

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/20
Date: 12 November 2025

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Adélaïde Sophie 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 Response to the "Confidential Redacted Version of the Defence Request to Present Additional Evidence for Sentencing (ICC-02/05-01/20-1243-Conf)"" , ICC-02/05-01/20-1249

Source: 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

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ 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

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I. Introduction

1. The Common Legal Representative of Victims (“CLRV”) hereby responds to the Defence Request to Submit Additional Evidence for Sentencing¹ (“the Defence Request”) and respectfully requests Trial Chamber I (“Chamber”) to partially reject the Defence’s request, for the following reasons.
2. More specifically, the CLRV requests the Chamber to decline to admit Items 10-11 and 16-18 contained in Annex 1 of the Defence Request and defers to the discretion of the Chamber in the disposition of the Items 1-2, 4-5, and 9 contained in Annex 1 of the Defence Request to submit additional evidence on sentencing, subject to the observations set out hereafter.²
3. The CLRV is not in a position to make meaningful observations on both items DAR-D31-00000373-0001 and DAR-D31-00000376-0001 at this point in time, considering that the letter issued by [REDACTED] is a preliminary assessment of the Accused [REDACTED] and will be followed by a full [REDACTED] report at the earliest opportunity. The CLRV respectfully requests the Chamber to be allowed to make observations, if at all, upon reception of the said report.

II. Confidentiality

4. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court, this filing is submitted as confidential as it refers to information not yet available to the public and responds to a filing bearing the same classification.

III. Submissions

5. The Chamber has discretion in deciding what evidence may assist in determining the appropriate sentence pursuant to Articles 76 and 78 of the Rome Statute and Rule 145 of the Rules of Procedure and Evidence (“the Rules”). In exercising such a discretion, the Chamber must assess whether additional evidence for sentencing

¹ ICC-02/05-01/20-1243-Conf.

² ICC-02/05-01/20-1243-Conf, Annex 1.

is: (1) *prima facie* relevant; (2) addressing matters already dealt with in the Judgment pursuant to Article 74 of the Statute; and (3) unique.

6. The CLRV will therefore focus the present response on Items 1-2; 4-5; 9; 10-11 and 16-18 of the Annex 1 of the Defence Request.

Items 1 and 2 and Items 4 and 5

7. Although the proposed evidence from witnesses D-0040 and D-0041 is not necessarily redundant with the evidence already on the record nor relitigates its facts established in the Trial Judgment, the CLRV defers to the discretion of the Chamber as to the necessity to admit those particular items for sentencing, in light of the relevant jurisprudence.
8. Given that the proposed testimonies of D-0040 and D-0041 pertain to efforts undertaken by the Accused five years after the relevant period to the charges, in [REDACTED] that falls outside of the scope of the charges for which the Accused was convicted, the CLRV raises concerns about the relevance of this evidence. Moreover, the witness statements provide no indication that the Accused was involved in a broader or a national peace process, further diminishing the relevance and weight to be afforded to this evidence, if any. The CLRV submits that the Defence failed to substantiate how the Accused's contributions "[REDACTED]"³ and his *post facto* "conduct after the events underpinning the charges for which he was convicted"⁴ is tied to relevant factors to determine the appropriate sentence to be imposed against the Accused or to any mitigating circumstances.
9. Further, the CLRV recalls the relevant jurisprudence regarding efforts to promote peace, reconciliation and social cohesion as a mitigating factor. Such efforts are only given weight when they are genuine and concrete.⁵ *Post facto* efforts have received

³ Defence request to submit prior recorded testimony of witnesses pursuant to Rule 68(2)(b) and Rule 68(3) for sentencing, [ICC-02/05-01/20-1244-Red](#), para. 9.

⁴ Defence request to submit prior recorded testimony of witnesses pursuant to Rule 68(2)(b) and Rule 68(3) for sentencing, [ICC-02/05-01/20-1244-Red](#), para. 10.

⁵ *The Prosecutor v Germain Katanga*, Decision on Sentence pursuant to article 76 of the Statute, [ICC-01/04-01/07-3484-tENG](#), para. 91; *The Prosecutor v Thomas Lubanga*, Decision on Sentence pursuant to Article 76 of the Statute, [ICC-01/04-01/06-2901](#), para. 87; *The Prosecutor v. Ntaganda*, Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 218 ; *The Prosecutor v Ngaïssona*, Judgment, [ICC-01/14-01/18-2784-Red](#), para. 4685.

limited to no weight in past cases.⁶

10. Considering the above and the fact that Trial Chamber's discretion to admit additional evidence for sentencing is to be exercised strictly with respect to matters which it finds relevant to the determination of the appropriate sentence to be imposed upon the Accused in the present case, the CLRV is of the view that the proposed statements should be assessed accordingly.

Item 9

11. The CLRV defers to the discretion of the Trial Chamber for the admission of Item 9. Nonetheless, the CLRV underscores that the ICC is not bound by domestic sentencing practices and laws.⁷ This principle is firmly rooted in international jurisprudence, including consistent caselaw from the ICTY.⁸

12. The CLRV further underlines that the Defence appears to be arguing that the Accused would benefit from an exemption under Sudanese law, as he is older than 70 years old. However, at a closer look, it seems that this exemption does not apply when the offense committed is extremely serious (in case of *hudud* and *qisas*),⁹ which can be the only qualification attributed to all the crimes for which the Accused was convicted. The CLRV notes that, given the penalties prescribed under the currently applicable Sudanese legal regime for the commission of similar crimes as for which the Accused was convicted, the Accused would therefore likely face the death penalty, which is not a punishment available under the jurisdiction of the ICC, or that the international community, let alone the CLRV, can condone

⁶ *The Prosecutor v. Ntaganda*, Sentencing Judgment, [ICC-01/04-02/06-2442](#), para. 224; *The Prosecutor v. Ngaißona*, Judgment, [ICC-01/14-01/18-2784-Red](#), paras. 4688-4699.

⁷ *The Prosecutor v. Bemba et al*, Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute", [ICC-01/05-01/13-2276-Red](#), paras. 77-78. "[...] No "inherent powers" may be invoked to introduce unregulated penalties or sentencing mechanisms not otherwise foreseen in the legal framework of the Court, as the Trial Chamber did in the present instance in pronouncing suspended sentences."

⁸ *The Prosecutor v. Ratko Mladic*, Judgment, [MICT-13-56-A](#), para.563. "[...] It is settled jurisprudence that the ICTY was not in any way bound by the laws or sentencing practices of the former Yugoslavia; rather, trial chambers were only obliged to take such practice into consideration".

⁹ Human Rights Council, Report of the Working Group on the Universal Periodic Review: Sudan, 20 April 2022, [U.N. Doc. A/HRC/50/16](#), para. 67 ; The Advocates for Human Rights, Sudan's Compliance with the African Charter on Human and Peoples' Rights: The Death Penalty, 14 February 2025, <https://www.theadvocatesforhumanrights.org/Res/Sudan%20ACHPR%20DP%20Final.pdf>, para. 6.

in any way.

13. Considering the above, the CLRV has doubts about the relevance and reliability of the proposed evidence. It omits to mention this exception to the exemption and appears to be tailored to support the Defence's argument that the Accused could benefit from the exemption prescribed in the Articles 48 and 49 of the 1991 Criminal Act regarding imprisonment for persons above 70 years old. It would, as a result, make him eligible for an alternative and non-custodial punishment, such as banishment. In any event, and as further elaborated below, the CLRV rejects the applicability of this type of punishment in the context of the ICC legal framework and certainly in the case at hand.

Items 10 and 11

14. The CLRV submits that the Chamber should decline to admit Items 10 and 11 on the basis that they are irrelevant to the legal regime of the Court and the determination of the appropriate sentence to be imposed against the Accused.
15. The Sudanese Supreme Court case submitted by the Defence deals with the rape of a child – an unquestionably dreadful crime – but bears no relevance to the present case, which concerns crimes under the Rome Statute of a wholly different nature and scale of gravity. One of the principal factors in determining an appropriate sentence is the gravity of the crimes committed, which must reflect in the sentence imposed on the Accused. For case law to serve as a meaningful legal analogy, it must involve comparable facts and offenses. This is obviously not the case here.
16. Furthermore, although the ICC may take into consideration domestic practice and laws, the punishment of banishment is not foreseen under the legal framework of the Court and therefore irrelevant in the present context.

Items 16 to 18

17. The CLRV submits that the Chamber should decline to admit the Items 16 to 18 as the Defence failed to articulate, let alone demonstrate, the *prima facie* relevance of those items to the Chamber's determination of the appropriate sentence.

18. The fact that community pharmacies are important in South Sudan and that they play a significant role in strengthening health systems in low to middle income countries is entirely irrelevant to mitigating circumstances within the meaning of Rule 145(2) of the Rules. The content of these articles is a general assessment of the health situation of the population on the ground - undoubtedly more than precarious - but does in no way specifically address the urgent need for the Accused in particular - a person prosecuted and convicted for serious international crimes - to be returned to his region in order to save medical shortcomings in his country. Consequently, those items have no bearing on the appropriate sentence and the personal circumstances of the Accused.
19. None of the items discussed above should be taken into consideration by the Chamber in the context of the sentencing procedure. The CLRV, whose focus is on the views and concerns of the participating victims, cannot leave this part of the Defence request unaddressed. Upon consultation with her clients, any unreasonable attempt from the Defence to suggest that the Accused should be wholly exempted from serving an appropriate prison sentence that reflects the Chamber's Trial Judgement of 6 October 2025, and instead serve a non-custodial sentence that would allow his return to Sudan, will be vigorously opposed by the CLRV.¹⁰

RELIEF SOUGHT

20. For the reasons set out above, the CLRV requests the Chamber to decline to admit items 10 and 11, and 16 to 18; defers to the Chamber's discretion in the disposition of the remainder of the Defence Request, subject to the above observations; and allow the CLRV to make observations on items DAR-D31-00000373-0001 and DAR-

¹⁰ Many participating victims have conveyed this message, as it will be set out more in details in the CLRV sentencing submissions. For instance, the following individuals have conveyed their wish that the Accused do not return to Sudan: **a/10302/22**, Townhall meeting with the CLRV, Goz Beida, Chad, 22 March 2025; **a/25179/21**, Townhall meeting with the CLRV, Goz Beida, Chad, 21 March 2025; **a/25019/21**, Townhall meeting with the CLRV, Goz Beida, 22 March 2025; **a/25080/21**, Message to CLRV FA, 1 September 2025; **a/06074/23**, Videoconference with the CLRV, 27 October 2025. Following the screening of the judgment on 6 October, one of the participating victim (**a/06060/23**) told the CLRV by message that: [...] The crimes this man committed against us are beyond description, and I pray that justice reaches him, God willing. I say that this man is a criminal and must be punished properly and officially, in a way that matches the scale of the crimes he committed against us".

D31-00000376-0001, upon reception of a full [REDACTED] report.

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 12 November 2025

At Berlin, Germany