

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/05-01/20  
Date: 29 February 2024

**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**

**Registry Observations on the “CLR V Request for Trial Chamber guidance on mapping of potential beneficiaries”**

**Source:** The Registrar

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

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## I. Introduction

1. Pursuant to the instruction of Trial Chamber I (“Chamber”),<sup>1</sup> the Registry hereby submits its observations on the Common Legal Representative of Victims’ request for the Chamber to issue guidance on the mapping of potential reparations beneficiaries in the case of the *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘*Ali Kushayb*’) (“CLRV”, “Request” and “Case”, respectively).<sup>2</sup>

## II. Procedural History

2. On 3 October 2022, the Chamber instructed the Registry’s Victims Participation and Reparations Section (“VPRS” and “Section”) to conduct a mapping exercise during the trial proceedings, with the aim to identify direct and indirect victims who may qualify as potential beneficiaries of reparations (“Mapping Exercise”) in case of a conviction, and, to report to the Chamber within four weeks of the notification of the Article 74 judgment, on each of the incidents for which a conviction would have been entered, their (i) approximate number, and (ii) if available, the different types of harm victims report to have suffered (“Mapping Order”).<sup>3</sup>
3. On 27 November 2023, the VPRS requested the Chamber’s authorisation to have access to any victim-related record on the case file, for the purpose of conducting its Mapping Exercise.<sup>4</sup>
4. On 11 January 2024, the Chamber authorised the VPRS to have access to the confidential record of the Case.<sup>5</sup>

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<sup>1</sup> Email from Trial Chamber I to the Registry on 16 February 2024 at 16:50 h (“Chamber’s Instruction”).

<sup>2</sup> Common Legal Representative of Victims, “CLRV Request for Trial Chamber guidance on mapping of potential beneficiaries”, 16 February 2024, ICC-02/05-01/20-1076-Conf (“CLRV Request”). A corrected version of the CLRV Request was filed on 22 February 2024 (ICC-02/05-01/20-1076-Conf-Corr). A public redacted version of the corrigendum to the CLRV Request was filed on 27 February 2024 (ICC-02/05-01/20-1076-Corr-Red).

<sup>3</sup> Trial Chamber I, “Second decision on the admission of victims to participate in trial proceedings”, 3 October 2022, ICC-02/05-01/20-761 (“Second Decision”), paras 13-20, 21(iii).

<sup>4</sup> Email from VPRS to Trial Chamber I on 27 November 2023 at 10:56 h.

5. On 16 February 2024, the CLRV requested the Chamber to issue (i) factual guidance on the geographical and temporal scope of the four incidents subject of the charges in the Case; and (ii) legal guidance on (a) the principles of transgenerational harm that indirect victims may claim, and which the Chamber find relevant, and on (b) the notion of harm to indirect victims arising from targeting their community leaders. On the same day, the Trial Chamber instructed the Registry to file observations on the Request by 29 February 2024.<sup>6</sup>

### III. Submissions

#### *Remarks on the conduct of the Mapping Exercise*

6. In compliance with the Mapping Order, the VPRS is presently collecting information to: (i) locate relevant victim communities; (ii) identify those among them who fall within the scope of the Case, in order to reach a concrete estimate of their actual size; and (iii) assess the different types of harm victims report to have suffered as a result of the charged crimes in the Case, and the impact of these crimes on them.<sup>7</sup>
7. The Mapping Exercise includes the collection of information from multiple sources,<sup>8</sup> as well as the evaluation, collation and analysis of a large amount of data.<sup>9</sup> In particular, the VPRS's recent access permission to the confidential record of the Case will enable the Section to broaden its search for material that would be of assistance in the implementation of its Mapping Exercise. In this context, the Registry wishes to express its gratitude for the work conducted by the CLRV team in the preparation of its Request. In particular, the CLRV Request's extensive references to the record of the Case - in support of the proposed factual

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<sup>5</sup> Email from Trial Chamber I to VPRS on 11 January 2024 at 16:55 h ("Chamber's Authorisation").

<sup>6</sup> See *supra*, footnote 1.

<sup>7</sup> Second Decision, paras 13-20, 21(iii).

<sup>8</sup> Contingent upon the situation on the ground, the VPRS seeks to collect as much as possible information from primary sources such as individuals and groups of victims.

<sup>9</sup> This includes documents that i) identify direct and/or indirect victims, and ii) quantify or qualify the types of harm suffered.

findings and parameters of the Case (“CLR V proposal”) - will assist and guide the VPRS in its review of the confidential record of the Case.

8. That said, as the Mapping Exercise is ongoing and a number of leads to victim communities still remain to be explored, the VPRS is not yet in a position to ascertain what additional guidance from the Chamber at present may be most helpful. In turn, should there be a conviction in this Case, the Registry would seek further guidance from the Chamber, as may be necessary, on the contours of the Case for reparation purposes based on the information collected at that stage.

#### *Observations on the Request*

9. The VPRS notes at the outset that the facts as helpfully laid out in the CLR V proposal have also been the VPRS’ baseline for its Mapping Exercise, as far as the findings and parameters are covered by the Decision on the confirmation of charges,<sup>10</sup> the Prosecution’s Trial Brief,<sup>11</sup> the Chamber’s guidance<sup>12</sup> and information found in the public record of the Case.<sup>13</sup> In addition, the VPRS suggests that the “outer bounds of the relevant victim population arising from the charged events” laid out by the CLR V may still be further concretised at a future juncture in case of a conviction, pending information gathered through the Mapping Exercise.<sup>14</sup>
10. In relation to the CLR V’s request for legal guidance on the two notions of harm – namely transgenerational harm and harm arising from targeting of community

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<sup>10</sup> Trial Chamber I, “Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)”, 9 July 2021, ICC-02/05-01/20-433.

<sup>11</sup> Prosecution, “Corrected Version of ‘Prosecution’s Trial Brief’”, 5 January 2022, ICC-02/05-01/20-550-Conf-Exp-Corr (“Prosecution Trial Brief”). A public redacted version of the Trial Brief was filed on 4 February 2022 (ICC-02/05-01/20-550-Corr-Red2).


<sup>12</sup> This refers particularly to the Chamber’s rulings on Group C applications - which shape the confines of the Case for victims’ purposes based on the information obtained from them directly.

<sup>13</sup> The VPRS has already been assessing victims’ applications for participation in light of these components.

<sup>14</sup> See para. 8 *supra*. An example for further concretisation could be other potential categories of victims, see Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, “Reparations Order”, ICC-01/04-02/06-2659, 8 March 2021, paras. 32 and 36.

leaders – the VPRS commends the CLRV for raising the two very important notions of victimisation, on which any clarification, also from a legal perspective, is always welcome. The VPRS notably intends to put a particular focus on these two notions in its Mapping Exercise and, in case of a conviction, will bring to the Chamber all the factual elements it will have been able to collect, also with a view to determining specific – legal or factual – aspects on which the Chamber may want to give further guidance in its reparations order.

11. In this context, the Registry intends, through its Mapping Exercise, and at the time of conviction, if any, to provide the Chamber with a maximum of relevant information for the latter to make final determinations on, for example, the categories of potential beneficiaries, after having obtained from the VPRS contextualised information from the victims' communities.
12. In light of the foregoing, the Registry is not in a position, at this stage of the proceedings, to confirm that guidance as requested by the CLRV is most conducive to the Mapping Exercise. Further, and independently from the Chamber's final determination of the CLRV Request, the VPRS will endeavour to liaise with the Chamber, should the decision under Article 74 lead to a conviction, to seek further guidance from the Chamber as may be necessary, on the contours of that conviction for mapping purposes.

  
p.p. Marc Dubuisson, Director, Division of Judicial Services,  
on behalf of  
Osvaldo Zavala Giler, Registrar

Dated this 29 February 2024

At The Hague, the Netherlands