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No.: ICC-02/05-01/20

Date: 30 March 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

**Public Redacted Version of
"Joint Prosecution, Defence, and Common Legal Representatives of Victims
submissions pursuant to Article 64(10) of the Statute", 29 March 2022, ICC-02/05-
01/20-653-Conf**

Source: Office of the Prosecutor
Defence for Mr Ali Muhammad Ali Abd-Al-Rahman
Common Legal Representatives of the Victims

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

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**Unrepresented Applicants
(Participation/Reparation)**

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I. INTRODUCTION

1. On 1 September 2021, the Office of the Prosecutor (“Prosecution”) filed the “Prosecution’s submissions pursuant to the ‘Order scheduling first status conference’ (“1st September 2021 Submissions”) whereby it presented its position on the issue of transcript corrections. In particular, the Prosecution: (i) submitted that the process of transcript corrections falls within the competence of the Registry; (ii) expressed, based on prior practice, serious concerns about the time-consuming nature of quality checks when undertaken by the Parties in the course of a trial; and (iii) noted the limited scope of assistance it could provide in the context of this process.¹

2. On 4 October 2021, Trial Chamber I (“Chamber”) issued its Directions on the conduct of proceedings (“Directions”), whereby it instructed the Registry to inform the Parties and Participants of the relevant procedure for requests for verification of the transcripts.²

3. [REDACTED].³ Following a request from the Defence, the Registry [REDACTED].⁴ [REDACTED]⁵

4. Having put into practice the current procedure for transcript verification since its communication, the Parties and Participants submit their observations on its impact on their substantive work, and request the Trial Chamber’s intervention pursuant to Article 64(10) of the Rome Statute (“the Statute”) to ensure the efficiency of the procedure and accuracy of the trial record, at this early stage of the trial proceedings.

5. The current procedure is cumbersome, and places the Parties and Participants in a position whereby an excessive and disproportionate amount of time and resources must be expended to undertake verifications. Further, the Parties and Participants

¹ [ICC-02/05-01/20-464-Red2](#), paras 48-51.

² [ICC-02/05-01/20-478](#), par. 68.

³ [REDACTED].

⁴ [REDACTED].

⁵ *Ibid.*

submit that they are neither properly skilled nor equipped to perform the task of transcript verification at the level and to the extent presently required.

II. CLASSIFICATION

6. Pursuant to regulation 23bis(2) of the Regulations of the Court, this submission is classified as confidential as it pertains to direct correspondence between the Parties and Participants and the Registry. A public redacted version of the Submissions will be filed shortly thereafter.

III. SUBMISSIONS

The Parties and Participants are neither equipped nor mandated to undertake extensive transcript corrections

7. Pursuant to Article 64(10) of the Statute, “*The Trial Chamber shall ensure that a complete record of the trial, which accurately reflects the proceedings, is made and that it is maintained and preserved by the Registrar” (emphasis added).*

8. Rule 137(1) of the Rules of Procedure and Evidence (“RPE”) provides that “*In accordance with article 64, paragraph 10, the Registrar shall take measures to make, and preserve, a full and accurate record of all proceedings, including transcripts, audio and video-recordings and other means of capturing sound or image” (emphasis added).*

9. The aforesaid provisions make clear that the quality check of transcripts comes first and foremost within the responsibility of the Registry, which alone is equipped with the relevant resources and expertise to undertake such a task.

10. [REDACTED].⁶ [REDACTED]. [REDACTED].⁷

11. These verifications are performed without access to the audiovisual recording of the relevant hearing, which limits content review to the memory or notes of attendants to the hearing sessions; such a process is of inherently limited reliability.

⁶ [REDACTED].

⁷ [REDACTED].

[REDACTED] Moreover, even if the records were received early enough, the Parties and Participants submit that they lack the resources and expertise that a full review of the audiovisual record for verification purposes would require.

12. In view of the above outlined circumstances, which involved non-evidentiary hearings and a relatively low-paced phase of the proceedings, the Parties and Participants submit that the manner in which the current transcript verification procedure has been conducted is not sustainable, places a heavy and undue burden on them, and is not consistent with the current legal and administrative framework of the Court.⁸ The Parties and Participants stress that their resources are limited and that the allocation of staff to undertake quality checks within a strict deadline – [REDACTED] – had a serious impact on the organization of their workload. They anticipate that this will not be mitigated by the longer deadline applicable to the trial phase, namely [REDACTED]⁹, as the process will have to be conducted on a quasi-daily basis, and the frequency and complexity of these quality checks drastically increase in respect of evidentiary hearings. Further, as previously highlighted by the Prosecution in its 1st September 2021 Submissions, the Parties and Participants do not have the required expertise to undertake – to the extent and at the level that has thus far been required – quality checks of transcripts and proposed reformulations of translations.

The Parties and Participants commit to provide assistance to the Registry within the limits of their capacity and expertise to ensure the quality of transcripts

13. The Defence and CLRV join the proposal of the Prosecution, as set out in its 1st September Submissions, and stand ready to provide clarifications to the Registry on an *ad hoc* basis with regard to the spelling of names or places, and outstanding interpretation matters identified following the Registry check of the audiovisual recordings of hearings, as provided for in the Registry's procedure.

⁸ See paras 3, 7, 8 *supra*.

⁹ [REDACTED].

14. In light of the substantive issues identified and obstacles encountered by the Parties and Participants while undertaking these checks, they respectfully seek the Trial Chamber's intervention, pursuant to Article 64(10) of the Statute, concerning the transcript verification procedure applicable in the *Abd-Al-Rahman* case, and clarification regarding the nature and scope of the Parties and Participants' role in this process.

15. The Parties and Participants respectfully request that the Trial Chamber invite the Registry to revisit the current procedure – and in particular [REDACTED] –to ensure that the input of the Parties and Participants in the transcript verification process remains confined to discrete outstanding quality checks to guarantee the accuracy of the final version of the transcripts during the trial, and which does not impose an undue burden on the Parties and Participants.

IV. CONCLUSION

16. The Parties and Participants file these submissions to bring to the attention of the Chamber this critical issue, which negatively impacts the substantive work of the Parties and Participants and places at risk the accuracy of the trial record. Pursuant to Article 64(10) of the Statute, the Parties and Participants respectfully request the Trial Chamber to engage with the Registry in respect of the issues identified in these submissions, including any practical proposals from the Registry aimed at ensuring that the current transcript verification procedure functions as intended, and is limited to minor corrections or clarifications of hearing transcripts by the Parties and Participants, not extensive review and revision.



Karim A. A. Khan QC
Prosecutor



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



Natalie v. Wistinghausen

Nasser Mohamed Amin Abdalla

Common Legal Representatives for Victims

Dated this 30th day of March 2022

At The Hague, The Netherlands