

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/05-01/20
Date: 30 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 request to submit additional evidence

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 Nigel Verrill	Detention Section
Victims Participation and Reparations Section	Other

1. On 13 September 2024, the Defence notified Trial Chamber I (the ‘Chamber’), the Prosecution, the Common Legal Representative for Victims (the ‘CLRv’) and the Registry of the closure of its case, subject to receipt of documents requested from the Sudanese authorities.¹
2. On 25 September 2024, the Chamber declared the submission of evidence closed in the present case (the ‘Order’).²
3. On 22 October 2024, the Registry transmitted a *note verbale* received from the Sudanese authorities to the Defence, which included what appear to be excerpts of one of the documents requested by the Defence and an explanation for the unavailability of other documents.³
4. On 28 October 2024, the Defence requested the submission into evidence of the *note verbale* (the ‘Request’).⁴ The Prosecution and the CLRv indicated that they do not object to the submission of the item as evidence.⁵
5. The Chamber notes that previous chambers have determined that re-opening a party’s case in order to permit the presentation of additional evidence will be granted only if ‘warranted by truly exceptional circumstances’.⁶
6. The Chamber has previously held that ‘it is important for the Defence to be provided with the documents requested in the Decision of 11 February 2022’ and that ‘the principles of fairness of proceedings and the equality of arms, [...], mandate that the Defence be provided with documents it considers necessary for the preparation of

¹ CLÔTURE DE LA PRÉSENTATION DE LA DÉFENSE, ICC-02/05-01/20-1188-Conf, paras 9-10. A public redacted version was notified on the same date, ICC-02/05-01/20-1188-Red.

² Order regarding the final briefs and closing statements, ICC-02/05-01/20-1191.

³ Email from the Registry, at 17:37.

⁴ Requête aux fins de soumission d’un élément de preuve supplémentaire dans le dossier de l’affaire, ICC-02/05-01/20-1200, with a confidential annex, ICC-02/05-01/20-1200-Conf-Anx.

⁵ Email from the Prosecution to the Defence, 26 October 2024, at 19:31; Email from the CLRv to the Defence, 28 October 2024, at 09:02.

⁶ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Reasons for the Decision on Defence request to defer the closure of its presentation of evidence, 3 March 2023, ICC-01/12-01/18-2474-Red, para. 29; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Declaration of the closure of the submission of evidence, 12 December 2019, ICC-02/04-01/15-1699, para. 5; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Second Redacted version of Decision on ‘Prosecution’s Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169’ (ICC-01/05-01/08-3138-Conf-Red) and ‘Defence Urgent Submissions on the 5 August Letter (ICC-01/05-01/08-3139-Conf)’ of 2 October 2014, 11 December 2014, ICC-01/05-01/08-3154-Red2, para. 25.

its case'.⁷ In this regard, the Chamber notes that the *note verbale* contains what appear to be excerpts of a document requested by the Chamber from the Sudanese authorities pursuant to Article 57(3)(b) of the Statute.⁸ The *note verbale* also contains a detailed explanation of the Sudanese authorities' inability to provide the other documents requested by the Chamber. The Chamber notes that the parties, particularly the Defence, and the Registry exerted considerable efforts to obtain the information contained in the *note verbale* before the declaration of closure of evidence in the present case, but to no avail, owing to the prevailing circumstances in Sudan.⁹ The Chamber finds that all of the above cumulatively constitute truly exceptional circumstances warranting the submission of the *note verbale* into evidence.

7. The Chamber further notes that its declaration of closure of evidence was made without prejudice to its discretion under Article 69(3) of the Statute to, at any stage, request the submission of additional relevant evidence where it considers it necessary for the determination of the truth.¹⁰ The *note verbale*—the explanation from the Sudanese authorities and the excerpts of the document—contains information which the Chamber deems necessary for the determination of the truth.

8. Therefore, in light of the lack of objection from the Prosecution and the CLRV, the truly exceptional nature of the present circumstances, and the necessity of the *note verbale* for the determination of the truth, the Chamber authorises the submission of the *note verbale* as evidence in the present case.

⁷ Decision on the Defence's second request pursuant to Article 87(5)(b), 4 November 2022, ICC-02/05-01/20-806-Conf, para. 18. A public redacted version was notified on 31 May 2023, ICC-02/05-01/20-806-Red, *referring to* Decision on the Defence request for cooperation pursuant to Article 57(3)(b) of the Statute, 11 February 2022, ICC-02/05-01/20-590-Conf-Exp. A public redacted version was notified on the same date, ICC-02/05-01/20-590-Red.

⁸ See Decision on the Defence's modified request for legal assistance dated 30 January 2023, 6 February 2023, ICC-02/05-01/20-864-Conf, para.18(i). A public redacted version was notified on 31 May 2023, ICC-02/05-01/20-864-Red.

⁹ See Email from the Defence to the Chamber, 18 September 2024, at 11:27; Email from the Registry to the Chamber, 19 September 2024, at 11:55; Email from the Registry to the Chamber, 15 October 2024, at 9:50; Email from the Registry to the Chamber, 21 October 2024, at 16:23; Email from the Registry to the Chamber, 22 October 2024, at 17:37.

¹⁰ Order, ICC-02/05-01/20-1191, para. 8.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 30 October 2024

At The Hague, The Netherlands