

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **4 February 2022**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF  
THE PROSECUTOR *v.* ALI MUHAMMAD ALI ABD-AL-RAHMAN  
(‘ALI KUSHAYB’)**

**Confidential**

**Observations on “Confidential Redacted Version of ‘Prosecution’ application to  
amend the charges”**

**Source:** The Common Legal Representatives of Victims

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan

Mr James Stewart

Mr Julian Nicholls

**Counsel for the Defence**

Mr Cyril Laucci

Mr Iain Edwards

**Legal Representatives of the Victims**

Ms Natalie von Wistinghausen

Mr Nasser Amin Mohamed Abdalla

**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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

1. The Common Legal Representatives of Victims ("CLRV") file these brief observations on the "Confidential Redacted Version of 'Prosecution's application to amend the charges'",<sup>1</sup> in which the Prosecutor requests that the Pre-Trial Chamber amend the particulars of Counts 2 and 3 (regarding the Kodoom/Bindisi incident), Counts 17 and 18 (regarding the Mukjar incident), and Counts 27 and 28 (regarding the Deleig incident), in relation to the minimum number of persons killed during the commission of the charged crimes of murder as a crime against humanity and a war crime.
2. The CLRV support the Prosecutor's Application. In the CLRV's view, the Application, for the reasons set out therein,<sup>2</sup> satisfies the relevant balancing test for amendment of the confirmed charges under the Rome Statute framework, "namely effectiveness of the prosecution and respect for the rights of the suspect or the accused",<sup>3</sup> and is justified by the investigative difficulties faced by and the diligent conduct of the Office of the Prosecutor.<sup>4</sup>
3. It is of importance to and in the interests of the victims in these proceedings that the Trial Chamber's judgment under Article 74, in accordance with the Chamber's truth-seeking function, properly encompasses the nature and scope of the harm suffered by the victims, their families and the wider community.<sup>5</sup> In this respect, the CLRV recall the Pre-Trial Chamber's determination that victim status extends to individuals who have sustained psychological harm as a result of witnessing atrocities committed against other members of their community.<sup>6</sup> The amendments sought by the Prosecution, which provide for the possibility of judicial determinations on the murders of a significant number of additional specifically identified individuals, serve these important justice interests.

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<sup>1</sup> ICC-02/05-01/20-563-Conf-Red, 25 January 2022 ("Application").

<sup>2</sup> Application, paras 11-19.

<sup>3</sup> *Yekatom & Ngaïssona*, Decision on the 'Prosecution's Request to Amend Charges pursuant to Article 61(9) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges', 14 May 2020, [ICC-01/14-01/18-517](#), para. 28.

<sup>4</sup> Application, paras 35-47.

<sup>5</sup> The CLRV concurs with the Prosecution's submissions in this regard (Application, paras 4, 12).

<sup>6</sup> Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests, 20 May 2021, para. 47.

4. The victims in this case, who have awaited justice for more than seventeen years, also have an important interest in and right to expeditious proceedings<sup>7</sup> in a trial set to commence on 5 April 2022, just as the accused has a right to trial without undue delay.<sup>8</sup> The CLRV agree with the Prosecution that the Application properly seeks the amendment of existing charges,<sup>9</sup> whose temporal and geographical scope would remain unchanged,<sup>10</sup> as opposed to adding charges or substituting more serious charges. Accordingly, a second confirmation hearing in respect of these amendments is not needed in the CLRV's respectful view,<sup>11</sup> and the Pre-Trial Chamber is well placed to efficiently consider and determine the Application.
5. Further, as the Application explains, all of the evidence underlying the requested amendments was disclosed to the Defence on or before the 5 January 2022 deadline set by the Trial Chamber, and the Prosecution had placed Mr Abd-Al-Rahman on notice of the Prosecutor's intention to seek inclusion of additional victims in relation to the incidents in Kodoom/Bindisi, Mukjar and Deleig both during the confirmation process and in the Prosecution's Trial Brief filed on 5 January.<sup>12</sup>
6. Accordingly, in the respectful submission of the CLRV, the accused's right to proper notice of the nature, cause and content of the charges against him, and his right to adequate time to prepare his defence, would be fully respected should the Pre-Trial Chamber amend Counts 2, 3, 17, 18, 27 and 28 of the confirmed charges at this stage of the proceedings, and in the circumscribed manner requested by the Prosecution.

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<sup>7</sup> Rome Statute, Article 64(2).

<sup>8</sup> Rome Statute, Article 67(1)(c).

<sup>9</sup> Application, para. 8.

<sup>10</sup> Application, para. 14.

<sup>11</sup> The CLRV agrees with the Prosecution in this regard (Application, para. 14).

<sup>12</sup> Application, para. 18.

Respectfully submitted,



Natalie v. Wistinghausen



Nasser Mohamed Amin Abdalla

Common Legal Representatives of Victims

Dated this 4th of February 2022

At The Hague, the Netherlands