

Trial Hearing
Procedural Matters

(Private 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 Tuesday, 31 January 2023
10 (The hearing starts in private session at 9.31 a.m.)
11 THE COURT USHER: [9:31:02] All rise. The International Criminal Court is now in
12 session. Please be seated.
13 PRESIDING JUDGE KORNER: [9:31:18] Yes, good morning, all.
14 Just to notify everybody, we're starting in private session. (Redacted)
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WITNESS: DAR-OTP-P-0921

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20 (Recess taken at 10.59 a.m.)

21 (Upon resuming in private session at 11.35 a.m.)

22 THE COURT USHER: [11:35:33] All rise. Please be seated.

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- 9 (Recess taken at 12.49 p.m.)
- 10 (Upon resuming in private session at 2.17 p.m.)
- 11 THE COURT USHER: [14:17:57] All rise. Please be seated.
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13 (Recess taken at 3.08 p.m.)

14 (Upon resuming in private session at 3.15 p.m.)

15 THE COURT USHER: [15:15:07] All rise. Please be seated.

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- 12 (Redacted)
- 13 (The witness exits the courtroom via videolink)
- 14 (Redacted)
- 15 (Redacted)
- 16 (Open session at 4.01 p.m.)
- 17 THE COURT OFFICER: [16:01:08] We are now in open session, Madam President.
- 18 PRESIDING JUDGE KORNER: [16:01:10] Right. Okay. Mr Jeremy, I know Mr
- 19 Nicholls isn't here, but as I understand it, the Prosecution's only got one more witness.
- 20 MR JEREMY: [16:01:22] That's right, Madam President.
- 21 PRESIDING JUDGE KORNER: [16:01:24] Which is due to testify, I think it's 13th and
- 22 14th February.
- 23 MR JEREMY: [16:01:31] Exactly.
- 24 PRESIDING JUDGE KORNER: [16:01:32] Right. Is that a guarantee?
- 25 MR JEREMY: [16:01:33] It's not a guarantee at this point. It's moving close to a

- 1 guarantee. We're still trying to bring the witness here, and we're still working on the
2 travel documents.
- 3 PRESIDING JUDGE KORNER: [16:01:45] Right.
- 4 MR JEREMY: [16:01:46] And as a backup, the AVL option is being worked on.
- 5 PRESIDING JUDGE KORNER: [16:01:50] All right.
- 6 MR JEREMY: [16:01:52] So it's a firm expectation that he will testify.
- 7 PRESIDING JUDGE KORNER: [16:01:54] Well, the only reason I raise it is because if it
8 turns out that for the reasons that apply to this witness, or any other, he can't testify, it's
9 obviously important that you let the Court know as soon as possible for -- as you
10 gather, we have -- we bring in interpreters and the like.
- 11 MR JEREMY: [16:02:15] Of course.
- 12 PRESIDING JUDGE KORNER: [16:02:15] If for whatever reason he can't testify, that,
13 effectively, the -- the Prosecution case is concluded; is that right?
- 14 MR JEREMY: [16:02:27] That's the current expectation, yes.
- 15 PRESIDING JUDGE KORNER: [16:02:30] Yes, okay. Well, obviously, as soon as you
16 know for sure what is happening, then you need to inform us and the Court. And also
17 as it requires apparently a formal written filing to say the case is concluded, that should
18 be filed as soon as possible thereafter.
- 19 Right. The second matter I want to raise is this, and it affects Mr Laucci.
20 Mr Laucci, you -- or, really it affects the Defence, obviously, but it's Mr Laucci who's
21 been dealing with this. You provided the Chamber with a courtesy copy of a
22 document, which, in effect, is ex parte, I think. But given it relates to matters that have
23 been discussed between both parties, is there any objection to me raising it with the
24 Prosecution here?
- 25 If there is, then I think what I'll do is I'll turn this into a very short ex parte hearing.

Trial Hearing
Procedural Matters

(Private Session)

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- 1 MR LAUCCI: [16:03:48] Do you mean the content of the document, Madam President?
- 2 PRESIDING JUDGE KORNER: [16:03:50] I do, yes.
- 3 MR LAUCCI: [16:03:51] Well, I would prefer to keep some --
- 4 PRESIDING JUDGE KORNER: [16:03:55] I mean -- yes, well, all right. I mean, as I said
- 5 -- but I think you're going about this the wrong way, and that's what I want to deal
- 6 with.
- 7 MR LAUCCI: [16:04:03] Oh, okay.
- 8 PRESIDING JUDGE KORNER: [16:04:04] Yes. So you prefer to deal with it on an ex
- 9 parte basis, would you?
- 10 MR LAUCCI: [16:04:15] Not knowing exactly what are the questions --
- 11 PRESIDING JUDGE KORNER: [16:04:17] Well, okay. You -- I don't think -- leaving
- 12 aside the contents --
- 13 MR LAUCCI: [16:04:22] Yes.
- 14 PRESIDING JUDGE KORNER: [16:04:22] -- are you happy for me to refer -- and we're
- 15 in open session in any event. Can we go into private session?
- 16 (Trial Chamber and court officer confer)
- 17 PRESIDING JUDGE KORNER: [16:04:35] 40 minutes to change into an ex parte? Well,
- 18 all right. Okay. Can we go into private session.
- 19 (Private session at 4.04 p.m.)
- 20 THE COURT OFFICER: [16:04:53] We are back in private session, Madam President.
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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Procedural Matters

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- 1 (Redacted)
- 2 (Redacted)
- 3 (The hearing adjourned in private session at 4.12 p.m.)