

**Original: English****No. ICC-02/05-01/20****Date: 5 November 2024****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****Decision regarding non-compliance with the Chamber's orders on the filing of
the final briefs**

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

The Office of the Prosecutor

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Counsel for the Defence

Cyril Laucci
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Legal Representatives of Victims

Natalie von Wistinghausen
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 11 December 2023, Trial Chamber I (the ‘Chamber’) issued its Third Directions on the Conduct of Proceedings, setting out, *inter alia*, the general timeline for the final briefs and closing statements and deciding that the Prosecution’s and Defence’s final briefs shall not exceed 200 pages, and the Common Legal Representative for Victims (the ‘CLRv’) final brief shall not exceed 125 pages.¹
2. On 25 September 2024, following a joint request from the Prosecution, the Defence and the CLRv,² the Chamber set the deadline for the filing of final briefs to 4 November 2024.³
3. On 9 October 2024, following a joint request from the parties seeking an extension of the page limit for their final briefs to up to 300 pages (the ‘First Request for Extension of the Page Limit’),⁴ the Chamber partially granted the request and fixed a 250-page limit for each party’s final brief.⁵
4. On 21 October 2024, the Defence filed a request under Regulation 37(2) of the Regulations of the Court (the ‘Regulations’) seeking a further extension of the page limit for its final brief from 250 to 370 pages (the ‘Second Request for Extension of the Page Limit’).⁶
5. On 28 October 2024, the Chamber partially granted the Second Request for Extension of the Page Limit and decided that the Defence’s and Prosecution’s final briefs shall not exceed 300 pages (the ‘Impugned Decision’).⁷
6. On 1 November 2024, the Defence filed a request for reconsideration of the Impugned Decision, asking the Chamber to grant the 370-page limit requested in the Second Request for Extension of the Page Limit (the ‘Reconsideration Request’).⁸

¹ Third directions on the conduct of proceedings, ICC-02/05-01/20-1046 (hereinafter: the ‘Third Directions’), paras 12-13.

² E-mail from the Defence, the Prosecution and the CLRv, 11 September 2024, at 12:25.

³ Order regarding the final briefs and closing statements, ICC-02/05-01/20-1191.

⁴ E-mail from the Prosecution and the Defence, 8 October 2024, at 14:01.

⁵ E-mail from the Chamber, at 14:30.

⁶ Requête en vertu de la Norme 37-2 du Règlement de la Cour (dated 21 September 2024, with a confidential, *ex parte*, Defence only annex), ICC-02/05-01/20-1194.

⁷ Decision on the Defence’s and CLRv’s Requests seeking an extension of the page limit for their final briefs under Regulation 37(2) of the Regulations of the Court, ICC-02/05-01/20-1201.

⁸ Requête aux fins de reconsidération de la décision ICC-02/05-01/20-1201, ICC-02/05-01/20-1204-Conf-Exp. A public redacted version was filed the same day, ICC-02/05-01/20-1204-Red.

7. On the same date, the Prosecution⁹ and the CLRV¹⁰ indicated that they did not intend to respond to the Reconsideration Request.

8. The Chamber subsequently, on the same day, communicated to the parties and participants its decision rejecting the Reconsideration Request, with reasons to follow.¹¹ Immediately thereafter, the Defence responded, *via* e-mail, that it would ‘carry on its efforts until Monday and see whether and how it can manage to present a full Defence of Mr. Abd-Al-Rahman in such conditions.’¹²

9. On 4 November 2024, the Chamber issued the reasons for its Decision rejecting the Defence’s Reconsideration Request (the ‘Decision on the Defence’s Reconsideration Request’). In its Decision, the Chamber deplored the Defence’s *in terrorem* submissions suggesting that it was considering circumventing the page-limits ordered by the Chamber, and emphasised that the Chamber’s orders must be complied with under the Court’s legal framework.¹³ Further, whilst noting that the 300-page limit for the Defence’s final brief was ample, the Chamber provided parties the opportunity to seek leave to make any supplementary arguments during their closing statements, should they feel they are incapable of properly dealing with the issues relevant to the Article 74 decision within the allotted page-limit.¹⁴

10. At the outset, the Chamber deeply regrets the late filing of the CLRV’s and Defence’s final briefs.¹⁵ The Chamber reminds the parties of their obligations under Regulation 33(2) of the Regulations.

11. The Chamber recalls that it made a clear order that the Defence’s final brief was not to exceed 300 pages. The Defence’s final brief, as filed, contains submissions not only in its 300-page main filing,¹⁶ but also in its 45-page Annex II.¹⁷ The main filing is rife with paragraphs

⁹ E-mail from the Prosecution, at 12:29.

¹⁰ E-mail from the CLRV, at 09:36.

¹¹ E-mail from the Chamber, at 16:02.

¹² E-mail from the Defence, at 16:06.

¹³ Decision on the Defence’s request for reconsideration of the Decision on the Defence’s and the CLRV’s Requests seeking an extension of the page limit for their final briefs under Regulation 37(2) of the Regulations of the Court, ICC-02/05-01/20-1205-Conf-Exp, para. 18 *referring to* Regulation 29 of the Regulations. A public redacted version was notified on the same date, ICC-02/05-01/20-1205-Red.

¹⁴ Decision on the Defence’s Reconsideration Request, ICC-02/05-01/20-1205-Conf-Exp, para. 20.

¹⁵ The CLRV’s final brief was filed at 23:57 on 4 November 2024. Although the Defence emailed the Chamber and the Registry at 16:13 that its filing was late, the final brief was filed with the Registry at 18:09.

¹⁶ Defence’s Final Brief, 4 November 2024, ICC-02/05-01/20-1207-Conf (hereinafter: the ‘Defence’s Final Brief’).

¹⁷ Annex II to Defence’s Final Brief, ICC-02/05-01/20-1207-Conf-AnxII.

indicating ‘Deleted to comply with Decision #1021’.¹⁸ While the Defence submits that ‘[t]hese do not form part of the Final Brief and are only annexed as proof of prejudice’¹⁹ and that ‘[t]he compilation of the deleted paragraphs in Annex II is not an attempt to circumvent Decision #1201’,²⁰ Annex II nonetheless contains submissions in contravention of Regulation 36(2)(b) and contrary to the Chamber’s explicit order.

12. The Defence is well aware that Regulation 36(2)(b) of the Regulations provides that ‘[a]n appendix shall not contain submissions’. Importantly, the Chamber recalls that it reminded the parties and participants of this provision in its Third Directions. In particular, it instructed that ‘pursuant to Regulation 36(2)(b) of the Regulations of the Court, annexes should not contain any argument on substance or evidentiary excerpts or summaries of the same and should be strictly limited to accessory non-substantial information.’²¹

13. The Chamber therefore considers that the Defence’s course of action is not only a breach of the relevant Regulation, but also a deliberate flouting of the Chamber’s order, as was presaged in the Reconsideration Request²² and the Defence’s subsequent e-mail.²³ Both Defence counsel are experienced advocates. The Chamber therefore considers that they are well aware that such a considered violation of a Court order amounts to misconduct. In light of this, the Chamber is considering what action, if any, is appropriate to take.

14. The Chamber is not prepared to accept a brief that is in contravention of its order. The Chamber has a duty to safeguard the interests of the Accused. The method by which the Defence has chosen to flout the order means that if the Chamber strikes Annex II, the Chamber may not be able to fully understand the arguments made on the Accused’s behalf. The Chamber therefore strikes from the record Annex II to the Defence’s Final Brief, and orders the Defence to file an amended final brief which is self-standing, contains no more than 300 pages, and includes complete, stand-alone submissions that may be fully comprehensible to the Chamber, together with the relevant corresponding annexes.

15. In light of the above, the Chamber instructs the Defence to file anew an amended version of its final brief by **Monday 11 November 2024** as specified above. Recalling its previous

¹⁸ See e.g., Defence’s Final Brief, ICC-02/05-01/20-1207-Conf, paras 5, 6, 9, 10, 887 and 903.

¹⁹ Defence’s Final Brief, ICC-02/05-01/20-1207-Conf, para. 49.

²⁰ Defence’s Final Brief, ICC-02/05-01/20-1207-Conf, para. 50.

²¹ Third Directions, ICC-02/05-01/20-1046, para. 13.

²² Reconsideration Request, ICC-02/05-01/20-1204-Conf-Exp, para. 13.

²³ E-mail from the Defence, 1 November 2024, at 16:06.

order on the filing of public redacted versions of the final briefs,²⁴ the Chamber hereby amends this deadline and instructs all parties and participants to file these by **Wednesday 13 November 2024**.²⁵

16. Finally, the Chamber observes that annexes to the Prosecution Final Brief, particularly Annex 26, also contain information which go beyond what was authorised by the Chamber in its Third Directions. Should the Prosecution wish to keep this material on the case record, the Chamber instructs it to make submissions *via* email by **Thursday 7 November 2024**, to explain why its annexes are not in breach of the Chamber's order. Any response to these explanations are to be provided via email by the filing deadline on the next day, **Friday 8 November 2024**.

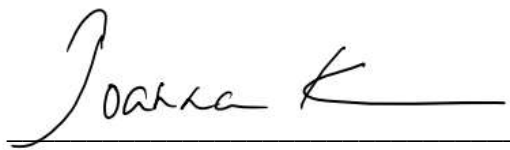
17. For these reasons, the Chamber:

DIRECTS the Registry to strike from the record Annex II to the Defence's Final Brief;

INSTRUCTS the Defence to file an amended version of its final brief and relevant corresponding annexes by **Monday 11 November 2024** as specified above;

INSTRUCTS all parties and participants to file public redacted versions of the final briefs by **Wednesday 13 November 2024** as specified above; and

INSTRUCTS the Prosecution to make submissions on its Annex 26, by **Thursday 7 November 2024** as specified above.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 5 November 2024

At The Hague, The Netherlands

²⁴ E-mail from the Chamber, 1 November 2024, at 10:48.

²⁵ The Chamber clarifies that no public redacted version of the current version of the Defence's final brief should be filed.