

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 June 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
with Public Annex**

CLRV Request to submit material from the bar table

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

Mr Karim A. A. Khan
Ms Nazhat Shameem Khan
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci
Mr Iain Edwards

Legal Representatives of the Victims

Ms Natalie von Wistinghausen
Mr Anand Shah

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

Mr Osvaldo Zavala Giler

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The Common Legal Representative of Victims (“CLR V”) respectfully requests Trial Chamber I (“Chamber”) to submit into evidence the eleven items¹ identified in the accompanying annex (“Annex”), pursuant to articles 64(9)(a),² 69(3)³ and 69(4)⁴ of the Rome Statute, Rule 63(2) of the Rules of Procedure and Evidence,⁵ and the Directions on the conduct of proceedings.⁶
2. In accordance with the Directions, the Annex sets out for each item: (i) the document identification number; (ii) date of the item; (iii) the source identity; (iv) a brief description of its content; (v) an index of the relevant sections; (vi) a short description of its relevance and *prima facie* probative value; and (vii) an indication regarding whether the parties agree or object to the submission of the item.⁷

II. Submissions

3. Under the approach adopted by the Chamber in these proceedings, and consistent with the more recent established practice of the Trial Chambers of the Court,⁸ “[t]he Chamber will ultimately assess the relevance, probative value and potential prejudice of the evidence (the ‘standard evidentiary criteria’) as part of

¹ The CLR V had intended to request submission of item DAR-V47-00000147 from the bar table, notwithstanding the item having been used with and discussed by Witness V-0001 during her testimony. As the Trial Chamber has *proprio motu*, and for the completeness of the record, recognized the item as formally submitted in the Chamber’s emailed Decision on submission of evidence through V-0001 (14 June 2023), the item is not included in the present motion. The Defence and Prosecution had previously advised the CLR V that they did not object to the submission of the item from the bar table.

² Rome Statute, Art. 64(9)(a): “The Trial Chamber shall have, *inter alia*, the power on application of a party or on its own motion to: (a) Rule on the admissibility or relevance of evidence”.

³ Rome Statute, Art. 69(3): “The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.”

⁴ Rome Statute, Art. 69(4): “The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.”

⁵ Rules of Procedure and Evidence, Rule 63(2): “A Chamber shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69.”

⁶ Directions on the conduct of proceedings, 4 October 2021, [ICC-02/05-01/20-478](#) (“Directions”).

⁷ *Id.*, paras 55-56.

⁸ See Decision on the Prosecution’s bar table motion, 27 February 2023, ICC-02/05-01/20-885-Conf (“Bar Table Decision”) (public redacted version: [ICC-02/05-01/20-885-Red](#)), fn. 51 (citing the Chambers Practice Manual (6th ed., 2021) and confidential annex thereto, as well as relevant recent jurisprudence of the Trial Chambers of the Court in the *Ongwen*, *Al Hassan*, and *Yekatom & Ngaissona* cases).

the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused, in its judgment pursuant to Article 74 of the Statute”.⁹ The Chamber has determined that this approach applies to evidentiary items proposed for submission from the bar table.¹⁰

4. In accordance with the procedure established under the Directions,¹¹ the CLRV respectfully requests the Trial Chamber to submit into evidence the eleven items identified in the accompanying Annex, which fall into four subject matter categories: (i) maps of Darfur (items 1 and 2); (ii) information on the Kalma internally displaced persons camp (items 3 to 5); (iii) the expulsion of non-governmental organizations from Darfur (items 6 to 10); and (iv) the situation of refugees in Chad (item 11).
5. None of these items touch on core issues relevant to the guilt or innocence of Mr Abd-Al-Rahman. As further set out in the Annex, the CLRV requests the submission of these items to assist the Trial Chamber’s understanding of the situation of the participating victims, and the Fur community more generally in the Wadi Salih and Mukjar localities, in the period during and following the events of 2003 and 2004 that are the subject of these proceedings. These items complement and are relevant to evidence received during the presentation of the Prosecution’s case, as well as the evidence of Witness V-0001, who appeared during the victims’ case last week.
6. The CLRV further reports, and as indicated in the Annex, that following consultations with both the Prosecution and Defence, the parties have indicated that they have no objection to these eleven items being submitted into evidence from the bar table.¹² The CLRV appreciates the good cooperation of the parties on this matter.

⁹ Directions, para. 25.

¹⁰ Decision on the Prosecution’s request to submit lists of victims from the bar table, 13 January 2023, [ICC-02/05-01/20-846](#), para. 15; Bar Table Decision, para. 25.

¹¹ Directions, paras 55-56.

¹² Email from Prosecution Senior Trial Attorney to the CLRV, 4 May 2023 at 12h02; Email from Defence Lead Counsel to the CLRV, 5 May 2023 at 12h15.

III. Conclusion

7. For the reasons set out above and in the accompanying Annex, the CLRV respectfully requests the Trial Chamber to submit into evidence the eleven items identified in the annex.

Respectfully submitted,



Natalie v. Wistinghausen

Common Legal Representative of Victims

Dated this 16 June 2023

At Berlin, Germany