

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 July 2026

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

Public Redacted Version of “CLRV Observations on Defence “Demande de Report de la Date de Reprise de la Présentation de la Défense”, 4 January 2024 (ICC-02/05-01/20-1050-Conf)

Source: The 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
[REDACTED]

Counsel for the Defence
Mr Cyril Laucci
Mr Iain Edwards

Legal Representatives of the Victims
Ms Natalie von Wistinghausen
[REDACTED]

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
[REDACTED]

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section
[REDACTED]

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. Pursuant to Trial Chamber I's instructions,¹ the Common Legal Representative of Victims ("CLRV"), on behalf of the 1,004 individuals presently admitted to participate in the proceedings, provides these limited observations on the Defence "Demande de Report de la Date de Reprise de la Présentation de la Défense".²
2. Certain introductory submissions in the Request repeat Defence complaints in respect of Trial Chamber decisions on prior applications to postpone the commencement of the Defence case.³ These are settled matters, and in the CLRV's view have no bearing on the issues that are the subject of the Request.
3. In the Request the Defence: (i) advises that it is not presently in a position to call further witnesses; (ii) applies for a postponement of the scheduled 15 January 2024 resumption of its case until the issues raised in the Request are 'resolved'; and (iii) requests the convening of a status conference with the Registry present, for purposes of addressing the 'difficulties' outlined in the Request.
4. The Defence asserts that the witnesses it wishes to call residing in [REDACTED] – including D-01, D-02, D-03, D-05, D-28 and D-29 – cannot travel and appear without undue risk [REDACTED].⁴ The Defence therefore took the decision to [REDACTED] for this purpose.⁵ According to the Defence, the implementation [REDACTED] requires the deployment of its resource person [REDACTED].⁶
5. The Registry, while having authorised the proposed Defence mission (the Sudanese component of which does not appear to require Court assistance), has determined that the Court is obligated under the 10 May 2021 ICC-Sudan Cooperation Agreement ("Cooperation Agreement")⁷ – as well as pursuant to a general principle⁸ – to inform the GoS authorities of the intended deployment.

¹ Email from Trial Chamber I to the parties, participants, and Registry, 29 December 2023 at 18h31.

² Demande de Report de la Date de Reprise de la Présentation de la Défense, 29 December 2023, ICC-02/05-01/20-1048-Conf ("Request").

³ *Id.*, para. 14.

⁴ *Id.*, para. 15.

⁵ *Ibid.*

⁶ *Id.*, para. 13.

⁷ See ICC-02/05-01/20-481-Conf-AnxA for a copy of the Cooperation Agreement.

⁸ See para. 8 *supra*.

Following this decision, the Defence cancelled its mission [REDACTED],⁹ the result of which is the impossibility of maintaining the 15 January 2024 trial recommencement date.¹⁰

6. The Defence submits that the Court is under no obligation to honour the notification requirement in the Cooperation Agreement on two bases. First, the Defence repeats its submission – rejected by the Trial Chamber¹¹ – that the Cooperation Agreement lacks legal basis.¹² In the CLRV’s view, this is a settled matter in respect of which the Defence is not requesting reconsideration, and accordingly should not be entertained further by the Chamber.
7. Second, the Defence asserts that even presuming the legal validity of the Cooperation Agreement, the Trial Chamber’s finding of non-cooperation against the GoS in respect of cooperation requests from the Chamber on behalf of the Defence, vitiates the Court’s notification obligation under the treaty law principle of reciprocity.¹³
8. The CLRV notes that in the Registry’s email to the Chamber of 29 December 2023, it phrases the notification issue in broader terms – namely, “the Court’s obligation to inform any State of any official ICC mission occurring on their territory”.¹⁴
9. At this stage, the CLRV does not take a position on the Defence’s assertion regarding the vitiation by lack of reciprocity of the Court’s notification obligation to the GoS, or in respect of the Registry’s positions on an obligation to notify the Sudanese authorities and a general principle of notification towards any State.
10. The CLRV further observes that the Request does not seek any specific relief from the Chamber in respect of the Registry’s decision that notification to the GoS of the proposed Defence mission is a legal obligation.

⁹ Request, paras 11-13.

¹⁰ *Id.*, para. 21.

¹¹ Decision on Defence submissions on cooperation with Sudan, 21 January 2022, ICC-02/05-01/20-561-Conf (public redacted version [ICC-02/05-01/20-561-Red](#)).

¹² Request, para. 17.

¹³ *Ibid.*

¹⁴ Email from the Office of the Director, Division of Judicial Services to the Trial Chamber, 29 December 2023 at 16h12 (emphasis added). *See also* ICC-02/05-01/20-1048-Conf-Anx5 (Registry’s letter, 21 Dec. 2023, p. 2).

11. This being the case, and in light of expected submissions from the Registry today and on 9 January 2024 on the matters raised in the Request,¹⁵ the CLRV advises that she does not oppose a limited postponement of the recommencement of the Defence case in order for the Trial Chamber to receive further relevant legal and factual submissions on this matter, including during a status conference, should the Chamber deem it helpful. The CLRV opposes the Defence's application for a postponement until the difficulties, as presented in the Request, are 'resolved'.¹⁶
12. The CLRV recalls the relevant decisions of the Trial Chamber on the time and facilities afforded the Defence for the preparation of its case on behalf of the accused since his initial appearance before the Court on 15 June 2020 (almost three years prior to the outbreak of the current conflict).¹⁷ The CLRV further reiterates her previous submissions on the need for the judicial process to move forward in a fair and expeditious manner, and the interest of the participating victims therein, two decades after the events that are the subject of this case.¹⁸
13. In respect of additional legal and factual issues the Chamber may wish to receive submissions on, the CLRV identifies the following non-exhaustive list:
- i. the definition or scope of an 'official ICC mission' for purposes of the Court's notification obligation, particularly where the mission concerns [REDACTED] defence or legal representative of victims (LRV) team members, and in circumstances where the team and team member(s) concerned [REDACTED] from the Court;
 - ii. previous instances of the Registry agreeing at the request of legal aid funded defence or LRV teams not to notify a State of intended defence or LRV missions on a State's territory [REDACTED], or otherwise authorising defence or LRV missions without notifying a State;

¹⁵ Email from Trial Chamber I to the parties, participants, and Registry, 29 December 2023 at 18h31.

¹⁶ Request, p. 10.

¹⁷ Trial Chamber decisions ICC-02/05-01/20-916-Conf-Red, paras 40-42 (public redacted version ("PRV") [ICC-02/05-01/20-916-Red](#)); ICC-02/05-01/20-938-Conf, para. 16 (PRV [ICC-02/05-01/20-938-Red](#)); ICC-02/05-01/20-990-Conf, paras 10, 12 (PRV [ICC-02/05-01/20-990-Red](#)).

¹⁸ ICC-02/05-01/20-904-Conf, paras 12-14 (PRV [ICC-02/05-01/20-904-Red](#)); Transcript of hearing, 4 April 2023, ICC-02/05-01/20-T-115-ENG, pp 36-37; ICC-02/05-01/20-925-Conf, paras 4(i), 6 (PRV [ICC-02/05-01/20-925-Red](#)); ICC-02/05-01/20-1011-Conf, para. 7 (PRV [ICC-02/05-01/20-1011-Red](#)).

- iii. any previous or current Registry requirements that [REDACTED] Defence or LRV teams notify the Registry of intended missions on the territory of a State, or that such teams directly notify States of such missions.

14. The CLRV additionally notes certain issues arising from the Request that, in the CLRV's view, need not be addressed at this stage, but should in no way be taken as the CLRV accepting the underlying premise or position expressed:

- i. the Defence's determination that [REDACTED] was the only viable avenue of securing interviews, witness statements and/or the appearances of prospective Defence witnesses;¹⁹
- ii. the necessity of deploying the Defence resource person [REDACTED] to achieve these goals;²⁰
- iii. the 'irremediable' harm to the fairness of the trial should the Defence be unable to secure the evidence of the identified witnesses.²¹

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 14 July 2026
At Berlin, Germany

¹⁹ Request, para. 15.

²⁰ *Ibid.*

²¹ *Id.*, para. 21.