



Original: English

**No. ICC-02/05-01/20
Date: 28 October 2024**

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 Defence's and CLRV's Requests seeking an extension of the page limit for their final briefs under Regulation 37(2) of the Regulations of the Court

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 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	<i>Amicus Curiae</i>
REGISTRY	
Registrar Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

I. Procedural history

1. On 11 December 2023, Trial Chamber I (the ‘Chamber’) issued its Third Directions on the Conduct of Proceedings, setting out, *inter alia*, the general timeline for the final briefs and closing statements and deciding that the Prosecution and Defence final briefs shall not exceed 200 pages, and the Common Legal Representative for Victims (the ‘CLRv’) final brief shall not exceed 125 pages.¹
2. On 25 September 2024, following a joint request from the Prosecution, the Defence and the CLRv,² the Chamber set the deadline for the filing of final briefs to 4 November 2024.³
3. On 9 October 2024, following a joint request from the parties (the ‘First Request’),⁴ the Chamber granted an extension of the page limit to 250 pages for each party’s final brief.⁵
4. On 21 October 2024, the Defence filed a request under Regulation 37(2) of the Regulations of the Court (the ‘Regulations’) seeking a further extension of the page limit for its final brief from 250 to 370 pages (the ‘Defence’s Request’).⁶
5. On 22 and 23 October 2024, in line with the time limit set by the Chamber,⁷ the CLRv⁸ and the Prosecution,⁹ respectively, filed their respective responses, submitting that they take no position on the relief sought in the Defence’s Request. They nonetheless object to the Defence’s submissions on the CLRv’s mandate and actions in these proceedings (the ‘CLRv’s Observations’ and the ‘Prosecution’s Response’, respectively). The Prosecution requests the same page limit as the Defence, should the Defence’s Request be granted.¹⁰

¹ Third directions on the conduct of proceedings, ICC-02/05-01/20-1046, paras 12-13.

² Email from the Defence, the Prosecution and the CLRv, 11 September 2024, at 12:25.

³ Order regarding the final briefs and closing statements, ICC-02/05-01/20-1191.

⁴ E-mail from the Prosecution and the Defence, 8 October 2024, at 14:01.

⁵ E-mail from the Chamber, at 14:30.

⁶ Requête en vertu de la Norme 37-2 du Règlement de la Cour (dated 21 September 2024, with a confidential, *ex parte*, Defence only annex), ICC-02/05-01/20-1194.

⁷ E-mail from the Chamber, 22 October 2024, at 09:22.

⁸ CLRv Observations on Defence “Requête en vertu de la Norme 37-2 du Règlement de la Cour”, ICC-02/05-01/20-1195.

⁹ Prosecution’s response to “Requête en vertu de la Norme 37-2 du Règlement de la Cour”, ICC-02/05-01/20-1196.

¹⁰ Prosecution’s Response, ICC-02/05-01/20-1196, para. 1.

6. On 24 October 2024, the CLRV requested an extension of the page limit for her final brief to 150 pages (the ‘CLRV’s Request’).¹¹

II. Submissions and analysis

7. In its Request, the Defence submits that the exceptional circumstances of this case justify the extension of the page limit.¹² Specifically, the Defence contends that the extension is warranted, due to: (i) the complexity of this case;¹³ (ii) the novel issue concerning the identity of the Accused;¹⁴ and (iii) the fact that it must address issues in its final brief which were not settled during the trial or were kept unclear by the Prosecution.¹⁵

8. The Defence further submits that its Request is reasonable and not excessive considering its efforts to keep the page count to the 370 pages requested compared to the current version in preparation of its final brief which is more than 480 pages, and the fact that similar requests have been granted by other chambers.¹⁶

9. The Defence contends that granting its Request is necessary for the fairness of the proceedings, particularly to allow the Defence to fully present its case and to offset any prejudice arising from the CLRV’s *de facto* role as second Prosecutor.¹⁷

10. The Chamber observes that pursuant to Regulation 37(2) of the Regulations, it may, at the request of a participant, extend the page limit ‘in exceptional circumstances’.

11. The Chamber notes that, unlike the First Request, the Defence now provides, in its Request, details which it asserts amount to exceptional circumstances.¹⁸ The Chamber further notes that it is in the interest of the parties, participants and the Chamber to have final briefs which are comprehensive and accurate to the greatest extent possible.¹⁹ In light of the above,

¹¹ E-mail of 24 October 2024, at 14:13.

¹² Defence’s Request, ICC-02/05-01/20-1194, paras 3-8.

¹³ Defence’s Request, ICC-02/05-01/20-1194, para. 4.

¹⁴ Defence’s Request, ICC-02/05-01/20-1194, para. 5.

¹⁵ Defence’s Request, ICC-02/05-01/20-1194, paras 6-7; Annex to Defence’s Request, ICC-02/05-01/20-1194-Conf-Exp-Anx.

¹⁶ Defence’s Request, ICC-02/05-01/20-1194, paras 10-12.

¹⁷ Defence’s Request, ICC-02/05-01/20-1194, paras 13-14.

¹⁸ Defence’s Request, ICC-02/05-01/20-1194, paras 3-8.

¹⁹ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Defence request for an extension of page limit for its closing brief, 4 May 2018, ICC-01/04-02/06-2283, para. 8.

and noting the Prosecution's²⁰ and the CLRV's²¹ neutral stance on the matter, the Chamber finds that exceptional circumstances exist warranting an extension of the page limit.

12. Notwithstanding the above, the Chamber considers that an extension of up to 370 pages for the issues identified by the Defence²² is excessive, and determines that an extension of 50 pages, to a total of 300 pages, is sufficient. The Chamber grants the same extension to the Prosecution.

13. In respect of the Defence's assertion that the CLRV's role in the proceedings is that of a 'second Prosecutor',²³ the Chamber finds that this is a misrepresentation of their role. No such suggestion has been made at an earlier stage of this trial. The record of the proceedings demonstrate that objections made to a line of questioning on the grounds that it exceeds the mandate of the CLRV have been rare and rulings in their favour on that basis²⁴ have not been the subject of application by the Defence for reconsideration thereof.

14. The Chamber further notes the CLRV's Request for a 25-page extension for her final brief in order to incorporate the views and concerns of the 128-newly admitted victims in the trial proceedings. The CLRV indicates that her Request is unopposed by the parties.²⁵ Noting the circumstances raised by the CLRV, that the requested extension is minimal and that, as indicated by the CLRV, the CLRV's Request is unopposed, the Chamber hereby grants her Request.

III. Conclusion

15. For these reasons, the Chamber:

PARTIALLY GRANTS the Defence's Request;

DECIDES that the Prosecution and the Defence have a 300-page limit for their final briefs;

GRANTS the CLRV's Request; and

²⁰ Prosecution's Response, ICC-02/05-01/20-1196, para. 1.

²¹ CLRV's Observations, ICC-02/05-01/20-1195, para. 2.

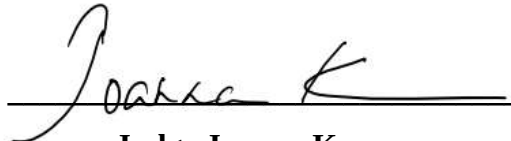
²² Defence's Request, ICC-02/05-01/20-1194, paras 3-8; Annex to Defence's Request, ICC-02/05-01/20-1194-Conf-Exp-Anx.

²³ Defence's Request, ICC-02/05-01/20-1194, para. 14.

²⁴ See *e.g.*, Decision on the CLRV Request to postpone the commencement of the victims' case, 11 May 2023, ICC-02/05-01/20-939; Decision on the Common Legal Representatives for Victims' request to present evidence and views and concerns, 16 February 2023, ICC-02/05-01/20-874.

²⁵ E-mail of 24 October 2024, at 14:13.

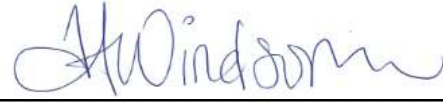
DECIDES that the CLRV have a 150-page limit for her final brief.


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 28 October 2024

At The Hague, The Netherlands