

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **9 May 2023**

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 Request to postpone the commencement of the victims’ case”, ICC-02/05-01/20-931-Conf, 8 May 2023

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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I. Introduction

1. The Common Legal Representative of Victims (“CLR V”), following the Trial Chamber’s instructions,¹ submits this request pursuant to Regulation 35 of the Regulations of the Court (“Regulations”) to postpone the commencement of the participating victims’ case, which is presently scheduled to open on 22 May 2023.²
2. As matters presently stand, it is likely that only one participating victim, DAR-V47-P-0002 (a/15002/18), will be available to appear before the Trial Chamber (by video-link) during the week of 22 May.³ In view of the unfortunate outbreak of armed conflict in Sudan on 15 April 2023, it is now clear that participating victims DAR-V47-P-0004 (a/25040/21) and DAR-V47-P-0005 (a/10127/22), residing in internally displaced persons (IDP) camps in Darfur, will be unable to journey out of Darfur to appear before the Chamber in the short-term. In respect of witness DAR-V47-P-0001 and participating victim DAR-V47-P-0003 (a/25009/21), who are long-term refugees residing in camps in Eastern Chad, unforeseen delays in the determination [REDACTED] of the procedure for the issuance of their travel documents, and thereafter in the issuance of internal travel authorisations [REDACTED], place in significant doubt the possibility of their appearing before the Chamber at the seat of the Court during the week of 22 May.
3. Per the CLR V’s understanding of the relevant procedural and logistical time frames, and standard operating procedures, and presuming that these processes unfold in as optimal a manner as possible as of the date of this filing, P-0001 and P-0003 could arrive in the Netherlands by **Saturday 27 May 2023** at the earliest,

¹ Email from legal officer of Trial Chamber I to the parties, CLR V and Victims and Witnesses Section, 4 May 2023 at 13:58 (instructing the CLR V to file any motion for postponement by 8 May 2023, including full details on the locations of the witness and participating victim residing in Chad, the parties to file their responses by 10 May 2023, and the VWS to provide an update by 8 May 2023 regarding the expected arrival of the witness and participating victim at the seat of the Court).

² Second Directions on the conduct of proceedings, 15 December 2022, [ICC-02/05-01/20-836](#), para. 15. The original date of 8 May 2023 was subsequently amended by the Trial Chamber to 22 May by way of an email decision, following the Chamber’s consultations with the parties and CLR V (Email from Trial Chamber I Legal Officer to the parties and participants, 1 February 2023).

³ In its decision of 16 February 2023, the Trial Chamber authorised witness P-0001, and participating victims P-0002, P-0003, P-0004, and P-0005, to appear during the presentation of the victims’ case (Decision on the Common Legal Representatives for Victims’ request to present evidence and views and concerns, 16 February 2023, [ICC-02/05-01/20-874](#)).

after which the VWS schedules 24 to 48 hours for a witness or participating victim to rest and acclimate, and only thereafter VWS' security and vulnerability assessments and the courtroom familiarisation processes may proceed.⁴

4. The CLRV submits that the CLRV team, including the two CLRV field assistants, as well as CLRV intermediaries, and the witness and participating victims themselves, have all acted diligently and made best efforts to work towards the scheduled 22 May 2023 opening of the CLRV case. The CLRV also notes that where the responsibilities of the Registry's Victims and Witnesses Section (VWS) are implicated, the Court is dependent on the cooperation and timely provision of information from relevant States and international organisations, and must abide by the procedures established by these entities, including the Host State.
5. While the CLRV is prepared to proceed with an opening statement on 22 May, followed by the video-link appearance of P-0002 (residing in a time zone six hours behind the seat of the Court), the CLRV respectfully submits that given the comparative brevity of the victims' case, there will be a measurable impact on the effectiveness, cohesiveness, and efficiency of the presentation of the case should it be broken into disparate segments. The CLRV respectfully submits that the above set of circumstances establish good cause under Regulation 35 of the Regulations to grant a postponement of the commencement of the CLRV case.
6. In seeking this relief, the CLRV is mindful that it is in the interests of the 488 participating victims that these proceedings, concerning events that took place almost two decades prior, move forward as expeditiously as possible, and that the accused likewise has a fundamental right to – and the Chamber a concomitant obligation to ensure – trial without undue delay. In view of the present schedule for the presentation of the Defence case, with the Defence opening statement set for 28 August 2023, the CLRV respectfully submits that a postponement of the CLRV case to the last week of May, or in the subsequent weeks up to 21 July 2023, should have little to no impact on the advancement of these proceedings.

⁴ See Section III(b)(i) *infra* for a discussion of the timeline for the relevant outstanding processes and logistics related to P-0001 and P-0003's appearance before the Trial Chamber at the seat of the Court.

7. The CLRV accordingly requests that the commencement of the CLRV case is rescheduled either:
- i. by one week, to the week of 29 May 2023, opening on 29, 30 or 31 May, with an adjournment granted thereafter to provide for the possibility of P-0004 and P-0005 appearing in the months of June, July, or August 2023; or
 - ii. for a period of 4 days sometime between 5 June and 21 July 2023.⁵ Rescheduling the CLRV case to late June or July should minimize any remaining uncertainty regarding delays arising from the travel documents and authorisations for P-0001 and P-0003, and may provide a reasonable prospect for a consolidated CLRV case presentation that includes the appearances of P-0004 and P-0005, should the situation in Darfur and Sudan sufficiently stabilize by that time.⁶
8. The CLRV appreciates that any postponement of the CLRV case the Chamber may consider granting is contingent on courtroom availability and the Trial Chamber's duties, and should also reasonably take into account the availabilities of the parties – particularly that of the Defence, which is preparing the accused's case presentation.

II. Classification

9. This filing is classified as confidential, as it contains sensitive and non-public information concerning a CLRV witness and participating victims. The annexes to the filing are classified as *ex parte*, as they contain personal information of a CLRV witness and participating victims not available to the parties. A public redacted version of this filing will also be submitted.

⁵ The Court's summer judicial recess runs from 22 July through 13 August 2023.

⁶ The CLRV additionally respectfully advises that it would be difficult for the Chadian-based witness and participating victim to travel during the month of August due to the rainy season.

III. Submissions

10. For the reasons set out herein, the CLRV respectfully submits that good cause exists to grant a postponement of the commencement of the CLRV case from the presently scheduled date of 22 May 2023, and that in light of the current schedule for the presentation of the Defence case,⁷ such a postponement, if granted, will have little to no impact on the advancement or fairness of the proceedings.
11. As the CLRV has previously submitted, her goal, acting on behalf of the participating victims in these proceedings, and particularly in the context of the CLRV Trial Brief⁸ and victims' case, is to allow the voices, views, and concerns of the participating victims, and the relevant evidence of witnesses, to be conveyed or highlighted to the Trial Chamber, and also the broader public, with as little filtering by the CLRV as possible.⁹ In the CLRV's view, such an approach is the most respectful manner in which the CLRV can seek to empower the participating victims in the context of these proceedings and facilitate the communication of their views and concerns to the Trial Chamber and the wider public.
12. An important component of this approach, as the CLRV earlier submitted in seeking leave to present a victims' case,¹⁰ is the in-person appearance of a witness and four participating victims before the Judges of the Trial Chamber, from the seat of the Court. Unfortunately, as the Chamber is aware based on the CLRV's

⁷ Decision on the Defence's Request for postponement of the presentation of its case, 17 April 2023, ICC-02/05-01/20-916-Conf-Exp, para. 44 (rescheduling the opening of the Defence case to 28 August 2023). Confidential redacted and public redacted ([ICC-02/05-01/20-916-Red](#)) versions of the decision were issued on the same day.

⁸ Public Redacted Version of "Second Corrigendum to 'Common Legal Representative of Victims' Trial Brief", 31 March 2023 (ICC-02/05-01/20-914-Conf-Exp)", 5 April 2023 (ICC-02/05-01/20-914-Conf-Exp-Corr2), 11 April 2023, [ICC-02/05-01/20-914-Corr2-Red](#).

⁹ *See id.*, para. 9.

¹⁰ Common Legal Representative of Victims' Request to present evidence and views and concerns, 6 February 2023, ICC-02/05-01/20-865-Conf-Exp, para. 16 ("Additionally and importantly, the CLRV submits, based on her consultation with her clients, that the appearance of participating victims in-person before the Trial Chamber to present their views and concerns holds value and great significance for the community of participating victims, and serves as a measure of recognition and fulfilment by the Court of the victims' status and right to meaningfully participate in the ICC's proceedings."). Public redacted version: [ICC-02/05-01/20-865-Red](#).

prior submissions and provision of information,¹¹ participating victim P-0002, who very much wished to appear before and address their Honours in-person from the courtroom, will only be able to appear by video-link, which the Chamber has authorised,¹² notwithstanding his and the CLRV's best efforts to expedite the issuance of identity and travel documents [REDACTED], including P-0002 engaging a national attorney to assist him.¹³ P-0002 has advised the CLRV that he remains fully flexible in his appearance before the Trial Chamber in the coming weeks should the commencement of the CLRV case be rescheduled.

13. The victims' case is also of a limited scale in comparison to those of the Prosecution and Defence, and serves a different purpose in line with the role and participatory rights of participating victims within the Court's legal framework. In addition to the importance of in-person appearance before the Trial Chamber when possible, these additional factors of the brevity and nature of the victims' case must weigh in favour of a consolidated case presentation where reasonably feasible.
14. As matters presently stand, and as will be further addressed below, it is likely that only P-0002 will be able to appear before the Trial Chamber as originally planned during the week of 22 May 2023, following an opening statement. Should the Trial Chamber thereafter grant an adjournment to allow for the later appearances of P-0001 and P-0003 travelling from Chad, and a further adjournment for the potential appearances of P-0004 and P-0005 residing in Darfur, the concise victims' case may be separated into three different segments. The CLRV respectfully submits, for the reasons articulated above, that such a result will have a measurable impact on the effectiveness, cohesiveness, and efficiency of the presentation of the victims' case that is *per se* limited in nature,

¹¹ Common Legal Representative of Victims' Request for in-court protective measures for one witness and four participating victims, and the appearance by audio-video link for participating victim DAR-V47-P-0002, 18 April 2023, ICC-02/05-01/20-918-Conf, paras 18-21; CLRV email to the Trial Chamber, 4 May 2023 at 12:15.

¹² Status Conference of 19 April 2023, ICC-02/05-01/20-T-116-CONF-ENG ET, p. 23, line 23 to p. 24, line 5.

¹³ See **Annex A** (containing a copy of email communications between the CLRV team and P-0002's domestic lawyer).

but must be given an appropriate space in the proceedings, which the Trial Chamber has left no doubt about.

15. The CLRV accordingly submits that good cause exists for the postponement of the CLRV case, either:

- i. by one week, to the week of 29 May 2023, opening on 29, 30 or 31 May, with an adjournment granted thereafter to provide for the possibility of P-0004 and P-0005 appearing in the months of June, July, or August 2023; or
- ii. a period of 4 days sometime between 5 June and 21 July 2023.¹⁴ Rescheduling the CLRV case to late June or July should minimize any remaining uncertainty regarding delays arising from the travel documents and authorisations for P-0001 and P-0003, and may provide a reasonable prospect for a consolidated CLRV case presentation that includes the appearances of P-0004 and P-0005, should the situation in Darfur and Sudan sufficiently stabilize by that time.

a. Situation of P-0004 and P-0005, and request for postponement

16. Participating victim P-0005, residing in an IDP camp in Darfur, travelled to [REDACTED] with the assistance of a CLRV intermediary, and submitted her application for a Sudanese passport on [REDACTED] 2023. Her passport was expected to be ready for pick-up on or around [REDACTED] 2023.¹⁵ The CLRV had further arranged, through the same intermediary, for a trusted third-party to be authorised to pick-up the passport as soon as it was available so that a picture of the information page could immediately be transmitted to the intermediary, and thereafter the CLRV, for submission to the VWS and commencement of the minimum 10-working day [REDACTED] procedure by Dutch authorities for grant of a visa.

17. However, as the Trial Chamber is aware, armed conflict broke out in Sudan on 15 April 2003,¹⁶ and it is not presently possible for P-0005 to obtain her passport.

¹⁴ The Court's summer judicial recess runs from 22 July through 13 August 2023.

¹⁵ See **Annex B** (containing a copy of the receipt / ticket for P-0005's passport application).

¹⁶ The outbreak of armed conflict in Sudan was discussed during the status conference of 19 April 2023, and acknowledged by the Trial Chamber (ICC-02/05-01/20-T-116-CONF-ENG ET, pp 11 to 14).

Even if P-0005 had obtained her passport, travel within Darfur, let alone outside of Darfur – at least for persons residing in IDP camps or other vulnerable communities – is very risky in the current circumstances.

18. The CLRV spoke with P-0005, as well as another participating victim, A/25072/21, this past Friday, 5 May 2023. P-0005 reported that, thankfully, she and her children remain safe in their home in the IDP camp in which they reside, but that water and food supplies are dwindling. P-0005 explained that it was unsafe to leave their home, and that the RSF were in control of the surrounding area.
19. A/25072/21 is a displaced person originally from the same area where P-0005 resides, and who happened to be visiting the area when the conflict broke out three weeks ago. He similarly advised the CLRV that the RSF were patrolling the area, and that it was unsafe for him to attempt the day-long journey back to the town in Darfur where he now resides.
20. P-0005 informed the CLRV that she will continue to monitor the situation, and that should security circumstances improve, it is her wish to travel to appear before the Trial Chamber. She said it was very important for her to do so.
21. Participating Victim P-0004 possesses a valid passport, a copy of which was submitted by the CLRV to the VWS on 23 February 2023. VWS thereafter submitted a request for visa assistance to the Dutch authorities, [REDACTED]. Per the plan agreed during trial coordination meetings with VWS, P-0004 (along with P-0005), through VWS's facilitation, [REDACTED].
22. As with P-0005, the outbreak of conflict on 15 April precludes P-0004 traveling within or out of Darfur at the present time. The CLRV has been in regular contact with P-0004. He has advised the CLRV that while he and his family remain safe within the IDP camp he is a long-time resident of, the security situation outside the camp is very unstable. Similar to P-0005, Participating Victim P-0004 expressed the strong wish to appear in-person before the Judges of the Trial Chamber in the near future, should the security situation in Darfur so allow.

23. The CLRV respectfully submits that the above-described circumstances constitute good cause for the postponement of the appearances of participating victims P-0004 and P-0005 before the Trial Chamber to sometime during the months of June, July or August 2023. The CLRV will continue to consult on a very regular basis with P-0004 and P-0005, and keep the Trial Chamber updated on the possibility of their travel to the seat of the Court.

b. Situation of P-0001 and P-0003, and request for postponement

24. P-0001 and P-0003 [REDACTED] residence in refugee camps in Eastern Chad. P-0001 and P-0003 [REDACTED].

25. In Section III(b)(i), the CLRV sets out her understanding as to the earliest date P-0001 and P-0003 could arrive at the seat of the Court, and thereafter appear before the Judges of the Trial Chamber. Section III(b)(ii) sets out the timeline of events leading up to P-0001 and P-0003's [REDACTED], which, in the CLRV's submission, constitutes good cause justifying the postponement of their appearances before the Chamber, currently scheduled for the week of 22 May 2023.

i. Timeline for P-0001 and P-0003's travel to the Court and appearance

26. The following detailed information and submissions are important for the Trial Chamber to get a full picture and to understand the factual background of the present request. They are based on the CLRV's six meetings held with the VWS since 16 December 2022, additional regular phone and email communications with the VWS, the experience of witnesses called during the Prosecution's case, and the advice of the CLRV's [REDACTED] field assistant.

27. Per the CLRV's understanding, should the below mentioned outstanding processes proceed within the shortest time frame possible as of the time of this filing, then the earliest P-0001 and P-0003 could arrive at the seat of the Court is **Saturday 27 May 2023**. Thereafter, per the VWS's standard operating procedures, P-0001 and P-0003 are permitted to rest and acclimate for 24 to 48 hours, and only

following this period VWS's vulnerability and security assessments and the witness/victim familiarisation process may commence:

- i. Receipt of travel documents: P-0001 and P-0003 must receive their refugee travel documents ('Convention Travel Documents') [REDACTED]. The VWS is awaiting instructions [REDACTED] as to the procedure to be followed by P-0001 and P-0003 to pick-up their travel documents [REDACTED]. As of the time of filing, no instructions have been received as to the procedure for collection [REDACTED].
- ii. Submission of travel documents to Dutch authorities [REDACTED]: Presuming the relevant instructions are received by end of today or sufficiently early tomorrow, P-0001 and P-0003 may be able to obtain their travel documents [REDACTED]. [REDACTED]. VWS will thereafter submit the documents and request for visa assistance to the Netherlands Ministry of Foreign Affairs (MFA). This submission will trigger the minimum 10-working day time period [REDACTED]. Presuming the request and travel documents are submitted to the Dutch MFA tomorrow, the minimum 10-working day time period would commence on 10 May 2023, and conclude on **Wednesday 24 May 2023 at the earliest** (Thursday 18 May being a Dutch national holiday).
- iii. Travel to [REDACTED]: [REDACTED].
- iv. Issuance of Dutch visas: Presuming the Dutch [REDACTED] process concludes on 24 May 2023, P-0001 and P-0003's applications for Dutch visas can be submitted by VWS [REDACTED] on Thursday 25 May 2023. [REDACTED].¹⁷ [REDACTED]. Presuming the visa is granted within one working day, and under the above timeline, **the visa could be issued on Friday 26 May 2023**.
- v. Arrival in The Hague and VWS processes at Seat of Court: under the above best-case scenario timeline, P-0001 and P-0003 could **arrive at the Court no earlier than Saturday 27 May 2023**. Thereafter, per the VWS' standard

¹⁷ [REDACTED].

operating procedures and witness/victim care practices, P-0001 and P-0003 will rest and acclimate for 24 to 48 hours, after which VWS' vulnerability and security assessments, and the witness/victim familiarisation process will take place.

28. Accordingly, per the CLRV's understanding of the relevant minimum timeframe for the remaining outstanding processes and logistics related to the appearance of P-0001 and P-0003 before the Trial Chamber, the witness and participating victim could not arrive at the seat of the Court earlier than **Saturday 27 May 2023**, and could appear no earlier than **Monday 29 May** before the Trial Chamber. As submitted above, these estimates presume an optimal timeline – namely that, P-0001 and P-0003 receive their travel documents [REDACTED] by tomorrow, that the Dutch [REDACTED] procedure does not extend beyond 10 working days, and that visas are issued [REDACTED] within one day of submission of the visa applications. Any lengthening of one or more of the above-mentioned processes, which are wholly outside the control of the CLRV and P-0001 and P-0003, would presumably push back the above indicated arrival and appearance dates.

ii. Timeline of events prior to P-0001 and P-0003's arrival [REDACTED]:

29. The CLRV respectfully submits that the CLRV team, including the CLRV's field assistant [REDACTED], as well as P-0001 and P-0003 themselves, have been exceedingly diligent in preparing for the witness and participating victim's scheduled appearances before the honourable Judges of the Trial Chamber during the week of 22 May 2023. However, matters outside the control of the CLRV, in particular related to delays in the determination [REDACTED] of the procedure for the issuance of their travel documents, and thereafter in the issuance of internal travel authorisations [REDACTED], have resulted [REDACTED]. The CLRV respectfully submits that these circumstances, as further outlined below, constitute good cause justifying the postponement of their scheduled appearances before the Trial Chamber.

30. The CLRV accordingly provides for the Trial Chamber's complete information and consideration, a summary of the relevant timeline of events preceding P-0001 and P-0003's arrival [REDACTED]:

- i. Following a Trial Management Meeting between the VWS and CLRV on 23 February 2023, on 8 March 2023, the VWS advised the CLRV by email [REDACTED].
- ii. After follow-up by the CLRV team, on 28 March 2023, the VWS advised the CLRV by email that the VWS "legal team was waiting for feedback [from] [REDACTED].
- iii. During a Trial Coordination Meeting held a few days later, on 4 April 2023, the VWS informed the CLRV team that there would be a change in process, and that [REDACTED].
- iv. After further inquiry by the CLRV team, on 12 April 2023, the VWS advised the CLRV by email that [REDACTED].
- v. During the third Trial Coordination Meeting between VWS and the CLRV held on 17 April, the VWS informed the CLRV that once [REDACTED].
- vi. Around 18 April 2023, [REDACTED].
- vii. On 26 April 2023, the VWS advised the CLRV by email that VWS had [REDACTED].
- viii. The CLRV immediately advised [REDACTED] P-0001 and P-0003, that they should [REDACTED] be ready to travel on short notice [REDACTED]. [REDACTED] P-0001, and P-0003 accordingly prepared themselves and have been on standby, since this time, [REDACTED].
- ix. [REDACTED].
- x. [REDACTED].
- xi. [REDACTED].¹⁸

¹⁸ See **Annex C** (containing copies of [REDACTED]).

- xii. It was agreed between VWS and CLRV that [REDACTED].
- xiii. As reported above, [REDACTED].
- xiv. As submitted above, at the time of filing, instructions have not yet been received [REDACTED].

IV. Relief Requested

31. Further to the above submissions, the CLRV submits that good cause exists pursuant to Regulation 35 of the Regulations to postpone the commencement of the CLRV case, and respectfully requests that the Trial Chamber reschedule the CLRV case either:

- i. by one week, to the week of 29 May 2023, opening on 29, 30 or 31 May, with an adjournment granted thereafter to provide for the possibility of P-0004 and P-0005 appearing in the months of June, July, or August 2023; or
- ii. for a period of 4 days sometime between 5 June and 21 July 2023. Rescheduling the CLRV case to late June or July should minimize any remaining uncertainty regarding delays arising from the travel documents and authorisations for P-0001 and P-0003, and may provide a reasonable prospect for a consolidated CLRV case presentation that includes the appearances of P-0004 and P-0005, should the situation in Darfur and Sudan sufficiently stabilize by that time.

Respectfully submitted,



Natalie v. Wistinghausen

Common Legal Representative of Victims

Dated this 9 May 2023

At Berlin, Germany