



Original: English

No.: ICC-02/05-01/20
Date: 4 February 2022

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

Joint Prosecution and Defence Submission of the Expert Report

Source: Office of the Prosecutor

Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

**The Office of Public Counsel for the
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States Representatives

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**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. On 8 September 2021, Trial Chamber I (“Chamber”) instructed the Office of the Prosecutor (“Prosecution”) and the Defence (together, the “Parties”) to seek joint agreement on various issues, including the selection of an expert witness.¹

2. The Parties entered into consultations regarding a list of suitable expert witnesses and agreed to jointly instruct Mr Alex de Waal (P-1042) on 10 November 2021. On 18 November, the Parties sent a signed letter containing joint instructions to Mr de Waal for the preparation of his expert report (“Joint Instructions”).²

3. On 1 January 2022, the Parties requested an extension to formally disclose the final expert report and add it to the list of evidence in order to accommodate proposed revisions. On 5 January, the Chamber granted this request and extended the deadline to 4 February 2022.³ On 1 February 2022, Mr de Waal provided his final expert report, including two annexes (“Expert Report”),⁴ to the Parties.

4. The Parties submit that Mr de Waal possesses sufficient qualifications and expertise in relation to relevant events which took place before and during the armed conflict in Darfur, in particular West Darfur State, in 2003-2004. The contents of the Expert Report fall within Mr de Waal’s well-established expertise, and they will assist the Chamber in the determination of the issues in this case.

5. Therefore, the Parties respectfully request that the Chamber accept Mr de Waal as an expert witness and allow the introduction of the Expert Report, Joint Instructions and other materials establishing Mr de Waal’s qualifications⁵ into evidence as expert testimony.

¹ [ICC-02/05-01/20-T-013-ENG](#), p. 23, l. 20-25 and p. 24, l. 1-8.

² DAR-OTP-0220-1693.

³ Email from the Chamber to the Parties, 5 January 2022 at 10:05.

⁴ DAR-OTP-0220-1623; DAR-OTP-0220-1686; DAR-OTP-0220-1689.

⁵ DAR-OTP-0220-1696; DAR-OTP-0220-1712.

II. SUBMISSIONS

6. Pursuant to Regulation 44(1) of the Regulations of the Court, the Chamber may allow the introduction of expert evidence on a discretionary basis.⁶ In order to determine whether the testimony of a witness and his or her report may be admitted as expert evidence, the Chamber will consider whether: (i) the proposed witness is an expert; (ii) the content of the expert report and/or anticipated testimony falls within the area of expertise of the proposed witness; and (iii) the content of the expert report and/or anticipated testimony will be of assistance to the Chamber.⁷

Mr de Waal is qualified to provide relevant expert testimony on Darfur

7. Mr de Waal is one of the world's foremost experts on the history, culture, politics and sociology of the Darfur region in Sudan. For nearly 40 years, Mr de Waal's scholarship has focused primarily on Darfur. Mr de Waal holds a DPhil in Social Anthropology from Oxford University, where he wrote his thesis about the famine in Darfur in 1984-1985. Since then, Mr de Waal has held numerous positions throughout the region, including Co-Director of African Rights, Executive Director of Justice Africa and Senior Adviser to the African Union High-Level Implementation Panel for Darfur.

8. Mr de Waal is currently serving as the Executive Director of the World Peace Foundation, Professor in the Fletcher School of Law and Diplomacy at Tufts University and Professorial Fellow at the London School of Economics. In these roles, Mr de Waal conducts research, teaches courses and runs seminars related to the Horn of Africa, including Sudan. Mr de Waal has authored or co-authored dozens of publications related to the armed conflict in Darfur, in particular his book, *Darfur: A New History of a Long War*.⁸

⁶ ("Moreover, although the fact that a person is included in the Registry's List of Experts may be of relevance, it is not determinative or required.") *Al Hassan* Expert Decision, [ICC-01/12-01/18-989-Red](#), para. 15.

⁷ *Bemba* Expert Decision, [ICC-01/05-01/13-1653](#), para. 11; *Ruto and Sang* Expert Decision, [ICC-01/09-01/11-844](#), para. 12; *Ntaganda* Expert Decision, [ICC-01/04-02/06-1159](#), para. 8.

⁸ The original edition of this book was entitled *Darfur: A Short History of a Long War*.

9. Mr de Waal has provided a full copy of his Curriculum Vitae⁹ and a statement of qualifications,¹⁰ which set out his academic credentials, list of publications, honours and other relevant positions that he has held in the course of his career in greater detail.

Mr de Waal's areas of expertise are relevant to the case and will assist the Chamber

10. Mr de Waal's work on Darfur has spanned many different areas relevant to the case, including in the fields of academia, politics, peacemaking, humanitarian action and public health. As such, Mr de Waal possesses a uniquely broad insight into the context in which the armed conflict in Darfur took place that will benefit the Chamber's understanding of the case. Moreover, the Joint Instructions that the Parties provided to Mr de Waal cover the topics that they consider to be most appropriately addressed by him. Specifically, the Parties directed Mr de Waal to provide an explanation of relevant events which took place before and during the armed conflict in Darfur, with a focus on West Darfur State, in 2003-2004.

11. The topics covered by the Expert Report include, *inter alia*, an overview of the relevant aspects of the sociology and political history of Darfur; the role of ethnicity, race, tribe and religion in Darfur; the ethnic, social, political, tribal and administrative structures in Darfur; the root causes of the armed conflict in Darfur in 2003-2004; the parties to the conflict, including the Government of Sudan ("GoS") forces, irregular forces and rebel forces; a description of individuals and/or groups known as the Militia/*Janjaweed*; the response of the GoS to the attacks by the rebel forces during the armed conflict; and the impact of the armed conflict on the civilian population in Darfur.

⁹ DAR-OTP-0220-1696.

¹⁰ DAR-OTP-0220-1712.

The joint agreement of the Parties to call Mr de Waal as an expert witness occasions no prejudice

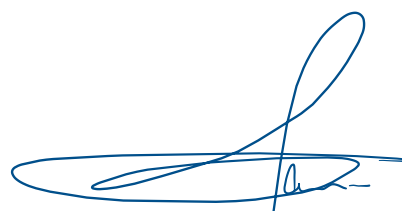
12. Pursuant to the Chamber's instructions, the Parties have jointly agreed to call Mr de Waal as an expert witness to provide valuable overview evidence regarding the Darfur region, in particular West Darfur State, in 2003-2004. The Parties have issued Joint Instructions, actively engaged in *inter partes* discussions regarding the proposed expert testimony and approved the contents of Mr de Waal's final Expert Report. The joint participation of the Parties in Mr de Waal's instruction has ensured that the Expert Report was drafted with the "utmost neutrality and objectivity"¹¹ and, thus, the admission of Mr de Waal's testimony into evidence as an expert witness would occasion no prejudice to either the Prosecution or the Defence.

III. CONCLUSION

13. On the basis of his extensive qualifications and experience, the relevance of his intended expert testimony to the case, and their joint agreement in this regard, the Parties hereby request that the Chamber accept Mr de Waal as an expert witness and introduce the Expert Report and related materials into evidence as expert testimony.



Karim A.A. Khan QC
Prosecutor



Dr Cyril Laucci
Lead Counsel for the Defence of Mr Ali
Muhammad Ali Abd-Al-Rahman

Dated this 4th day of February 2022

At The Hague, The Netherlands

¹¹ [Ntaganda Expert Decision](#), para. 9.