

Pursuant to Trial Chamber I's instruction, dated 15 September 2023, this document is reclassified as "Public"

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 August 2023

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")**

CONFIDENTIAL

With Confidential Annexes 1 to 4

Defence Request to admit Mr Philippe Gout as an Expert Witness

Source: Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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

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**Victims Participation and Reparations
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Other

Mr Marc Dubuisson, Director of Judicial
Services

INTRODUCTION

1. On 14 June 2023, pursuant to Regulation 44(1) of the Regulations of the Court, Mr Philippe Gout was admitted on the list of experts before the Court. The Defence for Mr Ali Muhammad Ali Abd-Al-Rahman ("the Defence") informs the Court that it intends to call Mr. Philippe Gout as its expert and submits that he possesses sufficient qualifications, professional experience and recognition on Sudanese law (positive law, interactions of customary law and tribal law, the applicability or non-applicability of international law, the impact of the state of emergency and other regulations on Sudanese law, the system of restorative and retributive justice, and the system of reprisals). Mr Gout's expertise will enlighten the Trial Chamber I (the "Chamber") on these issues.

2. The Defence is respectfully asking the Chamber to accept Mr Gout as an expert witness and allow the introduction of his expert report,¹ documentation establishing his qualifications² and other materials in support of his report.³

3. The present submission and its Annexes 1 to 4 are classified "Confidential" pursuant to Regulation 23*bis*(1) of the Regulations of the Court ("RoC"). The present submission, its report and related material shall remain confidential considering that the report of Mr Gout and other related materials contain personal details, sources resulting from private interviews or extracts from his PhD. A public redacted version of the present submission will be issued in due course.

SUBMISSIONS

4. In order to determine whether the testimony of a witness and his or her report may be admitted as expert evidence, the Chamber will consider whether:

- (i) the proposed witness is an expert;
- (ii) the content of the expert report and/or anticipated testimony falls within the area of expertise of the proposed witness; and

¹ Confidential Annex 1: DAR-D31-00000134-0001 ("Report").

² Confidential Annex 2: DAR-D31-D31-00000133 ("CV"); Confidential Annex 3: DAR-D31-00000132 ("Personal statement").

³ Confidential Annex 4: DAR-D31-00000131 ("Letter of instructions").

- (iii) the content of the expert report and/or anticipated testimony will be of assistance to the Chamber.⁴

Mr Gout's is qualified to provide relevant expertise on Sudanese law

5. Mr Gout's academic background demonstrates a strong expertise on the Sudanese legal order. Mr Gout successfully completed a PhD dealing with the apprehension by international law of customary law using the example of Sudan.⁵ In order to conduct his research, Mr Gout spent two years in Sudan. He also worked on a post-doctoral project focusing on Sudan.⁶ Mr Gout published several articles, participated in the writing of numerous chapters of legal books and took part in various seminars of relevance regarding his field of expertise.⁷

6. Mr Gout also benefits from legal skills, including in international criminal law, and has a broad teaching experience delivered in several universities. Mr Gout is currently a senior lecturer at the University of Toulouse Capitole in France, where he gives lectures to Bachelor and Master students about public international law and related subjects.

7. Mr Gout provided a detailed copy of his Curriculum Vitae and a statement of qualifications, which set out more completely the entirety of the experience he acquired during his career.⁸

Mr Gout's area of expertise is relevant to the case and will assist the Chamber

8. The Defence provided to Mr Gout a letter of instructions containing a list of topics that fall within the scope of the case and match his field of competence.⁹ The

⁴ *The Prosecutor v. Ruto and Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupéu, 7 August 2013, [ICC-01/09-01/11-844](#), para. 12 ; *The Prosecutor v. Ntaganda*, Decision on Defence preliminary challenges to Prosecution's expert witnesses, 9 February 2016, [ICC-01/04-02/06-1159](#), para. 8 ; *The Prosecutor v. Bemba and al.*, Decision on Prosecution Request to Exclude Defence Witness D22-0004, 24 February 2016, [ICC-01/05-01/13-1653](#), para. 11.

⁵ *L'appréhension de l'ordre juridique coutumier infra-étatique par le droit international: l'expérience soudanaise de la consolidation de la paix*, defended on 2 December 2019, Université Paris 2 Panthéon-Assas.

⁶ *Négocié un paradoxe : le MPLS-N entre la réintégration au système politique soudanais et la revendication d'une autonomie régionale*, See p. 4 of Mr Gout's CV.

⁷ Confidential Annex 2: CV, pp. 9-11.

⁸ Confidential Annex 2: CV ; Confidential Annex 3: Personal statement.

⁹ Confidential Annex 4: Letter of Instructions

Defence submits that Mr Gout's area of expertise is unique as it could assist the Chamber to get a better overview on the place and importance of the customary law in Sudanese law, public international law and its implementation in the Sudanese legal system.

9. At trial, during the Prosecution case, the Trial Chamber received evidence on several relevant topics, such as tribal hierarchy and conflict resolution in Darfur,¹⁰ notions of *Hirāba* and *Ghamina*,¹¹ the declaration of the state of emergency and its impact on fundamental rights in Sudan¹² and on immunities.¹³

10. As a legal expert, Mr Gout will provide additional and specific information on these issues, emphasizing on the different tribal structures, their diverse functions, characteristics, relationships and interactions, and influence on the codification of customary law in Sudan. Mr Gout will also give expertise on the sources of Sudanese law, their interactions and impact within the Sudanese legal order and expand on the structural coordination between tribes. It is expected that this information will greatly assist the Chamber in its consideration of the Case.

11. Mr Gout's expertise is of particular relevance for the Defence case. The topics covered in the Expert Report include:

i. Sources of Sudanese law;

¹⁰ See for example: **P-0026**, DAR-OTP-0095-0151-R02, par. 14, par. 20; **P-0028**, DAR-OTP-0094-0423-R01, paras 10-12; **P-0040**, DAR-OTP-0094-0165-R02, par. 8; paras 17-19, paras 23-30; **P-0581**, DAR-OTP-0216-0560-R02, paras 12-15 ; **P-0643**, ICC-02/05-01/20-T-056-CONF-ENG CT, (Private Session), 5 July 2022, pp. 21-22, ICC-02/05-01/20-T-058-CONF-ENG CT, (Private Session), 7 July 2022, p.12, pp. 79-82, pp. 90-91, ICC-02/05-01/20-T-059-CONF-ENG CT, (Private Session), 8 July 2022, pp. 39-40; **P-0720**, DAR-OTP-0210-0291-R02, paras 30-33; **P-0984**, DAR-OTP-0222-0084-R01, paras 15-18 ; **P-1021**, ICC-02/05-01/20-T-080-CONF-ENG CT, (Private Session), 26 September 2022, p. 31, ICC-02/05-01/20-T-081-CONF-ENG CT, (Private Session), 27 September 2022, p. 52 ; **P-1042**, ICC-02/05-01/20-T-027-ENG ET (Open session), 6 April 2022, pp. 55-59, pp. 63-65.

¹¹ See for example: **P-0617**, DAR-OTP-0202-1496-R01, paras 62-63; **P-0029**, ICC-02/05-01/20-T-029-CONF-ENG ET (Open session), 8 April 2022, p. 47, lns. 20-25 to p. 48, lns. 6-11.

¹² See for example: **P-0020**, ICC-02/05-01/20-T-042-CONF-ENG CT (Open session), 13 May 2022, pp. 17-22; **P-0083**, DAR-OTP-0110-0002-R01, para. 9(s), para. 67, and para. 90; P-0116, DAR-OTP-0127-0318, para. 23, para. 75 and para. 121; **P-0120**, ICC-02/05-01/20-T-036-CONF-ENG ET (Open session), 28 April 2022, p. 62, lns. 18-25, p. 63, lns. 11-22, p. 67, lns. 12-13, p. 68, lns. 9-23, DAR-OTP-0124-0816-R01, para. 60; **P-0916**, DAR-OTP-0224-0023-R01, para. 10, para. 102; **P-1042**, ICC-02/05-01/20-T-028-ENG ET (Open session), 7 April 2022, p. 90, lns. 8-12, DAR-OTP-0220-1623, at 1658.

¹³ See for example: **P-0120**, ICC-02/05-01/20-T-036-CONF-ENG ET (Open session), p. 62, lns. 21-22, DAR-OTP-0124-0816-R01, para. 60.

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- ii. Interactions between positive law and customary law (tribal law) in the Sudanese legal order;
- iii. The question of the existence or absence of a structural coordination between tribes;
- iv. International law within Sudanese law;
- v. Notions of *Hirāba*, *Ghamina* and *war booty*;
- vi. The State of emergency;
- vii. Violations of fundamental rights; and
- viii. Immunity system regime.

CONCLUSION

12. On the basis of Mr Gout's scholar experience, professional qualifications and the uniqueness of his expertise on matters of particular relevance to this case, the Defence hereby intends to call Mr. Gout as a *viva voce* expert witness and request the Chamber to accept:

- i) Mr Gout as an expert witness; and
- ii) the introduction of his Report and the related materials into evidence.

Respectfully submitted,


Dr Cyril Laucci,
Lead Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 22nd day of August 2023

At The Hague, The Netherlands.