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**International
Criminal
Court**

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

Date: **17 July 2026**

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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 the Defence Response to TFV Submissions on Reparations
(ICC-02/05-01/20-1359-Conf, 16 July 2026)**

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

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

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☒ Legal Representatives of the Victims

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INTRODUCTION

1. Pursuant to regulation 24(1) of the Regulations of the Court (“RoC”), the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”, “Defence”) submits this response (“Response”) to the Observations on Reparations filed by the Trust Fund for Victims (“TFV”) of 6 July 2026 (“TFV Observations”).¹ The Response comes in addition to and should be read together with the Defence Consolidated Response filed on 3 July 2026 (“Consolidated Response”).² The Defence does not repeat the submissions already made in its Observations on Reparations filed on 22 May 2026 (“Defence Observations”)³ and Consolidated Response.

2. Pursuant to Regulation 23*bis*(2) of the RoC and in the absence of public redacted version of the TFV Response, the Response is classified “Confidential”. A public redacted version will be submitted in due course.

3. For the sake of conciseness, the Defence does not address each and every point made in the TFV Observations. It focuses primarily on highlighting (I) the converging issues and (II) the diverging issues as between the TFV Observations and the Defence Observations and Consolidated Response, in order to assist the Trial Chamber in its determination of the various issues arising out of the reparations phase of the case.

I – CONVERGING ISSUES

4. With the exception of this Response, the TFV Observations are the last written contributions on reparations made before the Trial Chamber. At the request of the TFV and with no opposition from the Parties and Participants, the TFV Observations were submitted after completion of all submissions by the Legal Representative of Victims (“LRV”),⁴ the Office of the Prosecutor (“OTP”),⁵ *Amici Curiae* authorised to intervene,⁶ the Registry⁷ and the Defence, including responses thereto.⁸ The TFV uses that opportunity to address the various observations on reparations made to the Trial Chamber, including by the Defence.⁹

¹ TFV Observations: ICC-02/05-01/20-1357-Conf. No public version available.

² [Defence Consolidated Response](#): ICC-02/05-01/20-1354.

³ [Defence Observations](#): ICC-02/05-01/20-1338-Conf (Public Redacted Version ICC-02/05-01/20-1338-Red).

⁴ [LRV Observations](#): ICC-02/05-01/20-1344; [LRV Response](#): ICC-02/05-01/20-1356-Conf (Public Redacted Version ICC-02/05-01/20-1356-Red).

⁵ [OTP Observations](#): ICC-02/05-01/20-1342.

⁶ [Amicus 1 Observations](#): ICC-02/05-01/20-1326; [Amicus 2 Observations](#): ICC-02/05-01/20-1345-Conf (Public Redacted Version ICC-02/05-01/20-1345-Red); [Amicus 3 Observations](#): ICC-02/05-01/20-1346-Conf (Public Redacted Version ICC-02/05-01/20-1346-Red).

⁷ [Mapping Report](#): ICC-02/05-01/20-1256-Conf-Corr (Public Redacted Version ICC-02/05-01/20-1256-Red); [Registry Observations](#): ICC-02/05-01/20-1343-Conf (Public Redacted Version ICC-02/05-01/20-1343-Red); [Registry Response](#): ICC-02/05-01/20-1355.

⁸ [Defence Consolidated Response](#); [Registry Response](#); [LRV Response](#).

⁹ TFV Observations, [REDACTED].

5. In its Observations, the TFV [REDACTED].¹⁰ The TFV also [REDACTED].¹¹ [REDACTED] should be read in light of other submissions received in response to the Defence's propositions: in her Response, the LRV agrees that the Defence's proposals are "*constructive*" follow "*a good intention and victims friendliness*",¹² but disagrees – in general terms, by aligning herself to the position expressed in the OTP's Observations¹³ already addressed in the Defence Consolidated Response,¹⁴ and neither engaging with the Defence proposals nor substantiating her concerns – with the Defence's legal demonstration of the applicable principles. In the LRV's view, the proper way of achieving the Defence's proposals would be by way of revisiting the current legal framework applicable before the Court.¹⁵ The proposed review of the Court's legal text remains an option, but would have no impact on the Chamber's determination on reparations for victims in the present case. It is thus irrelevant in the context of the proposed submissions on reparations in the present Case. Neither the LRV, nor the OTP engage with the Defence's demonstration of the Customary International Law nature of the proposed principles; the LRV agrees that these would be of benefit to victims in the case; and the TFV [REDACTED].

6. The Defence therefore submits that the Trial Chamber should consider its proposals concerning additional principles of reparations, including the third additional principle proposed below, in light of this absence of substantiated opposition to their adoption. Should the Chamber follow the Defence's proposals, it would deliver a major ruling in International Criminal Law in favour of victims of international crimes, which the LRV, despite its legal reservations, is unlikely to appeal after having admitted that the Defence's proposals are in favour of her clients.¹⁶ The OTP cannot appeal under Article 82(4) of the Statute. The same applies to the TFV,¹⁷ which [REDACTED]. The Chamber's adoption of the Defence proposals would thus remain unchallenged and reach immediate finality.

7. [REDACTED].¹⁸ This information is relevant to the Trial Chamber's consideration of the Defence's proposed presumption mentioned at paragraph 30 of its Consolidated Response.¹⁹

8. Finally, [REDACTED]. While the Defence appeal against conviction is pending, Mr Abd-Al-Rahman remains convicted. Should the Trial Chamber issue its Reparations Order prior

¹⁰ [Defence Observations](#), paras. 54-118.

¹¹ [Defence Observations](#), paras. 119-151.

¹² [LRV Response](#), paras. 4, 55.

¹³ [OTP Observations](#), paras. 4-5.

¹⁴ [Defence Consolidated Response](#), para. 44, referring to [Defence Observations](#), para. 130.

¹⁵ [LRV Response](#), paras. 55-57.

¹⁶ [LRV Response](#), paras. 4, 55.

¹⁷ *Lubanga*, [ICC-01/04-01/06-3202-tENG](#), paras. 12-17.

¹⁸ TFV Observations, [REDACTED].

¹⁹ [Defence Consolidated Response](#), para. 30.

to the Appeal Judgment, it will thus necessarily be directed at him, as the convicted person. This is of course independent of his uncontested absence of capacity to contribute to reparations, which necessarily means that reparations will have to be supported by other sources through the TFV in any event. Should Mr Abd-Al-Rahman be acquitted, the first additional principle proposed by the Defence²⁰ is aimed precisely at ensuring that victims may still receive [REDACTED],²¹ including the TFV, [REDACTED]. The Defence's first proposed additional principle is founded precisely on the desirability of reparations in this eventuality.

II – DIVERGING ISSUES

9. The Defence sees two major differences between the approach taken in the TFV Observations and its own Observations and Consolidated Response: the first relates to the identification of the potential beneficiaries of reparations; the second to the modalities of reparations. In the Defence's submissions, the two issues are interconnected, so that the second is essentially a consequence of the first. The divergence between the TFV and the Defence places before the Chamber two fundamentally different options between which it must decide in its deliberation on the future reparation order.

10. In its Observations, the [REDACTED],²² [REDACTED].²³ The Defence refers to its submissions at paragraph 11 of its Consolidated Response as to the reasons why considering the Fur community as a whole as a victim is irreconcilable with the definition of "victims" under Rule 85 of the RPE and is not supported by the Chamber's factual findings in the Trial Judgment. The same argument applies all the more so to [REDACTED], which are not mentioned as targeted communities in the Trial Judgment. It should be recalled that they were not even referred to as targeted communities in the document containing the charges. Individual members of [REDACTED], who suffered individual harm as a result of the crimes, for example because they were residents of Kodoom or Bindisi on 15-16 August 2003, are eligible as individual victims, but this is a consequence of the individual harm they have suffered, not because they are [REDACTED]. As the LRV did in her Observations *vis-à-vis* the Fur community,²⁴ [REDACTED].²⁵ [REDACTED] does not, in and of itself and in the absence of a showing of individual harm suffered, make a person an eligible victim.

²⁰ [Defence Observations](#), paras. 119-136.

²¹ TFV Observations, [REDACTED].

²² [Registry Observations](#), paras. 152-157; [Amicus 3 Observations](#), para. 8.

²³ TFV Observations, [REDACTED].

²⁴ [LRV Response](#), paras. 75, 80-82.

²⁵ TFV Observations, [REDACTED].

11. Including [REDACTED] within the categories of victims for the purpose of reparations has a direct and considerable impact on the number of potential beneficiaries and, as a consequence, the overall feasibility of reparations measures. This consequence is clearly stated [REDACTED]²⁶ [REDACTED].

12. Extending the group of victims eligible for reparations to [REDACTED]²⁷ [REDACTED]²⁸ [REDACTED].²⁹ If followed, this proposal would defer the modality of reparations unanimously favoured by victims to a later and uncertain phase that would come after the implementation of two phases of complex rehabilitation measures benefiting the entire community, and conditional on their return to their homeland. The risk that such financial compensation would never materialize in any meaningful sense in the foreseeable future is immense and must be avoided.

13. The proposed deferral of individual compensation measures in the face of the unanimous preference expressed by the victims and reported in the various observations is the direct consequence of the proposed enlargement of the categories of victims eligible for reparations [REDACTED]. This is a perfect illustration of a situation “*placing an undue burden on reparations efforts that may be detrimental for actual victims with direct or indirect harm*”, as submitted to in the Defence Consolidated Response.³⁰ The Defence respectfully submits that this must absolutely be avoided and refers to the multi-phased approach prioritizing individual financial compensation for participating victims recommended by the Defence in its Consolidated Response.³¹

14. Deferring individual financial compensation to a later phase and prioritizing collective measures for the benefit of [REDACTED] not only runs counter to the views of the victims reported in all Observations; it would also essentially negate any meaningful realisation of the individual right to reparations under International Law of each victim of direct or indirect harm, by opposition to alleged collective harm.

15. The Defence refers to all relevant sources relied upon in its Observations and Consolidated Response in support of its demonstration of the Customary International Law nature of the individual right of victims to reparations.³² The same sources support the existence of a Customary International Law principle according to which the right of individual victims to

²⁶ [REDACTED].

²⁷ TFV Observations, [REDACTED].

²⁸ [REDACTED].

²⁹ TFV Observations, [REDACTED].

³⁰ [Defence Consolidated Response](#), para. 24.

³¹ [Defence Consolidated Response](#), paras. 52-60.

³² [Defence Observations](#), paras. 32-118; [Defence Consolidated Response](#), paras. 45-51.

reparations can only be satisfied by way of individual reparations measures. The Defence does not suggest that collective reparations measures amount to a violation of International Law, but submits that collective reparations measures alone cannot adequately satisfy the right of individual victims to reparations. Collective reparations can be considered in addition to, but not instead of, individual reparations measures. In accordance with Article 75(1) of the Statute, the Defence submits that the Trial Chamber should adopt this third proposed Principle of Reparations in addition to the two Principles proposed in the Defence Observations. The three additional Principles of Reparations which are submitted for adoption by the Trial Chamber pursuant to Article 75(1) of the Statute are thus the following:

- (i) Victims of international crimes have a right to reparations for the harm they have suffered under Customary International Law, that is not conditioned by the conviction of one or more offender(s);³³
- (ii) Notwithstanding reparations provided by or through the TFCV, the GoS and its members bear liability for reparations to victims under International Law and Sudan must cooperate fully with the activities of the Court for the purpose of identification, tracing, seizure and forfeiture of their relevant properties and assets for the purpose of reparations to victims;³⁴ and
- (iii) The right of individual victims to reparations can only be satisfied by way of individual reparations measures, which can be complemented, as appropriate and feasible, by collective measures.

16. All sources relied upon in the Defence Observations and Consolidated Response in support of additional Principles of Reparations (i) and (ii)³⁵ also support additional Principle (iii). To mention but some of the most relevant examples:

- the 1985 Declaration provides in section 12 as follows: *“When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization”*³⁶ (emphasis added): the approach is resolutely focused on individual victims and their families;³⁷

³³ [Defence Observations](#), paras. 119-136.

³⁴ [Defence Observations](#), paras. 137-150.

³⁵ [Defence Observations](#), paras. 32-118; [Defence Consolidated Response](#), paras. 45-51.

³⁶ [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), sect. 12.

³⁷ [Defence Observations](#), para. 51.

- the Bassiouni-Van Boven Principles provide in section 11 as follows: “*Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms*”³⁸ (emphasis added). The use of the singular “*victim*” emphasizes the focus on individual victims as owners of the right to reparations. Nowhere do the Bassiouni-Van Boven Principles contemplate satisfaction of the victim’s individual right to reparations by way of collective measures;³⁹
- the Juba Peace Agreement provides for the right of “*all individuals and communities in Darfur*”⁴⁰ (emphasis added) to reparations “*for the losses and damages suffered by them or their families as a result of the Darfur conflict*”⁴¹ (emphasis added) and that “*individuals shall have the right to seek restoration of property or compensation for their lost or seized property*”⁴² (emphasis added). Here again, the focus is on individual victims and their families. The community dimension comes in addition, not as a replacement;⁴³
- all examples of national practice from 33 States Parties and 9 Non-States Parties relied upon provide a right for victims to receive reparations on an individual basis, in most cases in the form of individual financial compensation.⁴⁴

17. On the collective side of reparations in response to the collective harm of eviction from homeland, the Defence has already respectfully submitted that the Chamber might be assisted by the approach followed by the African Court on Human and Peoples’ Rights (“ACHPR”) in the *Ogiek People Case*.⁴⁵ In that case, all reparations measures awarded benefited the Ogiek tribe collectively. This ACHPR ruling is based on the fact that the rights that were violated, namely the right to development and the loss of the Ogiek people’s property and natural resources as a result of encroachment on Ogiek land,⁴⁶ were collective rights; no individual harm was advanced as a basis for reparations claims. On the contrary, in the present case, individual financial

³⁸ [Bassiouni-Van Boven Principles](#), sect. 11.

³⁹ [Defence Observations](#), para. 53.

⁴⁰ [Juba Agreement for Peace in Sudan](#), Title 2, Chapter 4, “Compensation and Reparations Protocol”, sect. 3.

⁴¹ [Juba Agreement for Peace in Sudan](#), Title 2, Chapter 4, “Compensation and Reparations Protocol”, sect. 11.1.

⁴² [Juba Agreement for Peace in Sudan](#), Title 2, Chapter 4, “Compensation and Reparations Protocol”, sect. 11.3.

⁴³ [Defence Observations](#), para. 69.

⁴⁴ [Defence Observations](#), paras. 70-105; [Defence Consolidated Response](#), paras. 47-48.

⁴⁵ ACHPR, [African Commission on Human and Peoples’ Rights v. Kenya \(“Ogiek People Case”\)](#), referred to at paragraph 147 of the [Defence Observations](#).

⁴⁶ ACHPR, [African Commission on Human and Peoples’ Rights v. Kenya \(“Ogiek People Case”\)](#), paras. 47-48.

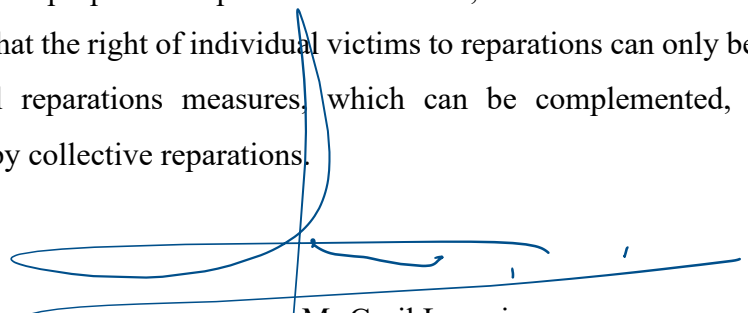
reparations are primarily sought for individual harm suffered by individual victims. Other harms calling for other forms of reparations of a more collective nature are also advanced as a basis for reparations claims, but these must come *after* the individual financial compensation which has been the unanimous expressed preference of victims reported in the various Observations received. As the Defence submits, collective reparations measures can complement individual financial awards, but must not replace these, nor be addressed as a priority, [REDACTED].

18. This is the fundamental choice that the Trial Chamber will have to make in its deliberations: [REDACTED], the Trial Chamber will order primarily collective reparations benefiting [REDACTED] in compensation for their alleged collective harm, while the more limited number of direct and indirect victims of individual harm resulting from the commission of the crimes, principally the participating victims, will have to wait for a later phase, if ever, to receive the individual financial compensation they are looking for. By doing so, the Trial Chamber would not only make a decision that is inconsistent with its own findings in the Trial Judgment; it would also negate any meaningful realisation of the individual right of victims of international crimes to reparations under Customary International Law. By following the Defence approach, however, the Trial Chamber will award individual reparations to a smaller group of direct and indirect victims, principally financial awards to participating victims, later completed thereafter by more collective rehabilitation measures benefiting a larger group, where feasible.

19. The Defence refers to its earlier submissions on reparations in all other aspects.

FOR THE FOREGOING REASONS, THE DEFENCE REQUESTS THE TRIAL CHAMBER TO CONSIDER the present observations and, **PURSUANT TO ARTICLE 75(1) OF THE STATUTE:**

- **STATE** that victims have a right to receive reparations for the harm they have suffered under Customary International Law, that is not conditioned by the conviction of the offender;
- **STATE** that the GoS and its members bear liability for reparations to victims under International Law and Sudan must cooperate fully with the activities of the Court for the purpose of identification, tracing, seizure and forfeiture of their relevant properties and assets for the purpose of reparations to victims; **AND**
- **STATE** that the right of individual victims to reparations can only be satisfied by way of individual reparations measures, which can be complemented, as appropriate and feasible, by collective reparations.



Mr Cyril Laucci
Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 17 July 2026

At The Hague, The Netherlands.