



Original: English

No. ICC-02/05-01/20

Date: 30 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

Order on the reading of the charges

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

The Office of the Prosecutor

Karim A.A. Khan
Nazhat Shameem Khan
Julian Nicholls

Counsel for the Defence

Cyril Laucci
Iain Edwards

Legal Representatives of Victims

Natalie von Wistinghausen
Nasser Mohamed Amin Abdalla
Anand Shah

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 25 March 2022, the Defence informed the Chamber that the accused 'is content to waive his right to have the charges read at the opening of the trial'. The Defence also noted that the accused will plead not guilty to all charges.¹
2. On 29 March 2022, the Prosecution and the Common Legal Representatives of Victims (the 'CLRV') responded to the above submission. In their view, the charges must be read at the start of trial and thus, cannot be waived by the accused.²
3. Pursuant to Article 64(8)(a) of the Rome Statute (the 'Statute'), at the commencement of the trial, the Trial Chamber shall have read to the accused the charges previously confirmed by the Pre-Trial Chamber. This is an obligatory procedural step which is not at the discretion of the Trial Chamber and equally not merely a right of the defence which can be waived. The charges shall therefore be read in court.³
4. However, due to the length of the text of the charges,⁴ there is a need for a meaningful and practicable solution. The Chamber also notes that in previous trials, extracts of the confirmed charges have been read in order to ensure efficiency of proceedings.⁵
5. Accordingly, the Court Officer will read the numbered counts as contained in pages 67-71 of the Decision on the confirmation of the charges.⁶ Thereafter, the accused will be afforded the opportunity to enter a plea, pursuant to Article 64(8)(a) of the Statute.

¹ E-mail from the Defence on 25 March 2022 at 12:41.

² E-mail from the Prosecution on 29 March 2022 at 12:44; E-mail from the CLRV on 29 March 2022 at 13:18. See also E-mail from Trial Chamber I on 25 March 2022 at 15:19 setting the deadline for observations.

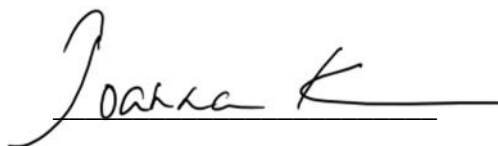
³ See Directions on the conduct of proceedings, 4 October 2022, ICC-02/05-01/20-478, para. 4.

⁴ The charges comprise 133 paragraphs plus 31 counts. See Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb'), 9 July 2021 (corrected version notified on 23 November 2021), ICC-02/05-01/20-433-Corr, pages 50-70.

⁵ Trial Chamber IX, *the Prosecutor v. Dominic Ongwen*, Initial Directions on the Conduct of Proceedings, 13 July 2016, ICC-02/04-01/15-497, para. 6; Trial Chamber V, *the Prosecutor v. Alfred Yekatom and Patrick-Edouard Ngaiisona*, Initial Directions on the Conduct of Proceedings, 26 August 2020, ICC-01/14-01/18-631, para. 5.

⁶ Decision on the confirmation of charges, ICC-02/05-01/20-433-Corr, pages 67-70.

6. The Chamber emphasises that the Decision on the confirmation of the charges remains the authoritative document for the purposes of Article 74(2) of the Statute.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 30 March 2022

At The Hague, The Netherlands