

Status Conference

(Open Session)

ICC-02/05-01/20

1 International Criminal Court

2 Trial Chamber I

3 Situation: Darfur, Sudan

4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman

5 ("Ali Kushayb") - ICC-02/05-01/20

6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou

7 and Judge Althea Violet Alexis-Windsor

8 Status Conference - Courtroom 2

9 Tuesday, 23 May 2023

10 (The hearing starts in open session at 9.33 a.m.)

11 THE COURT USHER: [9:33:07] All rise. The International Criminal Court is now in  
12 session. Please be seated.

13 PRESIDING JUDGE KORNER: [9:33:34] Yes. Good morning, all. Could we call the  
14 case, please.

15 THE COURT OFFICER: [9:33:38] Good morning, Madam President. This is the  
16 situation in Darfur, Sudan, in the case of The Prosecutor versus Ali Muhammad Ali  
17 Abd-Al-Rahman, case reference ICC-02/05-01/20.

18 And, for the record, we are in open session.

19 PRESIDING JUDGE KORNER: [9:33:55] Yes. Appearances from the Prosecution,  
20 please.

21 MR NICHOLLS: [9:34:01] Good morning, Madam President. Good morning, your  
22 Honours. Good morning to everyone in the courtroom and joining remotely. Julian  
23 Nicholls with Claire Sabatini, Laura Morris, Diana Saba, and Edward Jeremy. Thank  
24 you.

25 PRESIDING JUDGE KORNER: [9:34:15] Defence.

1 MR LAUCCI: [9:34:17](Interpretation) Good morning, your Honour. Good morning,  
2 your Honours. Good morning, dear colleagues. For Mr Al-Rahman, present in the  
3 courtroom this morning, Madam Marguerite Remy, intern in the Defence team;  
4 Madam Eva Kalb, assistant responsible for evidence analysis; Mr Ahmad Issa, our case  
5 manager; and Audrey Mateo, legal advisor; my colleague, Iain Edwards; and myself,  
6 Cyril Laucci, counsel.

7 PRESIDING JUDGE KORNER: [9:34:56] Yes. The representatives of the victims.  
8 Announce yourself and then I'll ask.

9 MR SHAH: [9:35:11] Yes. Good morning, Madam President, your Honours. Good  
10 morning to everyone in and around the courtroom. The participating victims are  
11 represented today by the legal representative, Ms Wistinghausen who appears  
12 remotely, myself, Anand Shah. I'm assisted by our interns Nur Mahameed and Saskia  
13 Adjowa Afande. Thank you.

14 PRESIDING JUDGE KORNER: [9:35:33] Right. Thank you. Yes, I see Ms  
15 Wistinghausen is on the screen.

16 Yes. All right. We have a Status Conference today which was originally intended just  
17 for the Defence, but in the light of some of the matters that have arisen, we're going to  
18 deal, first of all, with that which the parties have all been dealing with in advance, in  
19 particular Mr Laucci's request that the protocol that's been in place, I think, since 2011  
20 should be amended for this case.

21 Right. I've seen -- Mr Laucci or Mr Edwards, whichever, we've seen your application.  
22 As I understand it, you want VWS to be involved and see any potential witnesses even  
23 before you've decided that they'll become witnesses; is that right?

24 MR LAUCCI: [9:36:56](Interpretation) I'm sorry, your Honour, I immediately got up  
25 when you mentioned a request of the Defence to amend the protocol. We're not

1 demanding that or requesting that. The protocol is in place, I know that. It was  
2 contested by multiple Defence teams in other cases, but we are not asking for its  
3 amendment. Quite the contrary. We are asking for it to be precisely applied, and in  
4 particular, the exact application of Article 1(2) thereof which requires for its application  
5 for the Defence teams because the version of the defence of this protocol was never  
6 negotiated since its entry into force or the entry into force of the version that the  
7 Prosecutor, so such that this protocol envisaged to be applied by the Office of the  
8 Prosecutor be adapted mutatis mutandis to the needs of the Defence.

9 What is lacking at the moment, and I'm very sorry about this if our submissions were  
10 interpreted differently, but we are asking for no amendment to the protocol.

11 PRESIDING JUDGE KORNER: [9:38:15] Hang on a moment, Mr Laucci. Article 1(2)  
12 says that the protocol -- sorry:

13 "... will enter into further consultations on the issue of the protection of persons at risk  
14 on account of their interaction with the Defence and with Victims. Pending  
15 conclusions of agreement with these other bodies, the provisions of the present  
16 protocol apply mutatis mutandis to the protection of persons at risk on account of their  
17 interaction with them."

18 Everybody else seems to think that means that after you've identified to the VWS the  
19 witnesses you propose to call, it's at that stage that the VWS makes an assessment of  
20 the risk, not every time you see a witness in case they may be able to give evidence and  
21 in case you do want to call them. You've got to actually say, "We're proposing to call  
22 them." Unless I've got it wrong, but that's what everybody else seems to think is the  
23 protocol.

24 MR LAUCCI: [9:39:41](Interpretation) If I may answer this question, your Honour. I'll  
25 do say without difficulty. I'm just turning to my colleague from the Registry. Given

1 that this protocol and its existence is public, would you like us to answer in public  
2 session to your question? Because it's going to take -- go into some of the details of the  
3 content of the protocol, and bad timing given what's going on in the gallery.

4 PRESIDING JUDGE KORNER: [9:40:10] I am sorry. Is there any reason why this  
5 protocol shouldn't be mentioned in open session?

6 MS VUKASINOVIC: [9:40:21] Good morning, Madam President. Good morning, your  
7 Honours. My name is Jelena Vukasinovic. I represent the Registry. We have our  
8 colleague from VW, Gerhard van Rooyen, with us and we would prefer if we can go  
9 into closed session.

10 PRESIDING JUDGE KORNER: [9:40:30] Private.

11 MS VUKASINOVIC: [9:40:32] And invite him.

12 PRESIDING JUDGE KORNER: [9:40:35] Okay. I'm just trying to think. Are there any  
13 other matters we can deal with -- no. All right.

14 Into private session.

15 MS VUKASINOVIC: [9:40:46] Thank you, your Honours.

16 (Private session at 9.41 a.m.)

17 PRESIDING JUDGE KORNER: [9:41:50] We are now in private session, Mr Laucci, and  
18 we may, if necessary, go into closed, but not at the moment.

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