

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **French**

No.: **ICC-02/05-01/20 OA8**

Date: **23 March 2023**

**THE APPEALS CHAMBER**

**Before:** Judge Piotr Hofmański, Presiding Judge  
Judge Luz del Carmen Ibáñez Carranza  
Judge Marc Perrin de Brichambaut  
Judge Solomy Balungi Bossa  
Judge Godcha Lordkipanidze

**SITUATION IN DARFUR, SUDAN**

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

**Confidential**

**Application for Leave to Reply**

**Source:** Mr Cyril Laucci, Lead Counsel

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

**Office of the Prosecutor**

Mr Karim A.A. Khan KC, Prosecutor  
Ms Nazhat Shameem Khan, Deputy  
Prosecutor  
Mr Julian Nicholls, Senior Trial Lawyer

**Counsel for the Defence**

Mr Cyril Laucci, Lead Counsel  
Mr Iain Edwards, Associate Counsel

**Legal Representatives of Victims**

Ms Natalie von Wistinghausen  
Mr Anand Shah

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**Office of Public Counsel for Victims**

**Office of Public Counsel for the  
Defence**

Mr Xavier-Jean Keïta, Principal Counsel  
Ms Marie O'Leary, Counsel

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber I

1. Pursuant to regulation 24(5) of the Regulations of the Court (“RoC”), the Defence requests the leave of the Honourable Appeals Chamber to reply to the following submissions from the Office of the Prosecutor (“OTP”) in its response in the present OA8 appeal proceedings (“OA8 Response”):<sup>1</sup>

(i) The submissions made in paragraphs 4 and 7 of the OA8 Response concerning the applicability of article 19(4) of the Statute. Given that article 19(4) of the Statute is clearly not applicable in the case, the Defence could not have reasonably anticipated that the OTP could have ventured to set out a reasoning which is so fundamentally flawed in law.

(ii) The submissions made in paragraphs 4 and 10 of the OA8 Response concerning the alleged lack of prejudice caused by deferring the review of the request for reconsideration (“OA8 Request”)<sup>2</sup> until the end of the trial. The OTP’s submissions on this point are so clearly unfounded that they could not have been reasonably anticipated by the Defence, which could not have suspected the OTP of having the audacity to make them. In its reply, the Defence will show the obviousness, reality and extent of the prejudice caused by not having an immediate ruling on the OA8 Request, which should have been self-evident.

2. Pursuant to regulation 23*bis*(2) of the RoC, this application for leave to reply is registered as “Confidential” in line with the classification of the OA8 Response. The Defence requests that this application be reclassified as “Public” as soon as the public redacted version of the OA8 Response is registered.

[signed]

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

Dated this 23 March 2023

At The Hague, Netherlands

<sup>1</sup> ICC-02/05-01/20-908-Conf.

<sup>2</sup> ICC-02/05-01/20-898-Conf-tENG and its public redacted version [ICC-02/05-01/20-898-Red-tENG](#).