

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 and Judge Althea Violet
7 Alexis-Windsor
8 Hearing on the Motion for Acquittal/Status Conference - Courtroom 2
9 Tuesday, 4 April 2023
10 (The hearing starts in open session at 12.01 p.m.)
11 THE COURT USHER: [12:01:40] All rise. The International Criminal Court is now
12 in session. Please be seated.
13 PRESIDING JUDGE KORNER: [12:01:57] Yes, good morning all.
14 As yesterday, for, as I said, a sudden emergency, Judge Alexis-Windsor is on video
15 link.
16 Yes, could we have the appearances from the Prosecution, please.
17 MR NICHOLLS: [12:02:18] Good afternoon, your Honours, again both here and
18 remotely. Good afternoon to everybody in the courtroom. Today it's myself, Julian
19 Nicholls, with Edward Jeremy; Diana Saba; Alison Whitford; Claire Sabatini, Dahirou
20 Sant-Anna, who has not been in the courtroom before, but is our cooperation adviser
21 and helps us with all of these matters; and Pubudu Sachithanandan and Melissa
22 Simms. Thank you very much.
23 PRESIDING JUDGE KORNER: [12:02:47] Yes, thank you, Mr Nicholls --
24 MR NICHOLLS: [12:02:51] Sorry, just while I'm on my feet, your Honour, we have
25 submitted -- we will disclose and submit registered copies of the reference sheets that

1 we used yesterday. So we have ERNed our list of reference cites as well as our list of
2 authorities, and so those will be with you shortly with the ERNs for the record.

3 PRESIDING JUDGE KORNER: [12:03:12] Right. Well, that's very helpful.

4 Thank you, Mr Nicholls.

5 Yes, the Defence.

6 MR LAUCCI: [12:03:19](Interpretation) Good morning, Madam President. Good
7 morning, your Honours. Good morning, dear colleagues. On the Defence side
8 today, by the side of Mr Ali Muhammad Ali Abd-Al-Rahman, Eva Kalb and

9 Mr -- evidence reviewer, Ahmad Issa who is our case manager, Madam Audrey
10 Mateo who is legal adviser, Iain Edwards and myself, Cyril Laucci, lead counsel.

11 PRESIDING JUDGE KORNER: [12:03:51] And the representatives of the Registry
12 who are here for the second part of this morning's status conference.

13 MR DUBUISSON: [12:04:01](Interpretation) Thank you, Madam President,
14 your Honours. By my side there is Vera Wang, who is legal officer within the
15 external relations; Natalie Wagner, who is a legal officer within the judicial services;
16 Pieter Vanaverbeke, head, legal aid unit; and Mr Garrido Munoz, associate legal
17 officer and, myself, Marc Dubuisson, director of division of judicial services on behalf
18 of the Registrar, Mr Peter Lewis.

19 PRESIDING JUDGE KORNER: [12:04:35] Yes, thank you very much, Mr Dubuisson.
20 All right, Mr Edwards, I said you could have a further 10 minutes this morning
21 because I interrupted you yesterday to respond to what the Prosecution and the
22 representatives of the victims had to say.

23 MR EDWARDS: [12:04:48] Thank you, your Honour.

24 Yesterday, my learned friend made the point that the Bindisi attack did not happen
25 out of the blue -- and we accept that there is evidence of the behaviour of the militia

1 and the Janjaweed in the villages that were attacked before Bindisi, Nyerli, Tiro,
2 Kodoom -- but it has to be important to consider the evidence when taken at its
3 highest of what the accused would have known of the behaviour of the Janjaweed
4 and so on before they arrived in Bindisi. That really, is at the heart of that.
5 So the question for you, is, has the Prosecution demonstrated beyond reasonable
6 doubt that the accused was aware that the crimes underlying counts 6 to 9 would
7 have been committed in the ordinary course of events as a consequence of the
8 execution of his order to attack Bindisi? We challenged all four of those counts, but
9 really, this morning, I want to focus on counts 8 to 9.
10 Now, despite my learned friend's valiant attempts yesterday, you may think that by
11 running through his lengthy list of witness references, setting out snippets from the
12 testimony of some of the witnesses that have been called by the Prosecution, all he
13 really did was reinforce our fundamental point; that whilst there is evidence, and, in
14 some respects, a great deal of prima facie evidence that the accused may have been
15 aware that there was an attack against the civilian population in Bindisi, count 1;
16 murders, counts 2 and 3; destruction of property and even looting, counts 4 and 5 and
17 forcible transfer and persecution, counts 10 to 11, none of which we are taking issue
18 with at this stage, there is simply no evidence that he would have been aware that
19 rapes would have been committed in the ordinary course of events.
20 So in terms of the attacks on the villages leading up to Bindisi, Nyerli, Tiro, Kodoom,
21 there is the attacks on -- he talks about the attacks of -- the evidence of murders, the
22 fact that these people are civilians, that there was burning of property and so on, but
23 none of that really is at issue, because we are not challenging those counts, and, to
24 that extent, it seems that the Prosecution has rather missed a major point of what we
25 are seeking to argue.

1 Our submissions have been focused exclusively on the charges where insufficient
2 evidence has been adduced. And I pause to acknowledge that the Prosecution seems
3 to agree, our arguments -- what our position is about the standards at this stage; that
4 the standard is the beyond reasonable doubt standard -- at this stage. So all of the
5 references in the Prosecution's list when you read through it is entirely consistent,
6 taken at its highest, with an operation that was intended in the context of an attack
7 against a civilian population to murder, to forcibly transfer and so on. Including one
8 of the references which my learned friend made great play of -- number 43 on the
9 Prosecution's list of witness references, from a witness who states that Ali Kushayb
10 said:

11 "Listen, people, thank you. You've taught the enemy a lesson that the enemy will
12 never forget. The Fur will never forget this lesson [...]"

13 What is inconsistent with that congratulatory message on 15 August with a mission,
14 an exercise, an attack, which incorporates all of the counts -- counts 1 to 11 -- save for
15 6 to 9, but, in particular, 8 to 9? What is there in the congratulatory message that
16 says, "Well done for carrying out the rapes. Well done for taking the wives"?

17 There is no such evidence.

18 My learned friend also made great play of the evidence of witness 547, who had never
19 met the accused before. And when we look at the references that have been cited in
20 terms of what he said -- references 14 and 15 -- where 547 indicates what is meant by
21 *aksah amsah*, your Honour, I don't want to take up too much time, but we adopt what
22 he says for the purposes of these arguments:

23 "Kill -- kill, feel free to do what you do. There are no limits."

24 I pause there ... The Prosecution are going to say, "Ah, no limits. Therefore, rape is
25 fine. It's understood. It's either directly ordered or induced or it's a given."

1 But you only have to read on in the excerpt to what 547 says:

2 "There are no limits [...] do what they like [...] kill -- kill without taking into account
3 any other thing [...] do everything you can in order to kill. And this is the exact
4 meaning of this expression *aksah amsah*".

5 And then something fairly similar in respect of the reference at 15.

6 There is no evidence from 547's transcript which would allow for it to be concluded
7 that it was commonly understood as at 15 and 16 August, that rape could be
8 committed in order to kill. Your Honours, when you read through this list of
9 witness references, we are confident that you won't simply read these cherry-picked
10 snippets, I was about to say we'd urge you to read around it, but I don't need to urge
11 you, I know that you will.

12 PRESIDING JUDGE KORNER: [12:12:07] Sorry, Mr Edwards, you can take it, as I
13 hope I indicated yesterday, that before these submissions started, we read through the
14 various statements that you and the Prosecution were referring to.

15 MR EDWARDS: [12:12:21] Yes. Well, I'm not going to say I'm reassured because
16 I'd expect nothing less, but it is only by doing the reading around that a lot of the
17 context of these cherry-picked snippets really come out. So that, for example,
18 reference 51, P-7, what's cherry-picked here?

19 "Today, you and your men, we will kill you all and we will rape you all".

20 Well, this is something that the witness said he heard one of the rapists saying to one
21 or more girls on the 15th of August. But it's when you read around that - you read
22 your Honours' expressions of concern, your Honours' expressions of wanting a bit
23 more detail, "Well, how did you hear this?" - and, it's only then that it becomes clear
24 that P-7 says that he heard these words being said from one rapist to a girl from
25 a distance two to three times the distance between him and Ms Simms, who was

1 examining him in chief on that day. So a distance of perhaps, 20, 30 metres.
2 Again sticking with 878, reference 64, this is in the same context as the congratulatory
3 speech that 878 says he heard Ali Kushayb say, but it's a bit later on. So this is after
4 the attack of the 15th, when some of the members of the group – (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted). But there
8 is no evidence at all that Ali Kushayb heard what the other men were
9 saying -- whether he was talking to someone else, whether Ali Kushayb may have
10 been sleeping. We simply don't know. You are being asked to guess that Ali
11 Kushayb heard what the other men were saying and that's pure speculation. You
12 cannot do that.

13 This list of references is also replete with extracts of evidence going to the effect of
14 rape on the victims -- on the women and girls in Darfur and on the community in
15 general.

16 PRESIDING JUDGE KORNER: [12:15:25] As you saw, I stopped Mr Nicholls from
17 referring to all of that.

18 MR EDWARDS: [12:15:29] Yes.

19 PRESIDING JUDGE KORNER: [12:15:30] At this stage -- of course it may become
20 important at a later stage, but this is not the time to be dealing with that.

21 MR EDWARDS: [12:15:37] No. And once again, we are entirely confident that
22 you won't, but really the reason why I raise it now is because why would the
23 Prosecution put these references in? It is clearly an attempt to appeal to emotion, to
24 appeal to your Honours' natural sympathy to the victims of rape. And there isn't
25 a single person in this room that wouldn't have an emotional or sympathetic reaction

1 to the victims of rape in Darfur.

2 Now, the Prosecution accuse us of seeking to persuade your Honours to apply
3 a different standard when it comes to allegations of sexual and gender-based violence;
4 that we are trying to persuade your Honours to apply a higher standard. They're
5 wrong and we don't --

6 PRESIDING JUDGE KORNER: [12:16:36] Mr Edwards, I was going to come to that
7 when you'd finished, I didn't want to interrupt you again, but what is being said - and
8 certainly very clearly said by Ms von Wistinghausen on behalf of the victims - was
9 that you yourself describe this effectively as ethnic cleansing, the raids, in order to
10 drive out --

11 MR EDWARDS: [12:16:58] Yes.

12 PRESIDING JUDGE KORNER: [12:16:59] -- the Fur. And you accept that the
13 natural consequence of a policy which is -- it's probably not a legal term, but I think
14 we all know what it means --

15 MR EDWARDS: [12:17:12] Forcible transfer.

16 PRESIDING JUDGE KORNER: [12:17:14] Yes, exactly, forcible transfer and, if
17 possible, without return. What is said on behalf of the victims and indeed on behalf
18 of the Prosecution is, why should there be a -- if you accept for the purposes of this
19 argument that there is evidence showing that the activities described in the counts,
20 which are not being submitted on, are a natural and foreseeable consequence of this
21 sort of policy, why is rape in a different category?

22 MR EDWARDS: [12:17:48] I can explain that.

23 PRESIDING JUDGE KORNER: [12:17:49] Right.

24 MR EDWARDS: [12:17:50] But in so explaining, I am not seeking to ask you to apply
25 a different standard. I'm going to come back to the question of standard. When we

1 look at the other counts, the unchallenged, at this stage, counts on the indictment,
2 what is at their heart? It is about destruction. It is about eradication. Murder.
3 Destruction of property. Attacking a civilian population. It is about getting rid of
4 that which exists. Removal. Eradication. And that is exactly what *aksah amsah*
5 means, right? That is exactly what is meant by "Cut the straw and eat it raw".
6 Remove, get rid of, leave nothing behind. Forcible transfer, getting rid of
7 a population, destroying the village.
8 Rape doesn't fall, in our submission, within that. It is a different kind of activity. It
9 is not an activity of eradication or destruction in the way that murder and burning
10 down the villages. It is a crime that involves an application of power on a victim.
11 It's a crime that involves dehumanisation as my learned friend submitted yesterday.
12 But it is of a different nature, in our submission. And, really, the question is -- really
13 the question is, and I acknowledge that I'm sort of repeating what I said yesterday,
14 the question is, how foreseeable was it on 15 and 16 August, after the Nyerli and Tiro
15 and Kodoom attacks in which, frankly, there is no evidence that anyone observed the
16 rapes taking place? How foreseeable is it that Mr Abd-Al-Rahman would have
17 known to a degree of virtual certainty that rape would have taken place in Bindisi?
18 That is the question.
19 And I understand why the Prosecution -- the victims are saying, You can't ringfence
20 rape. You can't. It's all part of the same pattern. But when you look at the
21 meaning of *aksah amsah* - taking the Prosecution's case at its highest - it is of a different
22 sort. But simply by submitting that it is of a different sort, a different quality of
23 crime, that is not to say that we are asking your Honours to subject it to a higher
24 standard for the purposes of this argument, of course we're not.
25 But I come back to the multitude of references seeking - I'm afraid to say - to elicit

1 sympathy and an emotional reaction on your Honours' part. It seems to us that the
2 Prosecution and the victims are seeking to persuade your Honours to apply
3 a different standard when it comes to sexual and gender-based crimes and that is a
4 lower standard. The Prosecution seem to be asking you to say -- in fact, they almost
5 say as much, the Prosecution, in paragraph 1 of their response: "...a nuanced
6 approach [...] is required." They're almost saying to you, You've got to give sexual
7 and gender-based crimes a bit of a free pass. You can't do that.

8 All we are doing is asking you to apply exactly the same standard as you do all other
9 crimes in a motion for acquittal, and when you do that, and when you consider the
10 evidence relating to counts -- particularly 8 and 9, you will, I am sure, come to the
11 only available conclusion, which is that the Prosecution has not met its burden. It
12 has not proved beyond reasonable doubt Mr Abd-Al-Rahman's criminal
13 responsibility for any of the Fur crimes, certainly not for 8 and 9, and that there is
14 only one reasonable decision that you can come to in those circumstances.

15 I did intend to just finish very, very quickly by returning to her Honour, Judge
16 Alexis-Windsor's question from yesterday, because I did have the opportunity to
17 consider the Ongwen decision, and I think I've identified -- I say "I", the team has
18 identified, we think, the point that her Honour was interested in hearing from me
19 about.

20 May I do that or would your Honour like me to --

21 PRESIDING JUDGE KORNER: [12:23:42] Certainly, and I imagine Judge
22 Alexis-Windsor would like to know what you want to say.

23 MR EDWARDS: [12:23:50] Your Honour's question was whether, given the findings
24 in the Ongwen appeals decision, contextual and background evidence falling outside
25 of the 15-16 August timeframe is irrelevant to any kind of interpretation of the events

1 of that day? And, whilst I don't have much to add to what I said to your Honour
2 yesterday, it is of relevance to look at the context of that particular decision.
3 The Ongwen charge period was 1 July 2002 to 31 December 2005, but what the
4 Defence was complaining about was reliance by the Prosecution and, ultimately, the
5 Trial Chamber, on evidence from one, perhaps two witnesses of a meeting that took
6 place in September 2006, outside of the charge period. And why that meeting was of
7 relevance is because it was brought to Ongwen's attention that some of the LRA
8 fighters in his battalion were children under the age of 15.
9 The relevant paragraphs from the Trial Chamber decision or judgment are 2403 to
10 2411. And at paragraph 305 of the appeals judgment, the Appeals Chamber noted
11 that -- and I quote -- well, I sort of quote:
12 Evidence of facts falling outside the scope of the charges has been admitted and has
13 been relied upon before international courts. Nonetheless, the Appeals Chamber is
14 of the view that the question of whether trial chambers may rely on evidence of facts
15 falling outside the temporal or geographic scope of the charges can only be answered,
16 in particular, by reference to the specific evidence and the purpose for which it is
17 sought to be used. A trial chamber is required to carefully consider the link between
18 the evidence and the specific fact and of circumstances described in the charge.
19 So as is so often the case, the answer to the question is always going to be fact-specific,
20 and in Ongwen the purpose of eliciting the evidence of that meeting in September
21 2006 was to show that -- (a) Ongwen knew that he had abducted children under the
22 age of 15 within his ranks and that he didn't care.
23 The evidence from the Trial Chamber's decision is that when this was drawn to his
24 attention, the fact that he had children within his ranks, his response was, I quote:
25 "You call those kids children, but I call them my soldiers. So we are talking about

1 my soldiers. We are not talking about the children you are talking about."

2 So that evidence was clearly relevant because it directly linked to the conclusion at
3 that time that children under the age of 15 were integrated into his Sinia brigade, and,
4 I say parenthetically, that that was by far the only evidence that during the charged
5 period, Ongwen was aware that he had children under the age of 15 in his brigade.
6 But the evidential situation in the Ongwen case is quite distinguishable from the
7 situation that your Honours' Chamber is confronted with today, because the children
8 in the Sinia brigade -- well, that was a continuing offence. There was a great deal of
9 evidence of the presence of the children during the charge period and it continued
10 until after the charge period.

11 But here, it's a little different, because what we are asking your Honours to consider,
12 is, as at 15 or 16 August 2003, specifically, what did the accused know? What was he
13 aware of as being a substantial likelihood that rape would be committed in the
14 ordinary course of events as a consequence of the order to attack Bindisi?
15 So what he may have learned later in Sindu -- many months later of rape happening
16 in Sindu, doesn't assist the Prosecution and it doesn't assist your Honours in
17 answering that question and, therefore, any such later evidence of what he may have
18 learned after the 16 August is -- and I repeat, simply not relevant.

19 PRESIDING JUDGE KORNER: [12:29:17] So you would also say that the evidence of
20 what is said to have been his attitude towards the rapes that the evidence says were
21 reported to him and, he may or may not have seen, you say that's not relevant to his
22 state of mind in August 2003?

23 MR EDWARDS: [12:29:38] Yes. Well, I'm not going to go so far as to say it's
24 entirely relevant because the burden is elsewhere, the burden is on the Prosecution.
25 I didn't make any play of it yesterday during my submissions; although, it is in our

1 skeleton argument.

2 PRESIDING JUDGE KORNER: [12:30:03] No, you're referring to what he said about
3 the women, how his men should treat the women.

4 MR EDWARDS: [12:30:10] Yes.

5 PRESIDING JUDGE KORNER: [12:30:11] Yes, we got that, yes.

6 MR EDWARDS: [12:30:16] I'm not going to say it's of no relevance, but it isn't of the
7 greatest relevance.

8 PRESIDING JUDGE KORNER: [12:30:24] Yes, thank you.

9 I will just check whether Judge Alexis-Windsor wants to ask anything else on that
10 matter.

11 JUDGE ALEXIS-WINDSOR: [12:30:35] Thank you, I do not.

12 Thank you, Mr Edwards.

13 PRESIDING JUDGE KORNER: [12:30:41] Yes. Thank you very much, Mr Edwards.

14 All right, that completes the submissions in relation to the motion for judgment of
15 acquittal.

16 And we will move into the status conference aspect, which is to deal with the

17 Defence's application resisted by the Prosecution and on behalf of the victims for an
18 adjournment sine die, or without a date being set.

19 Mr Laucci, first of all, some of the matters referred to, and I think both the Registry
20 filing which is ex parte to you, and some are general, it would be most unfortunate if
21 we had to go in and have an ex parte session, if I can put it that way, because we have
22 to have a break then.

23 So if you work on the basis that we, the judges, have read all the filings on this matter,
24 we have also read your application for leave to respond and your response given in
25 that application, so what we really want to know at this stage - and we may have a

1 couple of questions about some of the things that were said - is, if there is anything
2 further you want to add in support of your application?

3 MR LAUCCI: [12:32:15] (Interpretation) Thank you, your Honour. Indeed, the
4 request for leave to reply was not done in an ex parte basis; so some of the elements
5 that I wished to submit by way of response to the Registry were not mentioned, but
6 the essential elements are present. You have them in your possession.

7 I have some updates to make with regards to events that occurred after the
8 application to reply and -- including today, it's possible to do so -- no, I can't
9 completely do it in the presence of the public and the parties, but without any doubt
10 we can certainly start in the presence of the parties. However, a lot of elements that I
11 have to discuss are not -- or cannot be done in public.

12 PRESIDING JUDGE KORNER: [12:33:29] All right, is there any part of it that can be
13 done in public? If not, then we will go into private session.

14 MR LAUCCI: [12:33:45] (Interpretation) It's a difficult exercise, but I will certainly
15 try to apply myself thereto. I will start firstly, with the additional elements of
16 a response that I wanted to make with regards to the response of the Office of the
17 Prosecutor.

18 Now you received my email, I have to insist on a very important point here. Two
19 different and radically different situations can't be compared -- I mean, the Office of
20 the Prosecutor's situation and that of the Defence. As you have seen throughout the
21 trial, a significant quantity of witnesses of the Office of the Prosecutor do not come
22 from Sudan. They came from the diaspora. They've been displaced in different
23 countries, but they did not come from Sudan.

24 The situation on the Defence side is the exact opposite thereof. The overwhelming
25 majority -- not all, but the overwhelming majority of the witnesses that we have the

1 intention to have appear during the presentation of the Defence come from Sudan.
2 That causes a problem of access for the reasons of cooperation and security, and it is
3 an element which makes all the difference in the situation in question.
4 Now, to speak about time, from 2007 to 2022, that is a lot of time to investigate on
5 witnesses who are available, whatever the access is to the territory of Sudan, because
6 they are not in Sudan. In our case, however, we are in a situation which is much
7 more difficult. Indeed it wasn't part of the initial application, but I have to state here
8 our submission with regard to the additional complication, if we needed it, of the
9 Ramadan period. They are not impressions or guesses, but they reflect very concrete
10 information that we have received from the people that we would like to question to
11 meet to become Defence witnesses, and we've said very clearly that they will not
12 travel and not in difficult conditions to meet us in this period.
13 The fact that the Defence asked exclusively for the intervention of the Chamber on the
14 matter of cooperation on 18 January 2022, my dear colleague, that wasn't in the same
15 case. I've looked at all the submissions on this issue at the pre-trial phase between
16 the only Pre-Trial Chamber, there was 19 of them, and the applications for
17 cooperation or request for cooperation, they were transmitted to the Chamber on 19
18 January 2021, in annex to our submissions 2063 -- or 263.
19 And finally, the submissions of the Office of the Prosecutor, and, in paragraph 27
20 thereof about the stopping of the proceedings, I would invite my colleague to read the
21 submissions. What we would ask is the exact opposite of a stopping of the
22 proceedings. What I have said and I'm saying firmly, is that the Defence has an
23 instruction and an intention to present its evidence in this case. The question is to be
24 able to do so. The request that was made to you in the application of a delay sine die,
25 is a delay with information -- continuous information given to the Chamber and on

1 a periodic basis about the progress of our investigations, our preparations and, if
2 there are any, the difficulties that we encounter. That in no way is a stopping or
3 halting of the proceedings. It's a very active phase, excessively active in fact, which
4 we propose to carry out during that period.

5 And we are committed to providing the Chamber on a regular basis; that the
6 Chamber would request the evidence from this phase. Any stopping of the
7 proceedings was asked in the pre-trial phase, but that was before the serious matters,
8 if I can put it like that, started. We very early noted all the difficulties that there
9 were -- that we were confronted with today when we put the question of the
10 conditions, whether they were there, in order to make progress in these proceedings.
11 Our submissions were rejected. The proceedings continued their way, the charges
12 were confirmed, and the proceedings started and the Office of the Prosecutor
13 presented its evidence. So it's -- for us, there is absolutely no question of stopping.
14 We have to respond to it, and it is for that sole purpose that the application for a delay
15 or stay was made.

16 PRESIDING JUDGE KORNER: [12:40:38] Yes, but what you're suggesting,
17 Mr Laucci, let's not make any bones about this, is that effectively the Trial Chamber
18 and, indeed, every other party to these proceedings, which includes the victims,
19 should wait until you tell us you're ready. I mean, that's the effect, isn't it?

20 MR LAUCCI: [12:41:03] (Interpretation) Certainly not, Madam President, because
21 with periodic reports that we propose to file for you.

22 PRESIDING JUDGE KORNER: [12:41:13] What are these periodic reports going to
23 tell us?

24 MR LAUCCI: [12:41:17] (Interpretation) All the progress that we have been able to
25 make, all the difficulties that we have encountered such that the Chamber may

1 ensure or assure itself that the Defence at all times is doing everything it
2 can -- everything that is within its possibility to make progress in the preparation of
3 its evidence.

4 PRESIDING JUDGE KORNER: [12:41:38] All right, so you give us all these reports.
5 At what stage, let's say for the sake of your submission, does the Trial Chamber say
6 you start? When you tell us you're ready?

7 MR LAUCCI: [12:41:50] (Interpretation) I am able, Madam President, not here, but
8 on an ex parte basis, to identify already what the investigation lines would be, which
9 we have identified and which we would explore to the end, such to be able to be
10 ready to present them to you -- to present the results thereof to you -- to the Chamber.
11 I think that with that, you should have all the elements to be able to know
12 whether yes, or not, or no, the Defence is able to complete what it proposes doing
13 before presenting its evidence.

14 PRESIDING JUDGE KORNER: [12:42:40] But that's what I mean. You give us
15 reports of your lines of investigation and where you've got to, and then you'll tell us
16 when you are at a stage that you're ready to begin, that you've completed such
17 investigations as you can, that you have the witnesses and the like. And, so, as I say,
18 Mr Laucci, the essence of what you want is that you tell us when you're ready to start
19 and we're in your hands.

20 MR LAUCCI: [12:43:13] (Interpretation) I think -- well, with regards to what was
21 proposed, I would say I'm in the hands of the Chamber more than the other way
22 round. But we can certainly speak about the exact modalities of this system of
23 periodical reporting that I propose to implement. Once again, that has to be an
24 ex parte discussion. We can discuss the modalities as long as you like; that's
25 certainly feasible.

1 PRESIDING JUDGE KORNER: [12:43:48] It's not the modalities, Mr Laucci, that are
2 of interest. It's entirely a matter for you and your client and the rest of your team.
3 What, of course, is most of interest to us and to the people watching this trial and to
4 the people who have an interest in this trial is, when will the Defence case start?
5 And I don't want to keep on repeating this, Mr Laucci, but you're offering us all these
6 reports, but in the end what you're saying is, it's only when we are ready to start that
7 the proceedings can start.

8 MR LAUCCI: [12:44:35] (Interpretation) Your Honour, I'm going to try and take
9 a concrete case about which I can base myself because it's known by everyone.
10 Our requests for cooperation have received no answer, so the documents that we've
11 been asking for since November 2021 --

12 PRESIDING JUDGE KORNER: [12:44:58] Just a moment, sorry, Mr Laucci, I think
13 we had better go into private session if we're going to go into all of this.
14 Yes, I'm sorry to those in the public gallery, but we are going to go into private
15 session, which means you will not hear anything.

16 (Private session at 12.45 p.m.)

17 THE COURT OFFICER: [12:45:32] We are in private session, Madam President.

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7 (Open session at 1.36 p.m.)

8 THE COURT OFFICER: [13:36:40] We are back in open session, Madam President.

9 PRESIDING JUDGE KORNER: [13:36:50] (Microphone not activated)

10 Okay, for the third time.

11 First of all, can I thank everybody for their very helpful written submissions; although,

12 I feel that oral argument is important, it obviously helps if you have a basis for that

13 argument.

14 And all that remains, for the third time, is, to wish everybody a happy Easter, and we

15 will meet again on the 19th of April. Yes, thank you.

16 THE COURT USHER: [13:37:36] All rise.

17 (The hearing ends in open session at 1.37 p.m.)