



**Original: English**

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

**Date: 18 March 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**

**Decision on the CLRV's Request for guidance on the mapping of potential  
beneficiaries**

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

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**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**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**

Oswaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Philipp Ambach

**Other**

## I. Procedural History

1. On 3 October 2022, Trial Chamber I (the ‘Chamber’) issued a second decision on the admission of victims to participate in trial proceedings.<sup>1</sup> In this decision, the Chamber ordered the Registry to start the mapping of potentially eligible beneficiaries of reparations (the ‘Mapping Exercise’).<sup>2</sup>
2. The Prosecution case closed on 28 February 2023.<sup>3</sup> The Common Legal Representative of Victims (the ‘CLR V’) presented the case on behalf of the participating victims over the course of five days, concluding on 19 October 2023.<sup>4</sup> The Defence case opened on the same day,<sup>5</sup> and is ongoing.
3. On 27 November 2023, the Victims Participation and Reparation Section of the Registry (the ‘VPRS’) requested access to the confidential record of the case for the purposes of the Mapping Exercise (the ‘VPRS’ request’).<sup>6</sup> The parties and the CLR V did not oppose the request.<sup>7</sup>
4. On 11 January 2024, the Chamber granted the VPRS’ request.<sup>8</sup>
5. On 16 February 2024, the CLR V requested the Chamber’s guidance on the Mapping Exercise (the ‘CLR V’s Request’).<sup>9</sup>
6. On 29 February 2024, the Defence responded to (the ‘Defence’s Response’)<sup>10</sup> and the Registry made observations on the CLR V’s Request (the ‘Registry’s Observations’).<sup>11</sup>

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<sup>1</sup> Second decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761 (hereinafter: ‘Second Decision on victims’ participation’).

<sup>2</sup> Second Decision on victims’ participation, ICC-02/05-01/20-761, paras 15-19.

<sup>3</sup> Notice of the conclusion of the Prosecution’s presentation of evidence, ICC-02/05-01/20-887.

<sup>4</sup> Transcript of hearing, ICC-02/05-01/20-T-128-CONF-ENG.

<sup>5</sup> Transcript of hearing, ICC-02/05-01/20-T-128-CONF-ENG, p. 36, line 16 to p. 59, line 6.

<sup>6</sup> Email from the VPRS, 27 November 2023, at 10:56.

<sup>7</sup> Email from the Prosecution, 4 December 2023, at 16:39; Email from the Defence, 30 November 2023, at 10:13; Email from the CLR V, 4 December 2023, at 17:12.

<sup>8</sup> Email from the Chamber, at 16:55.

<sup>9</sup> CLR V Request for Trial Chamber guidance on mapping of potential beneficiaries, 16 February 2024, ICC-02/05-01/20-1076-Conf. A corrected version was notified on 23 February 2024, ICC-02/05-01/20-1076-Conf-Corr. A public redacted version of the corrigendum was notified on 27 February 2024, ICC-02/05-01/20-1076-Corr-Red.

<sup>10</sup> Réponse à la Requête ICC-02/05-01/20-1076-Corr-Red, ICC-02/05-01/20-1091.

<sup>11</sup> Registry Observations on the ‘CLR V Request for Trial Chamber guidance on mapping of potential beneficiaries’, ICC-02/05-01/20-1092.

7. On 4 March 2024, the CLRV requested leave to reply to the Defence's Response,<sup>12</sup> which was granted by the Chamber on 8 March 2024.<sup>13</sup>

8. On 11 March 2024, the CLRV filed her reply to the Defence's Response (the 'CLRV's Reply').<sup>14</sup>

## II. Submissions

9. The CLRV requests guidance on the ordered Mapping Exercise. The CLRV submits that such guidance will not only facilitate a more effective and efficient mapping process but also serve the best interests of both participating victims and potential future beneficiaries, if a conviction is secured.<sup>15</sup>

10. The CLRV seeks guidance on two main aspects: (i) on geographical and temporal scope of incidents and the outer bounds of direct and indirect victims who may qualify as potential beneficiaries in connection to these incidents; and (ii) on the legal principles related to harm, specifically transgenerational harm and harm arising from the targeting of community leaders.<sup>16</sup>

11. In its response, the Defence submits that the CLRV's Request should be rejected in its entirety, as it is (i) unclear; (ii) based on a standard of proof that is not applicable at the present stage of the proceedings; (iii) unnecessary; and (iv) the Chamber cannot adjudicate on abstract issues and in the absence of 'a full judicial debate'.<sup>17</sup>

12. In her reply to the Defence's response, the CLRV addresses (i) the alleged lack of clarity in the Request in respect of the Trial Chamber issuing guidance on the outer bounds of direct and indirect victims; (ii) the Defence's concerns regarding the standard of assessment proposed in the Request, Defence's rights, and the presumption of innocence; and (iii) alleged lack of substantiation on the necessity of the relief requested.<sup>18</sup>

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<sup>12</sup> CLRV Request for Leave to Reply to Defence "Response to Request ICC-02/05-01/20-1076-Corr-Red", ICC-02/05-01/20-1094. No responses were filed by the parties.

<sup>13</sup> Email from the Chamber, at 09:57.

<sup>14</sup> CLRV Reply to Defence "Response to Request ICC-02/05-01/20-1076-Corr-Red", ICC-02/05-01/20-1099.

<sup>15</sup> CLRV's Request, ICC-02/05-01/20-1076-Corr-Red, para. 1.

<sup>16</sup> CLRV's Request, ICC-02/05-01/20-1076-Corr-Red, para. 12.

<sup>17</sup> Defence's Response, ICC-02/05-01/20-1091, para. 1 (unofficial translation).

<sup>18</sup> CLRV's Reply, ICC-02/05-01/20-1099, para. 2.

13. In its observations, the Registry provides an update on the conduct of the Mapping Exercise,<sup>19</sup> and remarks in relation to the CLRV Request that it ‘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.’<sup>20</sup>

### III. Analysis

14. At the outset, the Chamber rejects the CLRV’s assertion that it ‘is not anticipated that future Defence witnesses will address in any substance core crime base issues’.<sup>21</sup> As the Chamber is taking a holistic approach to the assessment of the evidence in the present case,<sup>22</sup> it would not be appropriate to provide the requested guidance before *all* evidence is heard and submitted before the Chamber. The Chamber finds it would be pre-emptive to provide any further guidance on the geographical and temporal scope of incidents and the outer bounds of direct and indirect victims prior to the issuance of the judgment pursuant to Article 74 of the Rome Statute (the ‘Statute’).

15. The CLRV further submits that the purpose of her request is ‘to facilitate the effective and efficient conduct of the VPRS’ mapping mandate’.<sup>23</sup> She also clarified that ‘[r]eceiving the Chamber’s preliminary guidance now – as opposed to findings issued many months down the road in or following a potential judgment of conviction, will, [...], bring greater certainty to the mapping work the VPRS has been ordered to start undertaking and must have clarity on.’<sup>24</sup> The Chamber recalls that the Registry, and not the CLRV, was ordered to conduct the Mapping Exercise.<sup>25</sup> The Chamber notes, as does the Defence,<sup>26</sup> that the Registry itself has not requested further guidance and did not see the need to join the CLRV’s Request. Considering that 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’,<sup>27</sup> the Chamber finds the CLRV’s Request to be premature.

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<sup>19</sup> Registry’s Observations, ICC-02/05-01/20-1092, paras 6-8.

<sup>20</sup> Registry’s Observations, ICC-02/05-01/20-1092, para. 12.

<sup>21</sup> CLRV’s Request, ICC-02/05-01/20-1076-Corr-Red, para. 11.

<sup>22</sup> Directions on the conduct of proceedings, 4 October 2021, ICC-02/05-01/20-478, para. 25.

<sup>23</sup> CLRV’s Request, ICC-02/05-01/20-1076-Corr-Red, para. 11.

<sup>24</sup> CLRV’s Reply, ICC-02/05-01/20-1099, para. 20.

<sup>25</sup> Second Decision on victims’ participation, ICC-02/05-01/20-761, paras 15-19.

<sup>26</sup> Defence’s Response, ICC-02/05-01/20-1091, para. 8.

<sup>27</sup> Registry’s Observations, ICC-02/05-01/20-1092, para. 12.

16. The Chamber is mindful of the Appeal Chamber's ruling that there may be a role 'for a chamber to make interim orders and decision in relation to reparation proceedings',<sup>28</sup> and indeed the Chamber availed itself of this role when it ordered the Registry to conduct the Mapping Exercise. However, at this point in the case, the Chamber does not deem it necessary to provide further guidance on the Mapping Exercise. Moreover, the Chamber notes that the two matters in respect of which the CLRV seeks the Chamber's guidance will be adjudicated either in the judgment pursuant to Article 74 of the Rome Statute, or in a reparations order, in the event of a conviction.

17. The Chamber notes the CLRV's concern regarding the lengthy time period that generally exists between the sentencing judgment and the issuance of the reparations order.<sup>29</sup> The Chamber was mindful of this when it instructed the Registry to submit a report on the mapping of potential beneficiaries in the present case within four weeks of the issuance of the judgment pursuant to Article 74 of the Statute, provided there is a conviction.<sup>30</sup>

18. Considering the above finding that the CLRV's Request is premature, the Chamber will not further consider the CLRV's 'proposed factual findings and parameters aimed at capturing the outer bounds of the potential population of direct and indirect victims'.<sup>31</sup>

19. Considering the above, the Chamber rejects the CLRV's Request in its entirety.

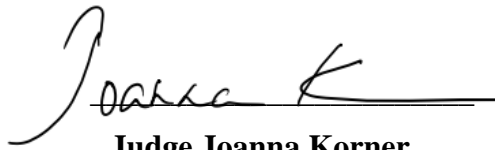
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<sup>28</sup> Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 18 August 2020 entitled 'Decision on the Defence request and observations on reparations pursuant to article 75(1) of the Rome Statute', 18 December 2020, ICC-02/05-01/20-237 (OA4), para. 14.

<sup>29</sup> CLRV's Request, ICC-02/05-01/20-1076-Corr-Red, para. 15.

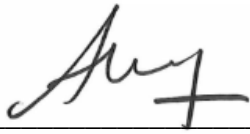
<sup>30</sup> Second Decision on victims' participation, ICC-02/05-01/20-761, para. 18.

<sup>31</sup> CLRV's Request, ICC-02/05-01/20-1076-Corr-Red, paras 18-32.

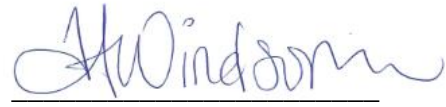


**Judge Joanna Korner**

**Presiding Judge**



**Judge Reine Alapini-Gansou**



**Judge Althea Violet Alexis-Windsor**

Dated this 18 March 2024

At The Hague, The Netherlands