

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/05-01/20
Date: 5 December 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 Defence Request to Present Unsworn Statement pursuant to Article 67(1)(h)
of the Statute**

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. On 25 September 2024, the Chamber declared the presentation of evidence closed and announced that closing statements would be held from 11 to 13 December 2024.¹ The parties and the Common Legal Representative for Victims (the 'CLRv') were given 4,5 hours and 1,5 hour, respectively, for their closing statements.²
2. On 28 November 2024, and pursuant to Article 67(1)(h) of the Rome Statute (the 'Statute'), the Defence requested that Mr Abd-Al-Rahman be permitted to make an unsworn statement during the closing statements (the 'Request').³ The Defence requests the authorisation for Mr Abd-Al-Rahman to speak for less than 15 minutes and at the very end of these hearings, referring to Rule 141(2) of the Rules of Procedure and Evidence (the 'Rules') according to which the Defense shall always have the opportunity to speak last.
3. The Prosecution and CLRv did not respond and took no position on the Request.⁴
4. As is his right,⁵ Mr Abd-Al-Rahman may make an unsworn statement as part of his closing statement. This statement must fall within the Defence's allotment to present closing statements. To the extent that this statement can be considered in the judgment, the accused must be reminded that such statement constitutes a waiver of his right under Article 67(1)(g) of the Statute to not be compelled to 'confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence'.

¹ Order regarding the final briefs and closing statements, ICC-02/05-01/20-1191. *See also* Third directions on the conduct of proceedings, 11 December 2023, ICC-02/05-01/20-1046, para. 12; Transcript of hearing, 12 June 2024, ICC-02/05-01/20-T-159-CONF-ENG, pp. 18-19.

² Third directions on the conduct of proceedings, 11 December 2023, ICC-02/05-01/20-1046, para. 12

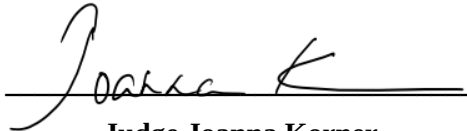
³ Requête de la Défense de Mr Abd-Al-Rahman, en vertu de l'Article 67-(1)-(h) du Statut, ICC-02/05-01/20-1212.

⁴ Email from the CLRv dated 29 November at 10:34; Email from the Prosecution dated 3 December 2024 at 10:32.

⁵ The Chamber notes that unsworn statements have been permitted during closing statements in previous trials at this Court. *See* Trial Chamber I, The Prosecutor v. Thomas Lubanga Dyilo, Transcript of Hearing, 26 August 2011, ICC-01/04-01/06-T-357-ENG, page 48 line 16 to page 49 line 19; Trial Chamber II, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Transcript of Hearing, 23 May 2012, ICC-01/04-01/07-T-340-ENG, page 48 line 5 to page 61 line 1. Mr Bemba was also granted an opportunity to make an unsworn statement during closing statements, but ultimately declined to do so (Trial Chamber III, The Prosecutor v. Jean-Pierre Bemba, Decision on unsworn statement by the accused pursuant to Article 67(1)(h) of the Rome Statute, 1 November 2013, ICC-01/05-01/08-2860). Trial Chamber VII, The Prosecutor v. Jean-Pierre Bemba et al., Decision on Requests to Present Unsworn Statements, 12 May 2016, ICC-01/05-01/13-1890; Trial Chamber VI, The Prosecutor v. Ntaganda, Decision on Defence request to reconsider the Second order on closing statements, 27 August 2018, ICC-01/04-02/06-2312.

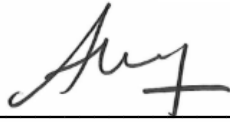
5. Noting the Defence's right to speak last,⁶ and that the evidence presentation in this case is closed, the Prosecution will not be permitted to reply on or present further evidence in response to the unsworn statement.

6. The Chamber accordingly grants the Request, in accordance with paragraph 4 above.

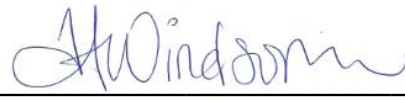


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 5 December 2024

At The Hague, The Netherlands

⁶ Rule 141(2) of the Rules.