

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **19 June 2020**

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

Prosecution’s Response to “Requête aux fins de modification du nom porté au dossier de l’affaire ICC-02/05-01/20”

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. On 15 June 2020, Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”) made his initial appearance before Judge Rosario Salvatore Aitala acting as the Single Judge (“Single Judge”), for Pre-Trial Chamber II (“Chamber”).¹ During this initial appearance, Mr Abd-Al-Rahman confirmed that his name is “Ali Abd-Al-Rahman”.² He also stated “[m]y name is not Ali Kushayb.”³

2. On 18 June 2020, the Defence filed its “Requête aux fins de modification du nom porté au dossier de l’affaire ICC-02/05-01/20” (“Defence Request”).⁴

3. The Office of the Prosecutor recognises that Ali Muhammad Ali Abd-Al-Rahman is Mr Abd-Al-Rahman’s legal name. The Prosecution acknowledges that “Ali Kushayb” is not Mr Abd-Al-Rahman’s legal name but rather a ‘nickname’ or ‘alias’ by which he is widely known.

4. For the reasons set out below, contrary to the Defence Request, the Prosecution submits that the name of the case should be “The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (also known as “Ali Kushayb”)”. References on the International Criminal Court’s website and official documents of the Court should also refer to the case by this name.

II. SUBMISSIONS

A. Ali Muhammad Ali Abd-Al-Rahman is the legal name by which Mr Abd-Al-Rahman should be referred to in this case

¹ *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Initial Appearance Hearing, 15 June 2020, ICC-02/05-01/20-T-001-ENG RT 15-06-2020 PT (“Initial Appearance Transcript”).

² Initial Appearance Transcript, p. 3, lns. 19-21.

³ Initial Appearance Transcript, p. 3, lns. 19-21.

⁴ *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Requête aux fins de modification du nom porté au dossier de l’affaire ICC-02/05-01/20, 17 June 2020, ICC-02/05-01/20-1.

5. Mr Abd-Al-Rahman has confirmed to the Chamber that his legal name is Ali Muhammad Ali Abd-Al-Rahman.⁵ To date, this is also the official name that the Prosecution and the Chamber have always used in filings and decisions relating to Mr Abd-Al-Rahman and the Prosecution agrees that this practice should continue.

6. In previous filings, the Prosecution stated that Mr Abd-Al-Rahman's full name is "Ali Muhammad Ali ADB-AL-RAHMAN also known as Ali Kushayb".⁶ In these previous filings and in the arrest warrants issued by Pre-Trial Chamber I ("PTC I") and the Chamber,⁷ "Ali Kushayb" was used as a defined term or short name to refer to Ali Muhammad Ali Abd-Al-Rahman.

7. The "also known as" prefix recognises that "Ali Kushayb" is a 'nickname' or 'alias' and not a legal name. Nevertheless, following Mr Abd-Al-Rahman's confirmation of his legal name in the initial appearance, the Prosecution accepts that the appropriate form of address when the parties refer to Ali Muhammad Ali Abd-Al-Rahman by his legal name in court proceedings, official court documents and filings, is to abbreviate his name to "Abd-Al-Rahman" or "Mr Abd-Al-Rahman" as opposed to "Ali Kushayb", by which he is widely known. Since it is, and has been, clear that "Ali Kushayb" is not the legal name of Mr Abd-Al-Rahman, there is no prejudice to Mr Abd-Al-Rahman by the additional reference to his nickname or alias.

8. Where it is necessary for the Prosecution to refer to Mr Abd-Al-Rahman as "Ali Kushayb" in the course of this case, the Prosecution acknowledges that it is

⁵ Initial Appearance Transcript, p. 3, lns. 19-21.

⁶ See e.g., Situation in Darfur, The Sudan, Prosecutor's Application under Article 58(7), 27 February 2007, ICC-02/05-55-US-Exp; *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, p.4.

⁷ *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Warrant of Arrest for Ali Kushayb, 27 April 2007, ICC-02/05-01/07-3-Corr ("First Arrest Warrant"); *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Public redacted version of 'Second Warrant of Arrest for Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")', 16 January 2018, ICC-02/05-01/07-74-Secret-Exp, 11 June 2020, ICC-02/05-01/07-74-Red ("Second Arrest Warrant").

understood that this is not his legal name, but instead an alternative name by which he is also widely known.

B. The name of the case should be “The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (also known as “Ali Kushayb”)”

9. Notwithstanding the confirmation that Mr Abd-Al-Rahman has provided in relation to his legal name,⁸ the Prosecution submits that the name of the case should be “The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (also known as “Ali Kushayb”)”. References on the International Criminal Court’s website and official documents should also refer to the case by this name.

10. The name of “Ali Kushayb” is integral to this case, including in particular the First Arrest Warrant and the Second Arrest Warrant, issued by PTC I and this Chamber, respectively.⁹ At this stage of the proceedings, it is important to preserve the name “Ali Kushayb” in the name of the case, particularly if it is qualified by the “also known as” prefix.

11. The First Warrant of Arrest, dated 27 April 2007, was issued for “Ali Muhammad Ali ABD-AL-RAHMAN, also known as ALI KUSHAYB”.¹⁰ PTC I found reasonable grounds to believe that “Ali Kushayb” is criminally responsible for the fifty counts of war crimes and crimes against humanity, as set out in that warrant.¹¹

12. In the Second Warrant of Arrest, dated 16 January 2018,¹² the Chamber ordered the arrest of “Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)”.¹³ The Chamber

⁸ Initial Appearance Transcript, p. 3, lns. 19-21.

⁹ First Arrest Warrant and Second Arrest Warrant.

¹⁰ First Arrest Warrant, p. 17.

¹¹ First Arrest Warrant, p. 6.

¹² Second Arrest Warrant.

¹³ Second Arrest Warrant, p. 13.

found reasonable grounds to believe that “Ali Kushayb” is criminally responsible for three additional counts of war crimes and crimes against humanity.¹⁴

13. The Prosecution notes that during his initial appearance, Mr Abd-Al-Rahman stated that “[m]y name is not Ali Kushayb”.¹⁵

14. Mr Abd-Al-Rahman’s assertion that “Ali Kushayb” is not his legal name is not a sufficient reason to remove “Ali Kushayb” from the case name, particularly if it is qualified by the “also known as” formulation, which is an established practice in international criminal tribunals, in particular the International Criminal Tribunal for the former Yugoslavia¹⁶, as well as in national jurisdictions.¹⁷

15. Referring to this case as “The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (also known as “Ali Kushayb”)” will ensure that his legal name is clearly distinguished from his widely known nickname “Ali Kushayb”.

16. This formulation will also ensure the continuity of a case name that has been in use since the First Arrest Warrant was publicly issued for “Ali Muhammad Ali ABD-AL-RAHMAN, also known as ALI KUSHAYB” in 2007.¹⁸ It will also enable the public to continue to follow the proceedings in this case, including through public filings and the website of the Court.

¹⁴ Second Arrest Warrant, p. 12.

¹⁵ Initial Appearance Transcript, p. 3, lns. 19-20.

¹⁶ See, e.g., *Prosecutor v. Duško Tadić a/k/a "Dule"*, IT-94-1-T, Trial Judgment, 7 May 1997; *Prosecutor v. Mladen Naletilić, a.k.a. "Tuta," & Vinko Martinović a.k.a. "Stela"*, IT-98-34-A, Appeals Judgment, 3 May 2006; *Prosecutor v. Zejnil Delalić, Zdravko Mucić (aka "Pavo"), Hazim Delić and Esad Landžo (aka "Zenga")*, IT-96-21-A, Appeals Judgment, 20 February 2001.

¹⁷ See, e.g., Canada: *The United States of America (Extradition Partner) and Abdullah Ahmed Khadr (aka Abu Bakr)(Person Sought)*, 2008 CanLII 41310 (ON SC), Ontario Superior Court of Justice Judgment, 19 August 2008, <http://canlii.ca/t/20cpq>; Italy: *MARCIANO Guiseppe, detto "Peppino" o "Zio" and MARCIANO Vincenzo, detto "Vincenzino"*, Sentenza, Il Tribunale di Imperia - Sezione Penale, No. 877/14, 7 October 2014, <http://www.genovaweb.org/sentenza-LA-SVOLTA.pdf>; and United Kingdom: *Shannon TAMIZ (aka MIAH), Abdellah DOHFI, Juned MIAH, Kamal HUSSAIN, Mohammed YOUBAS and THE QUEEN*, [2010] EWCA Crim 2638, Court of Appeal Judgement, 12 November 2010, <https://www.bailii.org/ew/cases/EWCA/Crim/2010/2638.html>.

¹⁸ First Arrest Warrant, p. 17.

17. This continuity and clarity is especially important for those following the proceedings from Darfur and elsewhere in Sudan, where the name “Ali Kushayb” is inextricably linked to Mr Abd-Al-Rahman’s case.¹⁹

III. RELIEF SOUGHT

18. For the above reasons, the Prosecution requests the Single Judge on behalf of the Chamber to:

- a. Reject the Defence Request.
- b. Designate case ICC-02/05-01/20 as “The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (also known as “Ali Kushayb”)”.



Fatou Bensouda, Prosecutor

Dated this 19th day of June 2020
At The Hague, The Netherlands

¹⁹ See e.g. Sudan News Agency, “The Government welcomes the step of Kushayb surrendering himself to the International Criminal Court,” Statement by Faisal Muhammad Salih, Minister of Culture and Information, Government of Sudan, 10 June 2020: “The International Criminal Court, through the Prosecutor of the Court, Mrs. Fatou bin Souda [*sic*], has announced the surrender of the accused, Ali Muhammad Ali Abdul Rahman, famously *Ali Koushayb*, in Central Africa. He is accused by the Sudanese authorities of committing a number of crimes, just as there is an arrest warrant issued against him by the International Criminal Court.” Available at: <https://suna-sd.net/ar/single?id=671910> (emphasis added). Due to the short deadline for this response, the OTP has prepared this draft translation of the relevant excerpt of the Statement. A full translation will be provided to the Chamber as soon as practicable.