



Original: English

**No. ICC-02/05-01/20
Date: 15 December 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

Second Directions on the conduct of proceedings

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

The Office of the Prosecutor

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Counsel for the Defence

Cyril Laucci
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Legal Representatives of Victims

Natalie von Wistinghausen
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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

1. On 4 October 2021, Trial Chamber I (the ‘Chamber’) issued the ‘Directions on the conduct of proceedings’.¹
2. On 26 October 2022, the Common Legal Representative for Victims (the ‘CLR V’), filed a notification of their intention to file a trial brief and made submissions on the scheduling of a victims’ case upon the conclusion of the Prosecution case.²
3. On 6 December 2022, a status conference was held to discuss, among other issues, the end of the Prosecution’s case as well as an eventual CLR V’s and Defence’s case.³

A. End of the Prosecution’s case

4. The Chamber notes the Prosecution’s submissions that it intends to call its last witnesses by February 2023.⁴ The Chamber further notes the Prosecution’s submissions that it will file a bar table motion in December 2022 and another one in January 2023.⁵
5. The Chamber has previously set out the procedure for the submission of evidence other than through a witness.⁶ In particular, the Chamber recalls that pursuant to the Directions on the conduct of proceedings, the tendering party shall first inquire whether the opposing party consents or objects to the tendering of an item, and include this information in the table.⁷
6. Accordingly, the Prosecution shall file any written application(s) for introduction of evidence other than through a witness by **31 January 2023**, including an indication of whether the other party consents or objects.
7. Moreover, the Chamber notes that the Registry and the Prosecution have reported that most Rule 68(2)(b) declarations will be obtained by January 2023.⁸

¹ Directions on the conduct of proceedings, ICC-02/05-01/20-478 with Annex A.

² CLR V Notification of intention to file a Trial Brief and Preliminary Submissions on the scheduling of a victims’ case, ICC-02/05-01/20-785 (hereinafter: ‘CLR V Notification’)

³ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT.

⁴ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p.68, lines 12-22.

⁵ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 68, lines 12-15.

⁶ Directions on the conduct of proceedings, ICC-02/05-01/20-478, paras 55-56.

⁷ Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 56.

⁸ E-mail from the Registry on 1 December 2022 at 14:02; Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 66, line 24 to p. 67, line 2.

8. The Prosecution shall notify the conclusion of its evidence presentation by way of a formal notice to be filed in the case record. Such a notice must be filed promptly after the conclusion of the presentation of evidence.

9. The deadlines that follow are set in accordance with the Prosecution's estimates. The Chamber may reconsider the deadlines below if there are significant changes to the expected conclusion of the Prosecution case.

B. No case to answer

10. The Defence indicated it might consider filing a no case to answer motion.⁹

11. Although the Chamber will issue, in due course, further directions regulating the procedure of a no case to answer hearing, the Defence must first request leave to file such a motion.

12. Accordingly, the Defence shall file any request for leave to file a no case to answer motion by **1 March 2023**.¹⁰

C. CLRV's case

13. The CLRV has provided notice that she will seek leave to call evidence and/or victims to express their views and concerns.¹¹ Bearing in mind the need to consult with her clients, particularly those recently admitted as victims participating in the case, the CLRV has suggested the deadline of 6 February 2023 to file such a request. The CLRV further submitted she could file a trial brief by 31 March 2023 and have her opening statement and an eventual case in early May 2023. The CLRV has stated that her case will not cause any delay in the preparation of an eventual Defence case.¹²

14. As noted during the status conference, the Chamber finds the above proposal reasonable, particularly if there is a no case to answer hearing.¹³

⁹ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 70, lines 15-16.

¹⁰ This would be, based on the present estimates, approximately one month after the testimony of the last Prosecution witness.

¹¹ CLRV Notification, ICC-02/05-01/20-785, para. 9.

¹² Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 73, lines 18-23 - p. 74, line 4.

¹³ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 76, lines 1-4.

15. For the reasons provided by the CLRV, and noting that there is no objection from the parties, the Chamber sets out the following deadlines:

- a) **6 February 2023** – deadline to file a request to call evidence and/or victims to present their views and concerns
- b) **31 March 2023** – deadline to file a trial brief and disclose any evidence she intends to rely on¹⁴
- c) **8 May 2023** – if leave is granted, opening statements and presentation of the CLRV case¹⁵

D. Defence's case

16. The Chamber recalls that the onus is on the Prosecution to prove the guilt of the accused, pursuant to Article 66(2) of the Rome Statute (the 'Statute'). Conversely, the accused has the right to remain silent and to not be compelled to testify, and may elect not to present evidence, as foreseen in Article 67(1)(g) of the Statute.

17. During the status conference, and in consultation with the parties, the Chamber determined that two months prior to the start of the Defence's case, the Defence must: raise any defences, submit a trial brief, and disclose any evidence it intends to rely on.¹⁶ Bearing in mind its difficulties to go on mission and obtain cooperation, the Defence suggested to start its case in October 2023.¹⁷ The Prosecution submitted that the suggested period is too long.¹⁸

18. Although the Chamber recognises the difficulties encountered by the Defence *vis-à-vis* pending cooperation requests and mission plans,¹⁹ the Chamber reiterates that

¹⁴ See Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 7, which applies *mutatis mutandis* to an eventual CLRV's list of witnesses.

¹⁵ See Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 13, which states that the CLRV have three hours for the opening statements. See also para. 17, which applies *mutatis mutandis* to the CLRV's case.

¹⁶ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 83, lines 18-25 - p. 84, lines 1-3.

¹⁷ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 82, line 16.

¹⁸ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 84, line 12.

¹⁹ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 80, line 9.

the accused is in custody and will be prejudiced if there is a significant delay in the proceedings.²⁰

19. The Chamber has an obligation to guarantee a fair and expeditious trial.²¹ It is therefore necessary to strike a balance between multiple factors. The Chamber acknowledges the accused's right to have adequate time and facilities for the preparation of his defence. The accused also has the right to be tried without undue delay. Moreover, the Chamber must also bear in mind the interests of justice. In particular, participating victims also have an interest in achieving justice.

20. Accordingly, the Chamber sets the following deadlines in relation to the start of the Defence's case:

- a) Notification of any defences or alibi, filing of a trial brief and disclosure of evidence to be relied upon by the Defence – **22 May 2023**
- b) Opening statements – **20-21 July 2023**²²
- c) Start of testimony of any defence witnesses – **28 August 2023**

21. Additionally, if the Defence elects to present evidence, and in order to assist in the preparation of the trial, the Defence must file by **23 June 2023**:

- a) List of witnesses;²³
- b) List of evidence; and
- c) Witness statements or sufficiently detailed summaries of the anticipated testimony for Defence witnesses.

²⁰ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-ENG RT, p. 80, lines 16-18.

²¹ Trial Chamber X, *The Prosecutor v. Al Hassan*, Decision on Defence Adjournment Request, 8 July 2020, ICC-01/12-01/18-940, para. 47.

²² See Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 13, which states that the Defence has nine hours for the opening statements. See also para. 17, which applies *mutatis mutandis* to the Defence's case.

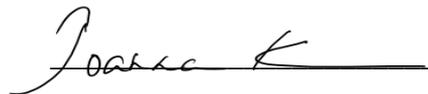
²³ See Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 7, which applies *mutatis mutandis* to the Defence's List of witnesses.

22. Applications for use of prior recorded testimony pursuant to Rule 68 of the Rules of Procedure and Evidence must be filed by **14 August 2023**.

23. The Chamber considers that the above deadlines provide a reasonable and proportional period of time for the preparation of the Defence's case (more than five months between the testimony of the last Prosecution witness and the start of the Defence's case). Moreover, the first Defence witness will only start testifying at the end of August 2023, which is almost seven months after the last estimated Prosecution witness.

24. The above deadlines are without prejudice to the Defence's ability to file a justified request, on a case-by-case basis, seeking an extension of deadline and/or an adjournment to the trial hearings. In particular, the Chamber notes this may be the case when the Defence identifies the need to carry out further investigations and/or new information or evidence becomes available which could be of assistance to the Defence's case.

25. Unless otherwise specified by the Chamber, the presentation of any eventual CLRV's and Defence's case will be governed by the Directions on the conduct of proceedings.²⁴



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 15 December 2022

At The Hague, The Netherlands

²⁴ See Directions on the conduct of proceedings, ICC-02/05-01/20-478, paras 24-45, 50-76.