



Original: English

**No. ICC-02/05-01/20
Date: 13 January 2023**

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

Decision on the Prosecution's request to submit lists of victims from the bar table

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

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**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, the Trial Chamber (the ‘Chamber’) issued the ‘Directions on the conduct of proceedings’,¹ setting out the procedure for the submission of evidence other than through a witness.²
2. On 15 December 2022, the Chamber issued its ‘Second Directions on the conduct of proceedings’, and instructed the Prosecution to 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.³
3. On that same date, the Prosecution filed a request to submit lists of victims other than through a witness (the ‘Request’).⁴ In its Request, the Prosecution submits that the Defence agrees to the introduction of the lists of victims into evidence, *in lieu* of having the relevant witnesses testify before the Chamber.⁵
4. The Request entails ten items containing three lists of victims (and the respective translations of one of these lists).⁶ The lists of victims relate to persons allegedly killed during the charged incidents in Kodoom/Bindisi, Mukjar and Deleig.
5. Pursuant to Article 64(9)(a) of the Rome Statute (the ‘Statute’), the Chamber has the power to rule on the relevance or admissibility of any evidence. In accordance with Article 69(4) of the Statute, the Chamber ‘may take into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness’.
6. The first item contains the names of 15 persons allegedly killed during the attack on Kodoom, Bindisi and surrounding areas.⁷ Three witnesses (P-0589, P-0717 and P-0834) appear as the sources of this item.⁸ The Chamber notes that upon an agreement

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

² Directions on the conduct of proceedings, ICC-02/05-01/20-478, paras 55-56.

³ Second Directions on the conduct of proceedings, ICC-02/05-01/20-836, para. 6.

⁴ Prosecution’s request to submit lists of victims from the bar table, ICC-02/05-01/20-835 with confidential Annex A.

⁵ Request, ICC-02/05-01/20-835, para. 2.

⁶ Request, ICC-02/05-01/20-835-Anx A.

⁷ DAR-OTP-00000697.

⁸ Request, ICC-02/05-01/20-835-Anx A, p. 1.

with the Defence, these witnesses were withdrawn and instead, the parties have agreed to the introduction of the said list.⁹

7. The Chamber further notes the Prosecution's submission that: (i) the item is relevant to establishing the number and identities of the persons allegedly killed in the charged incident; (ii) the sources are witnesses who were present during the charged incident; (iii) the Defence has reviewed the statements of the witnesses who sourced the item and has agreed to the introduction of the item *in lieu* of these witnesses testifying before the Chamber, and (iv) other witnesses have corroborated the deaths of three of the 15 alleged victims appearing on the list.¹⁰

8. The second item contains the names of seven persons allegedly detained and killed in Mukjar.¹¹ Two witnesses, P-0884 and P-0992, appear as the sources of this item.¹² The Chamber notes that upon an agreement with the Defence, these witnesses were withdrawn and instead, the parties have agreed to the introduction of the said list.¹³

9. The Chamber further notes the Prosecution's submission that: (i) the item is relevant to establishing the identities, gender and ethnicity of the alleged victims in the charged incident; (ii) the sources are witnesses who were present during the charged incident; (iii) the Defence has reviewed the statements of the witnesses who sourced the item and has agreed to the introduction of the item *in lieu* of these witnesses testifying; and (iv) other witnesses have corroborated the death of two of the seven alleged victims appearing on the list.¹⁴

⁹ E-mail from the Prosecution, 18 November 2022, at 13:31.

¹⁰ Request, ICC-02/05-01/20-835, paras 14-15. As regards the corroborating witnesses, the Prosecution mentions Rule 68(2)(b) witness P-0816 and Rule 68(3) witness P-0913.

¹¹ DAR-OTP-00000696.

¹² Request, ICC-02/05-01/20-835-Anx A, pp. 1-2.

¹³ E-mail from the Prosecution, 18 November 2022, at 13:31.

¹⁴ Request, ICC-02/05-01/20-835, paras 17-18. As regards the corroborating witnesses, the Prosecution mentions Rule 68(2)(b) witnesses P-0041 and P-0028.

10. The remaining items are four separate pages of a single list of 116 persons allegedly killed in the charged incident in Deleig (and their respective translations).¹⁵ P-1018 appears as the source of the said list.¹⁶

11. The Chamber further notes the Prosecution's submission that: (i) the item is relevant to establishing the number, identities, gender and ethnicity of the alleged victims in the charged incident; (ii) the Defence has agreed to the introduction of these items *in lieu* of P-1018 testifying; and (iii) other witnesses have corroborated the death of 27 of the 116 alleged victims appearing on the list and that the death of 79 persons have been referred to in other lists published by other organisations.¹⁷

12. The Chamber lastly observes the Prosecution's submission that the items' probative value outweighs any prejudice to the accused, as the evidence does not link the crimes to the accused, there is corroborative evidence and there is agreement by the Defence.¹⁸

13. Accordingly, the Chamber formally recognises the above items as submitted.

14. The Registry is therefore directed to reflect the formal submission of the items in the eCourt metadata.

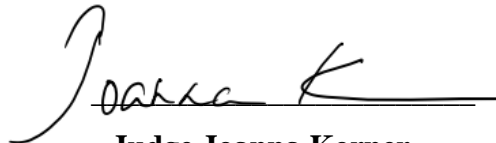
¹⁵ DAR-OTP-0219, 9003 (translation is DAR-OTP-0220-3043) , DAR-OTP- 0219-9004 (translation is DAR-OTP-0220-3045), DAR-OTP-0219-9005 (translation is DAR-OTP-0220-3047), DAR-OTP-0219-9002 (translation is DAR-OTP-0220-3041).

¹⁶ Request, ICC-02/05-01/20-835, para. 19 and Anx A, pp. 2-3. *See also* signature of P-1018 appearing on each page of the list.

¹⁷ Request, ICC-02/05-01/20-835, paras 19-20. As regards the corroborating evidence, the Prosecution does not mention specific witnesses but refers to Annex 23 of the Trial Brief. As regards the withdrawal of P-1018 as a witness, *see* e-mail from the Prosecution, 18 November 2022, at 13:31.

¹⁸ Request, ICC-02/05-01/20-835, para. 21.

15. The Chamber reiterates that, in line with the approach taken by the Chamber in its Directions on the conduct of proceedings, it will consider the ‘relevance, probative value and potential prejudice of the evidence (the ‘standard evidentiary criteria’) as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused’ in its judgment pursuant to Article 74 of the Statute.¹⁹

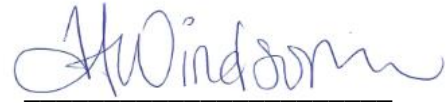


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 13 January 2023

At The Hague, The Netherlands

¹⁹ Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 25.