

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 September 2021

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. v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI KUSHAYB')

Public

With Confidential *EX PARTE* Annex I only available to the Office of the Prosecutor, Confidential *EX PARTE* Annex II only available to the Registry, and a Public redacted version of Annex II

Registry Submissions in View of the Upcoming Status Conference in accordance with "Order scheduling first status conference" (ICC-02/05-01/20-451)

Source: Registry

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

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I. Introduction

1. Following its “Order Scheduling the First Status Conference”¹ (“Order”), Trial Chamber I (“Chamber”) invited the Registry to provide submissions on “[l]anguages to be used by the parties, participants, and the witnesses the parties intend to call”², “[p]rotective measures of witnesses (including additional need for redactions, delayed disclosure or referrals to the Court’s witness protection programme)”,³ and an “[u]pdate and forecast on (additional) applications by victims to participate in the proceedings”.⁴

II. Classification

2. In accordance with regulation 23*bis*(1) of the Regulations of the Court (“RoC”), Annex I to the present observations is classified confidential *ex parte* only available to the Office of the Prosecutor (“Prosecution”), as it refers to personal and case-specific information regarding potential Prosecution witnesses, as well as to the internal operations of the Court. Annex II is classified confidential *ex parte* only available to the Registry because it contains sensitive information pertaining to victims. A public redacted version of Annex II is also filed with the present submissions.

III. Applicable Law

3. The following provisions are of particular relevance to the present submissions: articles 43, 50, 67(1)(a), 68, 87(2) of the Rome Statute (“Statute”), rules 16 to 19, 87 and 88 of the Rules of Procedure and Evidence (“Rules”), regulations 39(1), 40, 41 of the RoC, and regulations 57(1), 58(3), 61, 64(7), 66, 67, 68(4), 69, and 80 to 96 of the Regulations of the Registry (“RoR”).

¹ Trial Chamber I, Order Scheduling the First Status Conference, Order scheduling first status conference, 17 August 2021, ICC-02/05-01/20-451.

² *Ibid*, para. 1, point D.

³ *Ibid*, point E(4).

⁴ *Ibid*, para. 4, point J.

IV. Submissions

4. The following submissions follow the sequence of criteria listed in the Order and relate to each one in turn.

A. Languages to be used by the parties, participants, and the witnesses the parties intend to call

5. The Registry will only address hereunder languages other than French and English which might be used at trial.
6. While the Registry has not yet been informed of the languages of the witnesses to be called, it has nevertheless received indications during the pre-trial phase suggesting that it is likely that Fur, Sudanese (Darfuri) and Arabic will need to be supported.

Fur

7. Fur, one of the indigenous languages of Western Sudan, is a language of lesser diffusion for which accredited linguistic resources available to the Court are minimal, notwithstanding repeated efforts by the language services of the Court to recruit suitable freelance contractors. Additionally, Fur has only been recognised, as an indigenous language, by the constitution of Sudan as a national language “to be respected, developed and promoted” since 2005.⁵ As yet there is no widely accepted standardised variety taught in institutes of higher learning and for which a pool of trained court and conference interpreters exists.
8. At this time, the Registry cannot guarantee sufficient language resources to meet the demands of all trial and related operational activities. Recruitment efforts are ongoing; however significant difficulties are being experienced, including a high rate of negative personnel security clearance

⁵ Article 8(1) of the Interim National Constitution of the Republic of the Sudan, 2005., available at <https://www.refworld.org/pdfid/4ba749762.pdf>.

recommendations. It may be inevitable, to meet the language needs, to pool resources with the Prosecution, subject to guidance by the Chamber.

Sudanese (Darfuri) and Arabic

9. Notwithstanding the status of Arabic as a UN language, for which a pool of trained court and conference interpreters is available for recruitment, the Sudanese variety, and especially the Darfuri sub-dialect(s), may present considerable challenges for speakers of the modern standard variety. This is because Darfuri Arabic could be considered as a situation language in its own right.

Interpretation

10. If a very large number of witnesses who speak Fur are expected to testify, it may be preferable to consider recruiting and training of a team of Fur speaking interpreters for an intensive programme of training of three months (*Fur / Arabic*) to six months (*Fur / English*) in order to provide simultaneous interpretation (into either Arabic or English). In-house provision would not only facilitate more efficient trial proceedings, but would ensure the capacity to meet other Registry needs, such as trial related activities and public information and outreach activities.
11. In the absence of a para-professional team of interpreters, simultaneous interpretation, envisaged in regulation 61(1)(a) of the RoR, cannot be provided. In this case, accredited field interpreters would have to provide court interpretation in the consecutive mode as foreseen in regulation 61(1)(c) of the RoR.
12. Consecutive interpretation, means that the Fur - or other situation language - interpreters will interpret only after the speaker has stopped speaking. They will take notes while the person is speaking, and then deliver the segment which will be interpreted simultaneously into English or into Arabic. Interpretation into Arabic will require relay interpretation into English. The segments should be kept fairly short in order to ensure that there are no

omissions or inaccuracies. It is estimated that the duration of the testimony may last up to 50% longer. Consecutive interpretation therefore impacts the duration of the testimony.

13. The scheduling of Fur - or other situation language - speaking witnesses needs to be done with ample notice (six weeks) to allow time for the interpreters (individual contractors) to free themselves from any other commitments they may already have, as well as for making the necessary logistical and contractual arrangements, for visa procedures, for preparation, etc. as the interpreters who would need to be deployed will have to travel to The Hague from other locations, and for the setting up of specific training in accordance with regulation 64(7) of the RoR, for a minimum of three weeks. Consecutive interpretation was provided in, *inter alia*, Ateso in 2019 in the Ongwen trial, and more recently in Songhay in the Al Hassan trial.
14. The same situation language interpreters will be required to support other activities before, during and after witness testimony such as witness familiarisation, protection and vulnerability assessments, courtesy meetings, *etc.* The scheduling of these activities also needs close coordination as the Registry will work with a limited number of interpreters, i.e. the accredited field interpreters will have to provide both consecutive interpretation during trial sessions *and* the operational interpretation for the activities outside of hearings.
15. Field interpreters might have concerns about their security when asked to provide interpretation services at trial sessions, and these need to be addressed by the Court in accordance with regulation 68(4) of the RoR.

B. Protective measures of witnesses (including additional need for redactions, delayed disclosure or referrals to the Court's witness protection programme)

Protective measures of witnesses

16. The Registry hereby provides a general description of the measures that may be put in place to protect witnesses.

17. The non-procedural protective measures implemented by the Registry depend on the level of risk incurred by the witness and range from the implementation of good practices, the set-up of an Initial Response System, an assisted move, an internal resettlement within the relevant country or an international relocation. Internal resettlement and international relocation both require an inclusion of the witnesses into the Court's protection program ("ICCPP"). For international relocations, the Court also needs the cooperation of the relevant partner states that signed a relocation agreement with the Registry or accept to relocate witnesses on their territory on an *ad hoc* basis.
18. The admission of a witness in the ICCPP is a voluntary measure of last resort. Considering the extremely heavy impact an inclusion in the ICCPP has on the life of a person and her/his family members, the Registry always seeks to strike a balance between the intrusiveness of the protection measure and the risk and/or threat that the individual may face. This measure is only applied where no other alternative protection measure exists and where a person is considered to be severely at risk. An inclusion in the ICCPP also requires that the persons be assessed as suitable for that program from a psychological viewpoint.

Protection referrals

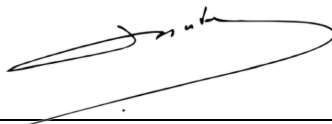
19. The Registry encourages the parties and participants to follow the procedure established in regulations 80(1) and 96(2) of the RoR for any referrals to the ICCPP or other forms of protection of witnesses and victims. Upon receipt of a referral for protection, the Registry performs a threat and risk assessment of the security situation of the referred individual. For the purpose of assessment and recommendation of the appropriate protective measures, the Registry emphasizes that it is essential that the parties provide the Registry with specific information on the nature of the threat or risk the individual could be exposed to. The Registry remains available to assist the parties in that regard and provide them with a protection referral form to facilitate any request.

Specific case related information

20. For the full information of the Chamber, case-related data is provided in Annex I to the present submissions on an *ex parte* basis only available the Prosecution due to the sensitivity and nature of the information.

C. Additional applications by victims to participate in the proceedings

21. The Registry makes submissions on victim participation in Annex II to the present submissions. Such Annex II is classified confidential *ex parte* only available to the Registry because it contains sensitive information pertaining to victims. A public redacted version of Annex II is also filed with the present submissions.



Marc Dubuisson, Director, Division of Judicial Services
per delegation of
Peter Lewis, Registrar

Dated this 1 September 2021

At The Hague, the Netherlands