



Original: English

No. ICC-02/05-01/20

Date: 11 May 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 CLRV Request to postpone the commencement of the victims'
case**

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

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Legal Representatives of Victims

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**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

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Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural background

1. On 15 December 2022, the Chamber issued its ‘Second Directions on the Conduct of Proceedings’, setting out, *inter alia*, the schedule for the case of the common legal representative for victims (the ‘CLRV’),¹ and scheduling the victims’ case to start on 8 May 2023.²
2. On 31 January 2023, due to the Chamber’s unavailability to sit in court, and in consultation with the parties and participants, the date for the commencement of the victims’ case was changed to 22 May 2023.³
3. On 3 April 2023, the CLRV filed its Trial Brief, along with a summary of the expected views and concerns to be provided by four participating victims (a/25009/21, a/10127/22, a/15002/18 and a/25040/21) and one witness (CLR-0001).⁴
4. On 4 May 2023, the CLRV informed the Chamber that she envisioned to file a request for the postponement of the victims’ case.⁵
5. On 8 May 2023, as instructed by the Chamber,⁶ the CLRV filed a request for the postponement of the victims’ case (the ‘Request’).⁷
6. On the same date, the Victims and Witnesses Unit (the ‘VWU’) submitted an update on the status of the victims’ case (the ‘VWU Update’).⁸
7. On 10 May 2023, the Prosecution,⁹ and the Defence,¹⁰ responded to the Request (respectively, the ‘Prosecution Response’ and the ‘Defence Response’).
8. On that same date, the CLRV, in consultation with the VWU, provided a further update.¹¹

¹ ICC-02/05-01/20-836, paras 13-15. *See also* CLRV Notification of intention to file a Trial Brief and Preliminary Submissions on the scheduling of a victims’ case, 26 October 2022, ICC-02/05-01/20-785.

² Second Directions on the Conduct of Proceedings, ICC-02/05-01/20-836, para. 15.

³ E-mail from Trial Chamber I Communications on 31 January at 11:44 and on 1 February 2023 at 17:17.

⁴ Common Legal Representative of Victims’ Trial Brief, ICC-02/05-01/20-914-Conf-Exp-Corr2 with confidential *ex parte* Annexes A and B. Confidential and public redacted versions of the main filing and annexes were notified subsequently.

⁵ E-mail from the CLRV at 12:15.

⁶ E-mail from Trial Chamber I Communications at 13:58.

⁷ CLRV Request to postpone the commencement of the victims’ case, ICC-02/05-01/20-931-Conf. A public redacted version was notified on 9 May 2023.

⁸ E-mail from the VWU at 17:48.

⁹ Prosecution’s response to “CLRV Request to postpone the commencement of the victims’ case”, ICC-02/05-01/20-934.

¹⁰ Réponse à la Requête ICC-02/05-01/20-931-Conf, ICC-02/05-01/20-931-935.

¹¹ E-mail from the CLRV at 16:41.

II. Applicable Law

9. The Chamber recalls that pursuant to Regulation 35(2) of the Regulations of the Court (the ‘Regulations’), the Chamber may extend a time limit if good cause is shown. Where the condition above is not met, and pursuant to its powers under Articles 64(2), 64(6)(d) and (f) and 69(3) of the Rome Statute (the ‘Statute’), the Chamber may still authorise the extension of a time limit in the interests of justice, where the evidence is deemed necessary for the determination of the truth. In taking this decision, the Chamber must have due regard to the rights of the accused, particularly the right to have adequate time and facilities to prepare his case pursuant to Article 67(1)(b) of the Statute.¹²

III. Submissions and analysis

10. The Chamber notes that the CLRV and the VWU confirm that the video-link for participating victim (DAR-V47-P-0002 (a/15002/18)) is ready and could be scheduled to meet the current deadline. In respect of the two victims currently residing in Darfur (DAR-V47-P-0004 (a/25040/21) and DAR-V47-P-0005 (a/10127/22)), both the CLRV and the VWU inform the Chamber that due to the current situation in Sudan it is not possible for them to travel out of Darfur in order to appear before the Chamber in the short-term. As regards witness DAR-V47-P-0001 and participating victim DAR-V47-P-0003 (a/25009/21), who reside in Chad, the CLRV and the VWU report that due to unforeseen delays in the issuance of their travel documents, it is not possible for them to appear in court as scheduled.¹³

11. The Chamber notes that although the CLRV is ready to proceed with the opening statement and the video-link appearance of one victim on 22 May 2023, she submits it would be more effective, cohesive, and efficient to present her case as whole.¹⁴ Hence, the CLRV requests a postponement ranging from one week (week of 29 May 2023) to seven weeks (week of 17 July 2023).¹⁵

¹² Decision on the Prosecution’s request for an extension of time limit to disclose and add items to its list of evidence and list of witnesses, 24 December 2021, ICC-02/05-01/20-545-Conf, para. 3, *referring to* Trial Chamber X, *The Prosecutor v. Al Hassan*, Public redacted version of the Decision on the Prosecution requests pursuant to Regulation 35 regarding P-0660 and P-0661 and to add 12 items to its Final List of Evidence, 21 October 2020, ICC-01/12-01/18-988-Red, para. 6; Trial Chamber VII, *The Prosecutor v. Bemba et al.*, Decision on the Prosecution Request to add 12 Items to its List of Evidence, ICC-01/05-01/13-1191, 27 August 2015, paras 9-10; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public redacted version of Decision on the Prosecution Motion for leave to disclose and add the investigator's report concerning Witness P-268 to the List of Incriminating Evidence, 27 September 2010, ICC-01/04-01/07-2325-Red, para.15.

¹³ Request, ICC-02/05-01/20-931-Red, para. 2 and VWU Update.

¹⁴ Request, ICC-02/05-01/20-931-Red, para. 4.

¹⁵ Request, ICC-02/05-01/20-931-Red, para. 7.

12. In light of the information provided by the CLRV in her Request and accompanying annexes detailing steps taken towards the start of the victims' case,¹⁶ as well as in the VWU Update,¹⁷ it is clear that: (a) the CLRV referred the victims concerned to the VWU in a timely manner, in accordance with the ordinary timeframes required by VWU *vis-à-vis* the deadline of 22 May 2023;¹⁸ (b) significant efforts have been made in the past months to arrange the victims' travel to the seat of the Court; (c) the VWU has encountered significant delays in securing the travel documents for victims in Chad; and (d) the victims currently residing in Darfur are unable to leave their place of residency to appear before the Chamber.

13. The Chamber accepts the CLRV's submissions,¹⁹ that, considering the present schedule for the presentation of the Defence to start on 28 August 2023, the postponement sought by the CLRV will have little to no impact on the expeditiousness of proceedings. The Chamber also accepts the CLRV's submission,²⁰ that, given the limited scale of the victims' case (four days in total) and its different purpose in line with the role of victims in the statutory framework, a short postponement will have limited impact on the trial proceedings.

14. The Chamber further notes that the Prosecution and the Defence do not oppose the Request.²¹

15. Accordingly, the Chamber concludes that good cause has been shown pursuant to Regulation 35 of the Regulations warranting a short postponement in the commencement of the victims' case.

16. However, the Chamber reiterates that 'continuation of trial proceedings at this Court cannot be contingent upon a State's cooperation being forthcoming'.²² In particular, as regards the victims currently residing in Darfur, the Chamber fully appreciates the difficulties faced given the prevailing situation in Sudan, and the victims' wish to appear in person before the judges.²³ Accordingly, the CLRV, in consultation with the VWU, is to look at alternative

¹⁶ Request, ICC-02/05-01/20-931-Conf-Exp, paras 16-30. See also Annexes A, B and C.

¹⁷ VWU Update.

¹⁸ The Chamber notes in particular that the CLRV submits she has held six meetings with the VWU since 16 December 2022. Request, ICC-02/05-01/20-931-Red, para. 26.

¹⁹ Request, ICC-02/05-01/20-931-Red, para. 6.

²⁰ Request, ICC-02/05-01/20-931-Red, para. 13.

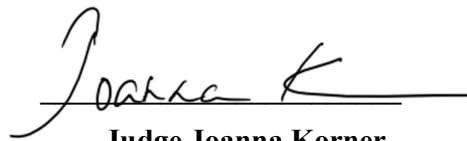
²¹ Prosecution Response, ICC-02/05-01/20-934; paras 1-2; Defence Response, ICC-02/05-01/20-931-935, paras 4-7.

²² Decision on the Defence's Request for postponement of the presentation of its case, ICC-02/05-01/20-916-Red, para 32.

²³ Request, ICC-02/05-01/20-931-Red, paras 12, 20, 22.

options which would allow these victims to present their views and concerns to the Chamber (*i.e.*, by way of video-link from Chad or Sudan or by way of a pre-recorded video communication that could be played in court).

17. Accordingly, the Chamber hereby postpones the commencement of the CLRV case to 5-7 June 2023.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 11 May 2023

At The Hague, The Netherlands