

Trial Hearing
Procedural Matters

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou
7 and Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Monday, 30 January 2023
10 (The hearing starts in open session at 9.35 a.m.)
11 THE COURT USHER: [9:35:10] All rise. The International Criminal Court is now in
12 session. Please be seated.
13 PRESIDING JUDGE KORNER: [9:35:28] Yes, good morning, all.
14 Appearances, please.
15 MR NICHOLLS: [9:35:37] Good morning, your Honours. Good morning, everybody
16 in the courtroom. Julian Nicholls with Edward Jeremy, Claire Sabatini, Diana Saba,
17 and Mohanad Elkholy. Thank you.
18 PRESIDING JUDGE KORNER: [9:35:52] Thank you.
19 Yes, Defence.
20 MR LAUCCI: [9:35:56](Interpretation) Good morning, Madam President. Good
21 morning, your Honours. Good morning, dear colleagues. Beside Mr Ali Muhammad
22 Ali Abd-Al-Rahman, we have Marcela Velarde, who is the assistant -- the evidence
23 reviewer; Ahmad Issa, the case manager; my colleague, Iain Edwards; myself, Cyril
24 Laucci, the lead counsel.
25 PRESIDING JUDGE KORNER: [9:36:21] Thank you.

- 1 Yes, representatives for the victims.
- 2 MR SHAH: [9:36:24] Good morning, your Honours. Anand Shah, associate counsel for
3 the participating victims today, with Idriss Anbari and our two interns, Nur
4 Mahameed and Randa Bellahdid. Thank you.
- 5 PRESIDING JUDGE KORNER: [9:36:40] Yes. And the court-appointed representative
6 for the witness. Could I have your name, please, for the record.
- 7 MS UNAC: [9:36:55](Interpretation) Good morning, Madam President. Good
8 morning, your Honours, dear colleagues. Héleyn Unac, who is duty counsel for the
9 witness, P-0921.
- 10 PRESIDING JUDGE KORNER: [9:37:07] Yes.
- 11 Before we go any further, Ms Unac, how are you communicating with the witness?
- 12 MS UNAC: [9:37:20](Interpretation) I communicate -- up to now, I have communicated
13 through video calls organised by the Office for the Public Counsel for Victims.
- 14 PRESIDING JUDGE KORNER: [9:37:36] Yes, but I don't imagine for one moment he
15 speaks French. So in what language are you communicating with him?
- 16 MS UNAC: [9:37:43](Interpretation) We have, up to now, communicated with the help
17 of an interpreter, a French-Arabic interpreter.
- 18 PRESIDING JUDGE KORNER: [9:37:50] Right.
- 19 Yes. Well, I have read your application that, apart from anything else, he's in closed
20 session the entire time. That is already granted, so you needn't have asked for that.
- 21 As to a blanket assurance, it is not the practice of this Court to give such blanket
22 assurances. The Rule 74 says, effectively, that under Rule 74(3)(a): "A witness may
23 object to any statement that might tend to incriminate him or her." We are prepared to
24 grant that.
- 25 What I'm not at all clear on is how you are going to advise him of this as he's on

1 videolink, which I may say, seems to be quite extraordinary, given the circumstances.

2 So we are prepared, as we've done with a very similar witness, to say that. But for the
3 moment, we're not prepared to give a totally blanket assurance.

4 So, Ms Unac, what do you want to do now?

5 MS UNAC: [9:39:43](Interpretation) You have informed the witness --

6 PRESIDING JUDGE KORNER: [9:39:48] No.

7 MS UNAC: [9:39:48] -- of the fact that you will not be giving the assurances as we go
8 along?

9 PRESIDING JUDGE KORNER: [9:39:54] No, it's not our job to inform the witness. It's
10 your job to inform the witness.

11 MS UNAC: [9:40:06](Interpretation) Yes, indeed. So I would like to ask to consult the
12 witness, starting now if possible. And I understand, in principle, that I should be able
13 to get the assistance of an interpreter, that this time would be one helping interpret
14 English and Arabic. I can also speak English fluently, so I considered that it was
15 possible for me to provide this support from English into Arabic.

16 PRESIDING JUDGE KORNER: [9:40:45] I'm really sorry. I'm not following any of that.
17 As I understand it, you are communicating with a French-Arabic interpreter. Is there a
18 French-Arabic interpreter here who can communicate with you? Nor am I clear how
19 you are going to communicate with him without us clearing the court.

20 MS UNAC: [9:41:14](Microphone not activated)

21 THE INTERPRETER: [9:41:22] Microphone for the speaker.

22 MS UNAC: [9:41:24](Interpretation) I indicated up to now I had communicated with
23 the witness in French, with the help of a French-Arabic interpreter. I had asked the
24 assistance of an interpreter, French-Arabic interpreter, for the two days to come to be
25 able to communicate with my client. I was told that such a French-Arabic interpreter

1 would not be available for the next two days, so I considered that I was in a position to
2 communicate with the witness with the help of an interpreter who interprets English-
3 Arabic for the next two days.

4 I know my level of English, and I know that I am able to provide counsel with the help
5 of an English-Arabic interpreter. Otherwise, I would not have said that. If I had
6 thought it was not in the interest of my client, of course I would not have accepted this.

7 PRESIDING JUDGE KORNER: [9:42:25] That doesn't answer the question of how
8 you're going to communicate with him over videolink without us clearing the court.

9 MS UNAC: [9:42:38](Interpretation) I had also checked this point, and I was told that I
10 could communicate with the client through a phone number that I had been given from
11 this Office of the Counsel for Victims on site. Now, if you think it is appropriate to set
12 up other technical means, we could interrupt the hearing to check that.

13 PRESIDING JUDGE KORNER: [9:43:12] I take it, Mr Jeremy, that there was a very
14 good reason why this witness is not here, given the complications of this particular
15 witness.

16 MR JEREMY: [9:43:27] Yes, Madam President. There is a very good reason. I won't go
17 into it now, but VWS and Prosecution has been trying for a number of months to secure
18 travel documentation for this witness so that he could come here and testify. That was
19 our overwhelming preference, that he would testify in person. Also the preference of
20 the witness. But, unfortunately, it was simply not possible.

21 PRESIDING JUDGE KORNER: [9:43:50] Why more impossible for him than any other
22 witness, as a matter of interest? Actually, we're in open session, so I suppose we better
23 go into private session.

24 MR EDWARDS: [9:44:09] And, if I may --

25 THE COURT OFFICER: [9:44:16] Please wait.

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1 (Private session at 9.44 a.m.)

2 THE COURT OFFICER: [9:44:20] We are now in private session, your Honour. Thank
3 you.

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- 8 (Recess taken at 9.54 a.m.)
- 9 (Upon resuming in open session at 11.01 a.m.)
- 10 THE COURT USHER: [11:01:52] All rise. Please be seated.
- 11 PRESIDING JUDGE KORNER: [11:02:11] It almost beggars belief that if I say counsel is
- 12 to be given time to speak to her client, we having heard a long discussion about how
- 13 she communicated with him, but not one single interpreter in this court, or anybody,
- 14 had the nous to explain to -- or to understand, rather, that that required an interpreter
- 15 to be present.
- 16 I'm told nothing happened for 30 minutes because the interpreters went off for coffee.
- 17 As I say, it almost beggars belief. And all I can think is that this is a Monday morning.
- 18 Right. I think we'd probably better go into private session, and we will be in private
- 19 session or closed session for the rest of the day.
- 20 (Private session at 11.03 a.m.)
- 21 THE COURT OFFICER: [11:03:34] We are now in private session, your Honour.
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- 9 (Recess taken at 12.55 p.m.)
- 10 (Upon resuming in private session at 2.29 p.m.)
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WITNESS: DAR-OTP-P-0921

(Private Session)

ICC-02/05-01/20

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ICC-02/05-01/20

- 1 (Redacted)
- 2 (Redacted)
- 3 (The hearing adjourned in private session at 3.57 p.m.)