video has been disclosed. I just need to make sure we are matching it up
7 correctly, but I do believe we have that, possibly.

8 PRESIDING JUDGE KORNER: [17:26:24] If you do, Mr Nicholls, I think it would
9 certainly help us, if you could tell us where we find the exhibit.

10 MR NICHOLLS: [17:26:31] Yes, I will do that as soon as possible.

11 PRESIDING JUDGE KORNER: [17:26:34] Right. Sorry, Mr Laucci, I know there's
12 one other matter, but I rather feel that in the light of the information you've got, you
13 may have dropped it, which is the question of your client's mobile phone.

14 It would have -- can I just say this, you say it's a minor matter. We agree. And it
15 would have helped if you had consulted first with the Prosecution and the Registry to
16 find out what the device was before you applied to the Trial Chamber.

17 MR LAUCCI: [17:27:11](Interpretation) Madam President, it is the magic of your
18 authority that made it possible after having addressed ourselves to you to have
19 information that we had never had till date. *The answers of the OTP and of the
20 Registry on that issue revealed points to use that, despite our direct inter-partes
21 efforts had not been covered, notably the document referenced in the OTP's response,
22 which enabled us to sit down with Mr Abd-Al-Rahman and try to identify which
23 device it was and what was being talked about.

24 I will not embarrass your hearing with details of this issue, this may come later. But
25 in any case, the fact that we addressed ourselves to you made it possible for us to

1 receive some information. Now, two additional points.

2 *I would like to thank my learned friend Mr Nicholls in advance for sharing the video
3 with the Defence, once he has identified it, so that we can, if need be, react. And lastly,
4 I would like to make the most of the presence of the representatives of the Registry
5 and in particular the Chief of the Detention Unit in this courtroom to put the question
6 to him about the possibility of using the videoconference policy for the benefit of Mr
7 Abd-Al-Rahman's family. This will enable us to shed light on the remaining grey area
8 of this conversation.

9 PRESIDING JUDGE KORNER: [17:29:13] Yes, well, I rather feel, as I do about the
10 electronic device with the Sudanese music, that you should try and sort this out
11 amongst the parties rather than troubling the Trial Chamber with it. At the moment,
12 we think these are matters that you can deal with amongst yourselves.

13 Yes, well, if there's nothing else for me, unless the Registry wants to say anything or
14 the prison authorities?

15 No.

16 Mr Nicholls?

17 MR NICHOLLS: [17:29:47] Just very quickly, your Honour, I know that you want to
18 end, but I just have to push back a little bit. This question of the music has come out
19 months and months ago. We don't have an MP3 player. We don't have a speaker.
20 We don't have a memory stick with music on it -- all these things, the way it's been
21 described. We've disclosed everything we have in a description to the Defence some
22 time ago.

23 I have to say it's not really our problem, and maybe he could just buy some CDs and
24 provide them to his client. But we have been clear with the Defence of what we have
25 and what we don't have. Thank you.

1 PRESIDING JUDGE KORNER: [17:30:24] Yes, well, I think it could be said that
2 Mr Laucci was just trying to save a little bit face on that one because it really was
3 a waste of everybody's time.

4 Yes, well, if there's nothing else, that concludes the hearing. As I say, we'll give a
5 decision by the end of the week.

6 Thank you very much.

7 And thank you very much for the interpreters for working overtime and, indeed, all
8 the staff here.

9 THE COURT USHER: [17:30:48] All rise.

10 (The hearing ends in open session at 5.30 p.m.)

11 CORRECTIONS REPORT

12 The following corrections, marked with an asterisk and not included in the
13 audio-visual recording of the hearing, are brought into the transcript.

14 Page 11 lines 23-25

15 "Unless or except that if you see -- look at the warrant, it is Mr Rahman's name which
16 appears only once in the cover page." Is corrected to "But if you look closely at the
17 warrant of arrest, the name of Mr Abd Al-Rahman appears in it on one occasion, on
18 the cover page. The rest of it refers to M. Ali Kushayb."

19 Page 12 lines 1-9

20 "So what we have in this file is that Mr Al-Rahman is a Sudanese citizen who was
21 selling medication, a police surgeon, and so this does not prove great expertise,
22 including access of the Sudanese population to communication means. They cannot
23 tell you that the fact of an arrest warrant mentioning Ali Kushayb - and, I'm
24 mentioning the media that talked about Kushayb, and this is a name that Mr Rahman
25 did not recognise at that time." Is corrected to "So, what we have in the file is that Mr

1 Abd-Al-Rahman is a Sudanese citizen living in Raha Al-Birdi, selling medication and
2 that he is a police sergeant. And it doesn't require great expertise in the Sudanese
3 population accessing modern means of communication, in particular the internet, to
4 say to you that the fact that there was an arrest warrant mentioning Ali Kushayb and
5 that all the communication - I mentioned that of the OTP, but I will add that of the
6 media - mentions exclusively Mr Ali Kushayb, a name by which Mr Abd-Al-Rahman
7 does not identify himself, cannot be used to conclude that he knew, from 2007, that
8 the Court was looking for him."

9 Page 12 line 11

10 "July" Is corrected to "February"

11 Page 12 line 20 to Page 13 line 2

12 "In the meantime, the OTP received the Defence's information, according to which we
13 were going to challenge the legitimacy of annex 3 with two other elements - and, we
14 provided that argument in our submissions - and when the OTP had the opportunity
15 to look at these submissions, they did not have any additional evidence to provide
16 other than that annex 3. Maybe my colleague has something to add. This should not
17 even have been admissible before the Court because there is no probative value to it
18 at all." Is corrected to

19 "But whatever the case, the OTP received information from the Defence that we
20 intended, once again, to challenge the validity of Annex 3 with new elements. We
21 provided that information in our Rule 118-3 request for a hearing and we saw that
22 when the OTP had the opportunity to make submissions on the matter of the
23 detention review, it did not furnish any additional more solid evidence. We are left
24 with this Annex 3, which - for the reasons my learned friend just mentioned and to
25 which I have added - should not even have been admissible before the Court because

1 it is "devoid of any probative value".

2 Page 17 lines 5-10

3 "You have the evidence in the case file that Mr Al-Rahman had to flee Sudanese
4 leaders to come and seek protection from the Court. So he is not part of any
5 government. The government before. The government after or the current
6 government." Is corrected to "I would remind you that it is agreed, and there is
7 evidence in the case file, that Mr Abd-Al-Rahman had to flee the Sudanese authorities
8 and place himself under the protection of the Court. We cannot let it be said without
9 reacting that he is part of any government - the previous government, the subsequent
10 government or the current government."

11 Page 18 lines 19-23

12 "Secondly, the people have to travel to actually take part in the video-link
13 communication and in the prevailing security situation and the impossibility of the
14 Court to protect the members of Mr Al-Rahman's family as well as victims and
15 witnesses, it is impossible. So to take people from a remote area to Khartoum to take
16 part in a 45-minute video link is impossible." Is corrected to
17 "Secondly, the people have to travel to actually take part in the video conference and
18 in the prevailing security situation and the impossibility of the Court to protect the
19 members of Mr Al Rahman's family as well as victims and witnesses, it is impossible
20 to consider taking the family of Rahad-Al-Bardi to Khartoum for a 45 minute
21 videoconference; it is quite simply impossible at the current time."

22 Page 19 lines 1-7

23 "So it was not even challenged by the other parties. So we also have information
24 about a telephone network of the Court for video conferencing and I think that
25 information is not correct. It is as simple as that. It's not encouraging. The Court is

1 responsible, but the result is Mr Al-Rahman has not had any contact either with
2 family members visiting or with video-link communication with his family.”
3 Is corrected to “It was not even worth making a request, because it is
4 unimplementable from beginning to end, and there we have it - it was not challenged
5 by the Registry. I would add that, as my learned friend indicated, the information we
6 have about the mobile network in Darfur for a videoconference is not very
7 encouraging, Quite simply put. The Court is not responsible for the telephone
8 network, but the result is that Mr Abd-Al-Rahman has not had any contact nor
9 videoconference with his family.”

10 Page 19 lines 13-18

11 “people who are involved. At the same time, there is a risk to the family of my client
12 and that is -- that would be for the purpose of a video link. So we see immediately
13 that that cannot happen. Also, there is no field office in Sudan at this point. So period.
14 It is not even worth making the request.” Is corrected to “those people who find
15 themselves in that situation whilst taking the risk of endangering the family of my
16 client for a video conference where one has only to read about the political situation
17 to understand that it will not be feasible for it to take place. Again, quite simply, it
18 would be necessary to have a field office in Sudan, and the Court doesn't have one.
19 Period. It is not even worth making a request.”

20 Page 20 lines 19-22

21 “The answers of the OTP on that issue revealed points to us that, despite our
22 inter partes collaboration, we did not have such information, including the document
23 referenced in the submissions of the OTP. It made it possible for us to sit down with
24 Mr Al-Rahman” Is corrected to “The answers of the OTP and of the Registry on that
25 issue revealed points to use that, despite our direct inter-partes efforts had not been

1 covered, notably the document referenced in the OTP's response, which enabled us to
2 sit down with Mr Abd-Al-Rahman.

3 Page 21 lines 2-8

4 "I would like to thank my learned friend, Nicholls -- Mr Nicholls for sharing the
5 video with us later; and also, given the detention chief's presence and the Registry in
6 this Court, I would like to ask the question whether it is possible to use the -- to
7 implement that video-link communication to organize family contacts?

8 If they give us an answer, it would have enabled us to continue our conversation."

9 Is corrected to

10 "I would like to thank my learned friend Mr Nicholls in advance for sharing the
11 video with the Defence, once he has identified it, so that we can, if need be, react. And
12 lastly, I would like to make the most of the presence of the representatives of the
13 Registry and in particular the Chief of the Detention Unit in this courtroom to put the
14 question to him about the possibility of using the videoconference policy for the
15 benefit of Mr Abd-Al-Rahman's family. This will enable us to shed light on the
16 remaining grey area of this conversation."