

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 May 2025

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Adélaïde Sophie 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 with confidential *ex parte* Annexes A to K

Public Redacted Version of "Request for Urgent Order to Registrar to authorise Darfur component of CLRV mission", 5 March 2025 (ICC-02/05-01/20-1226-Conf-Exp)

Source: Common Legal Representative of Victims

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☒ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☒ Counsel Support Section

☒ Victims and Witnesses Section

☐ Detention Section

☒ Victims Participation and
Reparations Section

☐ Other

I. Introduction

1. The Common Legal Representative of Victims (CLRV) requests Trial Chamber I's urgent intervention to:
 - i. issue an order to the Registrar authorising the legal aid funded [REDACTED], to meet and consult with the CLRV team ("Darfur component" of CLRV mission); *and*
 - ii. order **immediatiate injunctive relief** – to best preserve the possibility of the ultimate goal of the above core relief (*i.e.* successful undertaking of Darfur component of mission) – requiring the Registry to:
 - a. [REDACTED]¹ [REDACTED]; and
 - b. [REDACTED]² [REDACTED].
2. The urgency of this request arises from: (i) the scheduled mission departure date of the CLRV team [REDACTED]; (ii) the Registrar having issued his written decision rejecting the Darfur component of the mission only yesterday afternoon, 4 March 2025 ("Registrar's Decision");³ (iii) the need for [REDACTED]; and (iv) the importance of the Darfur component of the mission to the CLRV's mandate and the particiatping victims' rights and interests under the Rome Statute ("Statute").
3. In light of the above noted circumstances, the CLRV also respectfully requests that a shortended deadline is set for any submisisions from the Registrar and responses from the parties, in respect of the CLRV request.⁴
4. The CLRV lastly requests the Trial Chamber's leave for an extension of the page limit beyond that set by the Chamber for motions, in light of the urgent nature of

¹ Proposed operative text of which was provided by the CLRV Team to the Registry's Judicial Cooperation Unit (JCU), following discussions, on 26 February 2025 (CLRV email to JCU) (confidential *ex parte* **Annex A**).

² CSS email to the CLRV dated 26 February 2025 (confidential *ex parte* **Annex B**).

³ Confidential *ex parte* **Annex C** (CSS email to CLRV communicating Registrar's Decision, dated 4 March 2025 at 15h38).

⁴ This request and the annexes thereto are submitted on a confidential *ex parte* basis, only available to the CLRV, Registrar and relevant Registry sections, including the Counsel Support Section (CSS) and Victims and Witnesses Section (VWS), in light of reference to confidential information pertaining to the work and organisation of the CLRV Team, as well as personal information of participating victims. The CLRV will file a confidential redacted version of the filing available to the parties, with minimal redactions applied.

the CLRV's application, and the need to properly summarise and address the underlying procedural record to assist the Chamber's understanding and consideration of this matter.

II. Background

5. On 23 January 2025, the CLRV submitted a mission plan to the CSS, consisting of the aforementioned Darfur component, as well as the organisation of meetings and consultations [REDACTED], with [REDACTED] CLRV clients [REDACTED]).⁵
6. The mission plan was submitted [REDACTED] days prior to the proposed mission departure date [REDACTED], in advance of the minimum 30 day requirement for mission plans submitted by defence and legal representative of victim teams.
7. The Chad component of the mission has been approved by the Registrar. The CLRV is grateful for the dedicated assistance and advice provided by the various sections of the Registry in the organisation and facilitation of this part of the mission, [REDACTED].
8. As set out in the mission requests accompanying the mission plan (one submitted per participating CLRV team member), the mission goals were stated as follows: *"Meetings and consultations with participating victims in the Abd-Al-Rahman proceedings to update the Chad-based clients on the conclusion of the trial, inform them of the next stages of the case, and obtain their views on possible sentencing and reparations proceedings. In addition to similarly updating and consulting with the Darfur based clients, we will also consult with them, [REDACTED]"*⁶ [REDACTED].
9. On 4 February 2025, following various queries posed by the Registry's [REDACTED], and in advance of a scheduled meeting [REDACTED], the CLRV team provided written responses to the issues and questions that had been raised thus far by the Registry.⁷ In this communication the CLRV Team highlighted again

⁵ Confidential *ex parte* **Annex D** (CLRV mission plan, mission request, and transmission email to CSS dated 23 January 2025).

⁶ *Ibid* (underline added).

⁷ Confidential *ex parte* **Annex E** (CLRV email to CSS, [REDACTED] dated 4 February 2025).

the particular importance of meeting and consulting with the clients [REDACTED] in various IDP camps in Darfur, where the vast majority of the CLRV's clients reside.

10. One of the issues raised in the Registry's preceding communications was the security implications for the clients [REDACTED], and whether the CLRV team had sought a risk assessment from the VWS for this component of the mission. As the CLRV Team advised in the noted communication of 4 February 2025, on 3 and 4 February 2025, the CLRV Team, further to the invitation of the VWS on 3 February, had provided information and details requested by the VWS in order for the VWS to undertake such an assessment.⁸
11. Amongst the information communicated by the CLRV Team to the VWS was the fact that [REDACTED] had previously undertaken [REDACTED] missions⁹ of an extremely similar nature, including the participation of [REDACTED].
12. Thirteen days later, on the evening of 17 February 2025, the VWS transmitted its threat assessment report on the proposed Darfur component of the CLRV mission ("Assessment Report"),¹⁰ with a slightly updated version provided on the morning of 18 February 2025.¹¹
13. As set out in the conclusion of the Assessment Report, "[REDACTED]". The VWS accordingly recommended that [REDACTED].
14. Following careful review of the Assessment Report on 18 February 2025, and over the following four days, the CLRV Team again undertook diligent efforts to consult with [REDACTED]. These efforts took place in the context of the still limited and unreliable communications infrastructure available to individuals based in Darfur [REDACTED], and in view of the importance of the Darfur component of the mission and therefore the aim again to provide the Registry with a contemporary assessment of the situation by trusted persons living on the ground and best placed

⁸ Confidential *ex parte* **Annex F** (Email communications between CLRV and VWS, dated 3 and 4 February 2025).

⁹ The CLRV had mistakenly noted [REDACTED], but subsequently corrected this [REDACTED].

¹⁰ VWS, Assessment of the proposed LRV Mission to [REDACTED] (Confidential *ex parte* **Annex G**).

¹¹ Confidential *ex parte* **Annex H** (email communications between the CLRV Team and the VWS).

to assess the security situation.

15. On 23 February 2025, the CLRV transmitted the Assessment Report to the CSS (copying the VWS), along with the information and advice provided by the CLRV's [REDACTED] Field Assistants and other interlocutors addressing the facts and issues raised in the Assessment Report, including the mitigation measures [REDACTED].¹² The CLRV emphasised again the importance of the Darfur component of the mission, [REDACTED].
16. In this regard, the CLRV expressed the view that *"a decision-making process within the Registry that might result in [REDACTED], but denying the CLRV the same opportunity in carrying out her representation mandate from the Trial Chamber, would be a highly problematic and incongruous situation."* The CLRV accordingly requested the Registry to move forward in authorising the undertaking of the Darfur component of the proposed mission, including requesting [REDACTED].
17. On 24 and 25 February 2025, additional communications took place between the VWS and the CLRV Team (with CSS in copy), arising from the CLRV's email submission of 23 February 2025.¹³ The VWS highlighted in particular its assessment that a significant difference between the context of the [REDACTED] preceding [REDACTED] missions ([REDACTED]) and the proposed CLRV mission was the potential impact arising from [REDACTED].
18. The CLRV advised in response that she *"can only underline again that we in no way minimise that there is a certain amount of risk involved in the proposed Darfur component mission. I'm not sure about any negative consequence [REDACTED], but I do trust the assessment of our Field Assistants [REDACTED] and who addressed all potential risks and duly explained all measures that will be taken. Therefore, and given the importance of the mission to the CLRV's representational mandate, as I have explained in detail, my request to the Registry will remain the same."* (underline added)
19. While, in the context of these exchanges with the Registry, the CLRV did not deem

¹² CLRV email to the CSS dated 23 February 2025 (Confidential *ex parte* **Annex I**).

¹³ Confidential *ex parte* **Annex J** (emails between the VWS and the CLRV dated 24 and 25 February 2025).

it essential to address all of the subsidiary issues raised in the VWS communication of 23 February 2025, given that this matter is now before the Trial Chamber, the CLRV wishes to ensure that the factual record is clear, as follows. Firstly, in respect of the VWS's reference to [REDACTED].¹⁴ [REDACTED].

20. Secondly, the VWS's mention of [REDACTED].¹⁵ The CLRV's proposed mission will take place in the [REDACTED], a decision taken to specifically avoid such additional risks.

21. Three days later, on the afternoon of Friday 28 February 2025, the CSS wrote to the CLRV, requesting that the CLRV "indicate any risk reducing or mitigating measures you may have taken regarding [REDACTED]", after receipt of which CSS informed it would "liaise with the Registry's Head of Organ as to the approval of" the Darfur component of the CLRV mission. The CLRV responded thirty minutes later, advising that the requested risk reducing or mitigating measures had already been provided in detail to the CSS in the CLRV's email sent five days previously, on 23 February 2025 (as discussed at paragraphs 15-16 above). The CLRV additionally added that: "1) *Our highly experienced Chad Field Assistant, [REDACTED], has assessed that travel by clients [REDACTED] can be done in a safe and confidential manner;* 2) [REDACTED]; 3) [REDACTED]."¹⁶

22. Four days later, on 4 March 2025, the Registrar issued his decision rejecting the Darfur component of the CLRV mission, which was communicated as follows:

The Registrar has duly considered the request for the LRV team in the Abd-Al-Rahman case [REDACTED].

The Registrar is willing to authorise [REDACTED].

However, following the security advice provided by the VWS, the Registrar does not at this point in time authorise [REDACTED]. In reaching his decision, the Registrar has given due consideration to the purpose and timing of the proposed mission, notably the fact

¹⁴ CLRV email to the VWS dated 28 May 2024 (confidential *ex parte* **Annex K**). [REDACTED].

¹⁵ See CLRV email to Trial Chamber I (copying parties) dated 4 July 2023 at 16h54 ("[REDACTED].")

¹⁶ See communications contained in confidential *ex parte* **Annex C**.

deliberations for a judgment in the case against Mr Abd-Al-Rahman are still ongoing. The Registrar invites the LRV team to continue to liaise with the Registry services to discuss and identify further mitigating measures that, at an appropriate time, may allow the mission to take place.”¹⁷

III. Applicable law

23. Article 68(3) of the Statute states in relevant part: “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.”
24. Article 64(6)(f) of the Statute provides that: “In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary: [...] Rule on any other relevant matters.”¹⁸
25. The CLRV submits that the above noted legal framework of the Court empowers the Trial Chamber to grant the relief sought by the CLRV, including at this stage of the proceedings. The rights enshrined in the Rome Statute, including those accruing to participating victims, must be applied and interpreted in a manner rendering them practical and effective, not illusory.¹⁹ In making such an assessment a Trial Chamber may properly take into account the mandate of the CLRV and the role and circumstances of the particular party or participant, as well as the broader context in which the proceedings are taking place, which may include, for example, the security and logistical situation where potential witnesses or participating victims may be located.
26. This approach may properly result in a Chamber determining that measures which may not, at first blush, appear suitable or permissible for a particular stage of the proceedings, to instead have solid grounding if they secure or promote important

¹⁷ Confidential *ex parte* **Annex C** (Registrar’s Decision).

¹⁸ See [REDACTED].

¹⁹ ECtHr, [Airey v. Ireland](#), 9 October 1979, Series A No. 32, para. 24.

rights or interests of a party or participant, and do not significantly impinge on the rights and interests of another party or participant.

27. In the context of victim participation and the potential future interests of reparation beneficiaries in the event of a conviction of an accused, the precedent set by Trial Chamber VI in the *Said* case,²⁰ subsequent endorsement by the Appeals Chamber in the *Ntaganda* case,²¹ and adoption by Trial Chamber I in the present proceedings,²² of directing the VPRS to commence ‘mapping’ of potentially eligible beneficiaries by the VPRS during the trial phase (and continuing into the deliberations phase) of the proceedings, provides apt guidance. Indeed, [REDACTED].²³

IV. Submissions in support of request for an order to the Registrar

28. The CLRV has acted expeditiously in engaging with the Registry on the proposed Darfur component of the scheduled CLRV mission. The CLRV regrets having to approach the Trial Chamber on a very urgent basis, seeking expeditious consideration and relief in respect of the Registrar’s Decision, which was issued yesterday afternoon, [REDACTED], and following extensive and careful work and planning undertaken over many weeks by [REDACTED] the CLRV team, and even more so the CLRV’s [REDACTED] Field Assistant [REDACTED].

29. The Registrar’s Decision is premised on: **(i)** the present phase of the proceedings (post-trial deliberations); **(ii)** the VWS’s security advice; **(iii)** the possibility of the CLRV team organising in the future the proposed Darfur component of the mission; and **(iv)** the “Registry services” possibly being able to “identify further mitigating measures that, at an appropriate time, may allow the mission to take

²⁰ *Said*, Decision on matters relating to the participation of victims during the trial, 13 April 2022, [ICC-01/14-01/21-278](#), paras 86-90.

²¹ *Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled “Reparations Order”, 12 September 2022, [ICC-01/04-02/06-2782](#) (A4 A5), paras 9, 340.

²² Second decision on the admission of victims to participate in trial proceedings, 3 October 2022, [ICC-02/05-01/20-761](#), paras 15-19.

²³ C.f. Decision on the CLRV’s Request for guidance on the mapping of potential beneficiaries, 18 March 2024, [ICC-02/05-01/20-1104](#) (rejecting the CLRV’s request for the issuance of mapping guidance during trial proceedings as premature).

place”.

30. The CLRV submits that the Registrar’s Decision errs in fact and law and fails to provide a reasoned decision. The CLRV accordingly requests that the Trial Chamber correct these errors and order the Registrar to authorise the Darfur component of the CLRV mission.
31. Firstly, the Registrar’s Decision fails to recognise that, inherent in Article 68(3) of the Statute is the right of participating victims to meet with their appointed legal representative, and that such right is not circumscribed by the fact that the proceedings are presently at the deliberations phase. The Registrar is well aware that, given the particular circumstances of the *Abd-Al-Rahman* case, both prior to and after the outbreak of the ongoing Sudanese civil war, the CLRV Team has been unable to meet in-person or by video or audio link with the vast majority of the participating victims, who reside in IDP camps in Darfur. As reiterated in the CLRV’s communication to CSS dated 23 February 2025: “[REDACTED].”²⁴
32. Regardless of the outcome of the Trial Chamber’s Article 74 Judgment – full acquittal, full conviction, partial acquittal and conviction – the CLRV team must be in a position to advise and consult with their [REDACTED] clients in as effective a manner as possible, including the element of trust and the question of potential reparations. [REDACTED].
33. This rudimentary network, however, cannot compare with even a single face-to-face meeting between the CLRV Team, and the participating victims they have stirred to represent over these more than three years of trial proceedings. [REDACTED], is no small thing. Furthermore, through the intensive consultations planned [REDACTED], the CLRV aims to facilitate substantive and meaningful consultations with the larger body of [REDACTED] clients on potential sentencing and reparations proceedings, which would ultimately be placed before the Trial Chamber for its assistance and consideration in the event of a Judgment of

²⁴ CLRV email to the CSS dated 23 February 2025 (confidential *ex parte* **Annex I**).

conviction.

34. Second, the Registrar's Decision erred in fact, and failed to provide a reasoned decision, by ignoring the impact of the lengthy June to September rainy season in Darfur and Chad, which, as the CLRV Team submitted to the Registry, would delay the Darfur component of the mission until [REDACTED], with the real possibility that the Trial Chamber's Article 74 Judgment, and sentencing proceedings in the event of conviction, would have taken place months earlier, and possible reparations proceedings already commenced.
35. Third the Registrar's Decision erred in fact, failed to provide a reasoned decision, and/or amounted to an abuse of discretion, when simply noting that the Decision had been taken, in part, "following the security advice provided by the VWS". While the CLRV does not intend to recite in full here the information provided in its various submissions and communications to the Registry, including the CLRV email of 23 February 2025, the Registrar's Decision (*also taking account the above noted time line of events*) gives no indication of a proper consideration of the detailed, up-to-date, and on the ground information (compared to largely open source information relied on in the VWS Assessment Report) provided by the CLRV Team, including risk mitigation and security contingencies, as well as the fact of the [REDACTED] previous and successful [REDACTED] missions, [REDACTED] mission of the same nature.
36. [REDACTED].
37. It is the CLRV's respectful submission that in the present circumstances, the Court must take care not to act in a manner that may seem dismissive or patronising [REDACTED]. The available record suggests that [REDACTED].
38. The CLRV feels compelled to advise that, following the Registrar's Decision of yesterday, the CLRV Team informed the CLRV [REDACTED] Field Assistants, today, of the Registry's rejection of the Darfur component of the CLRV mission.²⁵

²⁵ Given the urgency of this request, and time constraints, the CLRV Team was unable to produce a Case Manager Note detailing these discussions, but will of course provide such note if requested by the Chamber.

[REDACTED], expressed deep sorrow and apprehension at this news. [REDACTED], would view this decision as a rejection by the ICC of their [REDACTED], and would result in a feeling of great disappointment that they were unable to finally meet and have substantive discussions in person with the CLRV Team [REDACTED]. [REDACTED] CLRV Field Assistants further advised that this reality would inevitably impact on [REDACTED]. The CLRV [REDACTED] Field Assistant lastly raised the question of how he would explain this rejection by the ICC Registry to [REDACTED]. The CLRV has no good answer.

39. Lastly, and connected to the issues addressed above, the CLRV submits that the Registrar's proposal that the CLRV continue engaging with the "Registry services" to "identify further mitigating measures that, at an appropriate time, may allow the mission to take place", constitutes an error of fact and/or failure to provide a reasoned decision, in light of the Registry's consistent position, [REDACTED]. It is the CLRV's considered assessment that there is no realistic prospect that the Registry will take another position in the future, [REDACTED].

V. Conclusion

40. For the reasons above, the CLRV respectfully requests that the Trial Chamber:

- i. grant the CLRV's request for page extension;
- ii. set a shortened deadline for any submissions from the Registry and responses from the parties to the present filing, considering that [REDACTED];
- iii. order the Registrar to authorise the Darfur component of the Darfur mission;
and
- iv. grant the **injunctive relief** requested at paragraph 1(ii) above, which will have negligible time and resource impact on the Registry, and in respect of the [REDACTED], in the event the Trial Chamber rejects the core relief requested by the CLRV, it may simply be withdrawn.

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 22 May 2025

At Berlin, Germany