

Situation in Darfur, Sudan

Update: April 2022

The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")

Opening of the trial in the Abd-Al-Rahman case, 5 April 2022

WHO IS MR ABD-AL-RAHMAN AND WHAT IS HE ACCUSED OF?

Mr Abd-Al-Rahman was an alleged leader of the Militia/Janjaweed at the time of the issuance of the ICC arrest warrant. He is accused of 31 charges, including: intentionally directing attacks against the civilian population as such, as a war crime; murder as a crime against humanity and as a war crime; pillaging as a war crime; destruction of the property of an adversary as a war crime; other inhumane acts as a crime against humanity; outrages upon personal dignity as a war crime; rape as a crime against humanity and a war crime; forcible transfer as a crime against humanity; persecution as a crime against humanity; torture as a crime against humanity and a war crime; cruel treatment as a war crime; attempted murder as a crime against humanity and a war crime.

WHAT CAN BE EXPECTED AT THE OPENING OF THE TRIAL?

The trial in the Abd-Al-Rahman case will open on 5 April 2022 before ICC Trial Chamber I. The trial will open with the reading of the charges against Mr Abd-Al-Rahman. The Judges will verify that the accused person understood the nature of the charges. The Judge will ask him whether he makes an admission of guilt or pleads not guilty to the charges. Chamber will hear the Prosecution's opening statement first, followed by a short unsworn statement by the accused and a short remark presented by the Legal Representatives of Victims ("LRV"). The Prosecution will be given six hours to present its opening statements; followed by the first Prosecution witness, an expert scheduled to start on 6 April 2022.

While the Prosecution must prove the guilt of the accused, the Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt. At the end of the trial hearings, the Judge will render her judgement within a reasonable period of time. The verdict will be read out in public and will either acquit or convict the accused. If the accused is convicted, a sentence will be imposed on him. The Prosecution and the Defence may appeal the judgement and/or the decision on sentencing before the ICC's Appeals Chamber.

HOW LONG WILL THE TRIAL LAST?

It is not yet possible to say precisely how long the trial will last. That depends on the complexity of the case and challenges that may arise. Judges ensure that the rights of all parties and participants are respected. But the Judges are committed to expedite the trial as much as possible.

WHAT ARE THE RIGHTS GRANTED TO THE ACCUSED DURING THE TRIAL?

Mr Abd-Al-Rahman is presumed innocent and is entitled to several rights during the trial including, to mention a few:

- to be defended by the counsel (lawyer) of his choice, present evidence and witnesses of his own and to use a language which he fully understands and speaks;
- to be informed in detail of the charges in a language which he fully understands and speaks;
- to have adequate time and facilities for the preparation of his defence and to communicate freely and in confidence with his Counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose to the Defence evidence in her possession to the defence or control which he believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

IF MR ABD-AL-RAHMAN IS FOUND GUILTY AFTER THE TRIAL, WHAT PENALTIES MAY BE IMPOSED BY THE COURT?

There is no death penalty at the ICC in the event of a conviction. The Judges may impose a prison sentence, to which may be added a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The maximum sentence is 30 years. However, in extreme cases, such as the specific circumstances of the accused conviction, the Court may impose a term of life imprisonment. Persons convicted of crimes under the jurisdiction of the ICC do not serve their sentence at the ICC Detention Centre in The Hague as the facility is not designed for long-term imprisonment. Convicted persons are therefore transferred to a prison in a State designated by the Court from a list of States which have indicated their willingness to allow convicted persons to serve their sentence there.

ARE THERE VICTIMS PARTICIPATING IN THIS TRIAL AND HOW?

At this stage there are 142 victims participating in this trial, represented by their Counsels, Natalie von Wistinghausen, Nasser Mohamed Amin Abdalla and Anand Shah. The Registry of the Court will continue to collect forms of victims willing to participate, and the judges will then decide if additional victims will participate in the trial. Through their Legal Representatives, participating victims can exercise the following rights at trial:

- to consult the record of the case, including: decisions of the Chamber, submissions of the parties, participants and the Registrar, transcripts and evidence disclosed by the parties and communicated to the Chamber;
- to be notified of documents filed;
- to attend all public and non-public hearings in the case;
- to make written submissions on points of fact and on law and to respond to submissions;
- to make opening statements;
- to present evidence, should leave to do so be granted by the Chamber; and
- to question witnesses.

CAN VICTIMS RECEIVE REPARATIONS?

Throughout the procedure, the ICC Registry may collect forms from victims wishing to seek reparations in this case. But the issue of reparations for victims is dealt with by ICC judges if the accused is found guilty after the trial. At the end of a trial, the Trial Chamber may then order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty. Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials. The Court may award reparations on an individual or collective basis, whichever is, in its opinion, the most appropriate for the victims in the particular case. The Court may request the Trust Fund for Victims to participate in the implementation of reparations orders, including when the convicted person does not have sufficient financial resources for this purpose.

WHAT ARE THE CONDITIONS OF DETENTION AT THE ICC DETENTION CENTRE?

The ICC Detention Centre is located within a Dutch prison complex in Scheveningen - on the outskirts of The Hague, in the Netherlands. It functions to hold in safe, secure and humane custody those persons detained under the authority of the ICC. The Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated. Detained persons are presumed innocent until proven guilty. If convicted of crimes under the ICC's jurisdiction, they do not serve their sentences at the ICC Detention Centre as it is not a facility made for the purposes of managing a regime of convicted prisoners; they are transferred to a prison outside of The Netherlands to serve their time, subject to an agreement between the ICC and the State of enforcement.

WHO ARE THE JUDGES SITTING IN THIS CASE?

Trial Chamber I is composed of Judge Joanna Korner, Presiding Judge, Judge Reine Alapini-Gansou and Judge Althea Violet Alexis-Windsor. The ICC Judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. The Judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights.