

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **22 October 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

CLR V Observations on Defence “Requête en vertu de la Norme 37-2 du Règlement de la Cour”

Source: The Common Legal Representative of Victims

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

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Unrepresented Victims

**Unrepresented Applicants
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**Victims Participation and Reparations
Section**

Other

1. The Common Legal Representative of Victims (“CLRV”) files these observations on the Defence for Mr Abd-Al-Rahman’s (“Defence”) “Requête en vertu de la Norme 37-2 du Règlement de la Cour”,¹ in which the Defence seeks a second extension of the page limit for its final brief – this time an increase from the current limit for the parties of 250 pages, to 370 pages.
2. The CLRV takes no position, as a general matter, on the relief sought by the Defence, and notes that she does not have access to the confidential *ex parte* annex in which the Defence seeks to further justify its request.
3. However, given that the Request implicates the motivations of the participating victims, and the CLRV’s mandate and actions in these proceedings, as a partial basis for the extension of pages sought, the CLRV is compelled to address certain wrong assumptions and mischaracterisations contained in the Request.
4. The Defence submits that on account of Article 75 of the Rome Statute (“Statute”), which requires a conviction of an accused before a reparations order may be issued, the participating victims and their legal representative are ‘*de facto*’ placed in the position of a ‘second prosecutor’ charged with obtaining Mr Abd-Al-Rahman’s conviction.² The Defence points to the CLRV’s interventions opposing the admission of the prior recorded testimony of D-0028, and claims that the CLRV’s ‘repeated positions’ on matters that are of only a general relevance to the interests of the participating victims, evidences the ‘second prosecutor’ role.³ The Request accordingly submits that as a matter of fairness, the Defence ought to be granted a final brief page limit equalling the total pages granted the Prosecution (250 pages) and the CLRV (125 pages, not 120, as the Defence submits⁴).
5. It is unfortunate that the Request reduces the participating victims’ legitimate and genuine interests in these proceedings to potential reparations in the event of a conviction. Even presuming the Defence’s *ultra vires* request – for judicial re-

¹ 21 September 2024, [ICC-02/05-01/20-1194](#) (“Request”).

² *Id.*, para. 14.

³ *Ibid.*

⁴ Third Directions on the conduct of proceedings, 11 December 2023, [ICC-02/05-01/20-1046](#), para. 13.

writing of the Rome Statute to disconnect the reparations process from an Article 74 judgment and the convicted person⁵ – had been accepted by the Pre-Trial Chamber⁶ or Appeals Chamber,⁷ the participating victims would undoubtedly have remained fully invested in the substance, progression and outcome of these proceedings. Their interests, statutory rights and voices would remain equally deserving of the CLRV carrying out her mandate in exactly the manner she has.

6. As has been made clear through the CLRV's focused questions to witnesses and their responses on the record, in the CLRV opening statement⁸ and trial brief,⁹ and in the views and concerns presented by four of the participating victims before the Trial Chamber,¹⁰ what the participating victims seek, **above all else**, is justice, through fair, expeditious and truth-seeking judicial proceedings, in respect of the alleged crimes charged in this case that have indelibly marked them as individuals and as a wider-community, for more than two decades.
7. The Rome Statute's legal framework, and Article 68(3) in particular, drawing upon the seminal principles set out in UN General Assembly Resolution 40/34 (1985),¹¹ recognises this fundamental need for victims of crime, and the status and role they may properly hold in criminal proceedings. It provides that: "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."

⁵ Request, para. 14 (referring to Defence's Request and Observations on Reparations Pursuant to Article 75(1), 17 July 2020, [ICC-02/05-01/20-98-tENG](#)).

⁶ Decision on the Defence Request and observations on réparations pursuant to article 75(1) of the Rome Statute, 18 August 2020, [ICC-02/05-01/20-117](#) (dismissing Defence request *in limine*).

⁷ Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 18 August 2020 entitled 'Decision on the Defence request and observations on reparations pursuant to article 75(1) of the Rome Statute', 18 December 2020, [ICC-02/05-01/20-237](#), para. 20 (upholding Chamber's decision).

⁸ [T-119](#) (5 June 2023).

⁹ Public Redacted Version of "Second Corrigendum to 'Common Legal Representative of Victims' Trial Brief", 31 March 2023 (ICC-02/05-01/20-914-ConfExp), 5 April 2023 (ICC-02/05-01/20-914-Conf-Exp-Corr2), 11 April 2023, [ICC-02/05-01/20-914-Corr2-Red](#).

¹⁰ V-0002, V-0003, V-0004, V-0005.

¹¹ UN General Assembly, [Res. 40/34](#) (29 November 1985), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

8. The Request completely misses the mark in considering the CLRV's interventions and actions on behalf of her clients to transform the CLRV into a 'second prosecutor'. It is a rhetorical flourish without substance, and appears in keeping with the Defence's long-standing, but unsubstantiated claim of unfair proceedings.¹²
9. It is the Prosecutor, not the CLRV, who called or submitted the evidence of the 81 witnesses noted in the Request, and the Prosecutor and Defence together that account for almost the entirety of the cited 1,853 documentary items submitted as evidence.¹³ It is the Office of the Prosecutor, pursuant to its mandate under Article 66(2) of the Statute, that questioned and cross-examined witnesses, and submitted documentary evidence, on matters concerning the Accused's alleged identity as "Ali Kushayb" and his personal actions in relation to the four charged incidents. Not once did the CLRV seek to question OTP or Defence witnesses, call her own witnesses, or submit documentary evidence, directly touching upon the Accused's mistaken identity defence, or his specific alleged actions. There is no ambiguity in her role in these proceedings.
10. The fact that the CLRV, acting in accordance with her mandate and the Court's legal framework, has intervened in *some* procedural matters that impact the participating victims' interests, including those of fair and expeditious proceedings, does not equate to the "second prosecutor" imagined in the Request. It rather reflects her understanding of a meaningful representation of the participating victims' views and concerns.
11. The pure mathematics the Defence is undertaking to justify the present Request and its need to characterize the CLRV's role in a fashion it hasn't done previously, is an obviously vain and unconvincing undertaking that should be rejected by the Trial Chamber.

¹² See CLÔTURE DE LA PRÉSENTATION DE LA DÉFENSE, 13 September 2024, ICC-02/05-01/20-1188, paras 3, 8-9 (PRV: [1188-Red](#)).

¹³ Request, para. 4.

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 22 October 2024
At Berlin, Germany