



Original: English

**No. ICC-02/05-01/20
Date: 18 November 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

**Further decision on non-compliance with the Chamber's orders on the filing of
the final briefs**

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

1. Trial Chamber I (the ‘Chamber’) recalls the procedural history as set out in its Decision regarding non-compliance with the Chamber’s orders on the filing of the final briefs (the ‘Decision regarding non-compliance’).¹
2. On 5 November 2024, following the issuance of the Decision regarding non-compliance, Lead Counsel for the Defence sent an e-mail to the Chamber, apologising, explaining his conduct, and taking full responsibility for it.²
3. On 6 November 2024, the Defence filed its Amended Final Brief as directed by the Chamber in its Decision regarding non-compliance.³
4. On the same date, the Prosecution⁴ and the Common Legal Representative for Victims (the ‘CLRV’)⁵ each sent an e-mail to the Chamber, explaining their conduct in response to the Decision regarding non-compliance.
5. It has become clear that the parties and participants have not been paying sufficient heed to the Chamber’s orders. The Chamber reminds the parties and participants that the legal framework governing the Court requires them to comply with orders made by the Chamber. This is particularly clear in the Code of Professional Conduct for Counsel, in which Article 7(3) requires counsel to comply with rulings made by the Chamber. Sanctions may be imposed in cases of non-compliance with a direction of the Chamber.⁶
6. As noted in the Decision regarding non-compliance, the Chamber considers that the Defence’s action in filing its final brief in its original form was a deliberate flouting of the Chamber’s order and amounts to misconduct.⁷ The Chamber further notes that in its Decision, it indicated that it was ‘considering what action, if any, is appropriate to take’.⁸

¹ 5 November 2024, ICC-02/05-01/20-1209 (hereinafter: the ‘Decision regarding non-compliance’).

² Email from the Defence, 5 November 2024, at 19:50.

³ Decision regarding non-compliance, ICC-02/05-01/20-1209, para. 15. On 8 November 2024, the Defence filed a corrected version of its amended final brief, amending missing footnotes and formatting errors. *See* Corrected Version of ‘Defence Final Brief’ ICC-02/05-01/20-1210-Conf, ICC-02/05-01/20-1210-Conf-Corr (hereinafter: Defence’s Amended Final Brief).

⁴ Email from the Prosecution, 6 November 2024, at 17:05.

⁵ Email from the CLRV, 6 November 2024, at 09:57.

⁶ *See* Article 71(1) of the Rome Statute.

⁷ Decision regarding non-compliance, ICC-02/05-01/20-1209, para. 13.

⁸ Decision regarding non-compliance, ICC-02/05-01/20-1209, para. 13.

7. The Chamber acknowledges that the Decision regarding non-compliance was immediately followed by an email apology from Lead Counsel for the Defence, who also took full responsibility for the misconduct.⁹ The Chamber further notes that, as instructed in the Decision regarding non-compliance, the Defence promptly filed an amended version of its brief in compliance with the Chamber's orders.¹⁰ In these circumstances, and pursuant to the Chamber's broad power under Article 64(2) and (6)(f) of the Rome Statute and Regulation 29 of the Regulations of the Court, the Chamber finds that a public admonishment is sufficient, accepts the Defence's Amended Final Brief as filed, and has determined to take no further action.

8. In its Decision regarding non-compliance, the Chamber noted that annexes to the Prosecution's final brief, particularly Annex 26, did not comply with the Chamber's orders on the filing of the final briefs.¹¹ In response to this, the Prosecution explained and apologised for its conduct *via* e-mail.¹² Neither the Defence nor the CLRV made any response to the Prosecution's explanation. While the Chamber considers that the content of Annex 26 should have formed part of the Prosecution's main brief, it acknowledges the Prosecution's explanation that Annex 26 was intended to count towards the page limit.¹³ Considering this, and the explanations provided, the Chamber will exceptionally consider the content of Annex 26 as forming part of the Prosecution's main submissions in its brief, which the Chamber accepts as filed.

9. Recalling the above, the Chamber reminds all parties and participants that non-compliance with Court orders will no longer be tolerated.

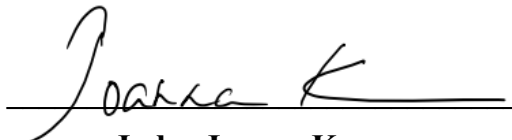
⁹ Email from the Defence, 5 November 2024, at 19:50.

¹⁰ Defence's Amended Final Brief, ICC-02/05-01/20-1210-Conf.

¹¹ Decision regarding non-compliance, ICC-02/05-01/20-1209, para. 16; Third direction on the conduct of proceedings, 11 December 2023, ICC-02/05-01/20-1046.

¹² Email from the Prosecution, 6 November 2024, at 17:05.

¹³ Email from the Prosecution, 6 November 2024, at 17:05.

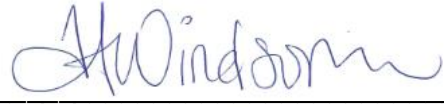


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 18 November 2024

At The Hague, The Netherlands