



Original: English

No. ICC-02/05-01/20

Date: 29 March 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

Decision on the length and timing of the Prosecution case

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

The Office of the Prosecutor

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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

I. Procedural history

1. On 8 September 2021, Trial Chamber I (the ‘Chamber’) set the commencement of trial and corresponding deadlines thereto.¹
2. On 4 October 2021, the Chamber adopted the ‘Directions on the conduct of proceedings’, where it indicated it would issue a separate decision on the length and timing of the presentation of evidence by the Prosecution after receipt of the Prosecution final list of witnesses.²

II. Analysis

3. To date, the Chamber has ruled on all applications pursuant to Rule 68(2)(b) and (2)(c) of the Rules. It has also ruled on seven of the ten Rule 68(3) applications filed by the Prosecution. The Chamber also notes the Prosecution’s indications that some applications under Rule 68(3) and 68(2)(c) are still upcoming.
4. The Chamber notes that the Prosecution estimates it will need 320 hours to present its case.³ The Chamber also notes the Defence’s submissions that it should have 455 hours for cross-examination, considering the number of witnesses for whom Rule 68(3) has been authorised.⁴ The aforesaid calculations are based on the addition of the Prosecution’s estimates per individual witness.
5. The Chamber recalls, as noted already in the status conference of 12 November 2022,⁵ that the parties and participants will not be granted a number of hours per witness (as calculated above by the Prosecution). Instead, the Chamber will allocate an overall amount of time for the Prosecution to question its witnesses.
6. In reaching its decision, the Chamber must bear in mind its duty to ensure a fair and expeditious trial and the accused’s right to be tried without undue delay. The

¹ Transcript of hearing on 8 September 2021, ICC-02/05-01/20-T-013-ENG, p. 76, line 15 to p. 79, line 13.

² Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 22.

³ Transcript of hearing of 8 February 2022, ICC-02/05-01/20-T-022-ENG, p. 51, line 22 *et seq.*

⁴ Transcript of hearing of 8 February 2022, ICC-02/05-01/20-T-022-ENG, p. 52, line 13 *et seq.*

⁵ Transcript of hearing of 12 November 2021, ICC-02/05-01/20-T-T-017-ENG, p. 51, line 15 *et seq.*

Chamber also acknowledges the parties' continued efforts to agree on facts, which ultimately saves time in the courtroom.

7. As noted already in the Chamber's decisions on Rule 68 applications,⁶ the Prosecution's List of witnesses includes more than a hundred witnesses, some of them providing corroborative and cumulative evidence. Accordingly, the Prosecution must streamline the presentation of evidence in order to avoid unnecessary or repetitive evidence in the course of the trial.

8. The Chamber acknowledges that the use of Rule 68(3) reduces the time of examination-in-chief significantly and accordingly it accepts the Defence's submission that it requires additional time for cross-examination vis-à-vis the Prosecution. However, the Defence's submission that it would require 450 hours is unconvincing, as this estimate is based on the assumption that the Defence would cross-examine every single Rule 68(3) witness for at least three hours. Bearing in mind the Defence's trial brief,⁷ not all witnesses will testify on issues identified as core to the Defence case. Furthermore, many of the Rule 68(3) witnesses provide evidence about the contextual elements of war crimes and other agreed facts in the case. Moreover, the Chamber reiterates that cross-examination 'is not without limitation, notably in that the questions posed must be demonstrably relevant to the issues in the case or to the credibility or the testimony of the witness'.⁸

9. The Chamber notes that the Common Legal Representatives for Victims (the 'CLR V') did not file a trial brief. Pursuant to the Directions on the conduct of proceedings, the Chamber will decide on the necessity or propriety of questions to be asked by the CLR V on a case-by-case basis.⁹

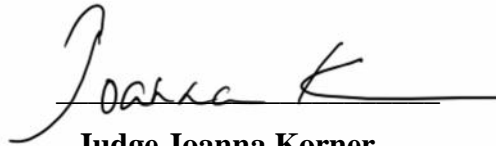
⁶ First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf. A public redacted version was notified on that same date, ICC-02/05-01/20-559-Red; Decision on the Prosecution's second and third requests to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-588-Conf. A public redacted version was notified on the same day, ICC-02/05-01/20-588-Red; Decision on the Prosecution's fourth and fifth request to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-602-Conf. A public redacted version was notified on that same date, 21 February 2022, ICC-02/05-01/20-602-Red; Decision on the Prosecution's sixth request to introduce prior recorded testimonies under Rule 68(3), 16 March 2022, ICC-02/05-01/20-630-Conf. A public redacted version was notified the same day, ICC-02/05-01/20-630-Red; Decision on the Prosecution's seventh application to introduce prior recorded testimonies under Rule 68(3), 18 March 2022, ICC-02/05-01/20-635-Conf. A public redacted version was notified the same day, ICC-02/05-01/20-635-Red.

⁷ Mémoire préalable au procès, 4 March 2021, ICC-02/05-01/20-616.

⁸ Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 37.

⁹ Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 35.

10. In light of the above, the Chamber hereby grants the Prosecution 280 hours for the presentation of its case. The Defence is granted 365 hours to cross-examine the Prosecution witnesses. The Chamber will decide on a case-by-case basis on the length of any questions to be posed by the CLRV.




Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 29 March 2022

At The Hague, The Netherlands