Cour Pénale Internationale

International Criminal Court

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No.: **ICC-02/05-01/20**
Date: **06 November 2026**

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 Confidential Annex I

Defence Response to Additional Submissions on Reparations

Source: **Defence for Mr Ali Muhammad Ali Abd-Al-Rahman**

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☐ **Unrepresented Victims**

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INTRODUCTION

1. Pursuant to the "Order Requesting Additional Submissions" ("Order") issued by the Honourable Trial Chamber ("Trial Chamber") on 17 September 2026,[1] the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman ("Mr Abd-Al-Rahman", "Defence") submits this response ("Response to Additional Submissions") to the Additional Submissions filed by the Legal Representative of Victims ("LRV") on 16 October 2026 ("LRV Additional Submissions")[2] and to the Additional Submissions filed by the Trust Fund for Victims ("TFV") on 23 October 2026 ("TFV Additional Submissions").[3] All definitions and acronyms used in the Defence's Observations on Reparations filed on 22 May 2026 ("Defence Observations"),[4] Consolidated Response filed on 3 July 2026 ("Defence Consolidated Response")[5] and Response to TFV Submissions on Reparations filed on 16 July 2026 ("Defence Response to TFV") apply to this Response to Additional Submissions. The Defence does not repeat the submissions already made in its earlier submissions.

2. Pursuant to Regulation 23*bis*(1) of the Regulations of the Court ("RoC"), this Response to Additional Submissions is public but its Annex 1 is classified "Confidential", in order to preserve the identity of the person mentioned therein from premature public exposure.

3. The Defence first responds to the LRV's Additional Submissions (**I**), then to the TFV Additional Submissions (**II**) and concludes by making concrete submissions with the intent of assisting the Trial Chamber in its determination of the way forward (**III**).

4. At the outset, the Defence wishes to highlight that none of the various proposals made to date by the Parties and participants, including the Defence, with respect to reparations are aiming for perfection. The Defence is fully aware of the difficulties of offering meaningful reparations to the victims in the Case, for the reasons mentioned in the various submissions, most importantly the ongoing conflict in Sudan. What the Chamber, the Parties and the participants are dealing with is the art of the possible, with a common desire to grant victims reparations thate as meaningful as possible as quickly as possible. All Defence submissions, including this Response, should be read in the light of this reality. The Defence acknowledges that its proposals are not perfect. But the objective will be reached if they result in meaningful reparations to the case victims provided within a reasonable timeframe.

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[1] Order requesting Additional Submissions: ICC-02/05-01/20-1364, p. 4. The initial time limit of 30 October 2026 was postponed to 6 November 2026 by email of the Trial Chamber dated 16 October 2026, 13h53.
[2] LRV's Additional Submissions: ICC-02/05-01/20-1366, with Annex 1.
[3] TFV's Additional Submissions: ICC-02/05-01/20-1367, with Confidential *Ex Parte* – OTP, Defence, LRV, VPRS, TFV - Annex A.
[4] Defence Observations: ICC-02/05-01/20-1338-Conf (Public Redacted Version ICC-02/05-01/20-1338-Red).
[5] Defence Consolidated Response: ICC-02/05-01/20-1354.

I – Response to LRV's Additional Submissions

5. In its Additional Submissions, the LRV elected not to support the Defence's proposal regarding the establishment of a schedule providing specific amounts of *pretium doloris* for the various types of harm.[6] This position is stated at paragraphs 4 and 23 of the LRV's Additional Submissions. It is justified by suggesting a risk that "*such an approach appears more likely to be detrimental that beneficial to the victims. It risks establishing an undesirable hierarchy of harms, generating tensions among the victims' community, and creating unrealistic expectations*".

6. But the LRV does not begin to explain that anticipated risk, other than by vaguely referring to "*consultations with her clients*".[7] The LRV acknowledges that "*numerous domestic jurisdictions give a specific quantification of* pretium doloris *compensation, which is also known as "damages for pain and suffering" in common law jurisdictions.*"[8] The LRV mentions examples from France, Québec and Australia in her footnote 35, without explaining why these domestic systems are "*detrimental*" to victims, establish undesirable hierarchies of harms, generate tensions or create unrealistic expectations. The Defence respectfully submits that establishing a schedule would assist precisely in avoiding unrealistic expectations, since what can be expected would be known in advance. The LRV's further submissions made at paragraphs 26 to 28 with respect to the difficulties she anticipates in the establishment of the proposed schedule[9] confirm the need to seek assistance from an expert. The proposal of instructing an expert with assisting the Chamber in the establishment of a schedule of *pretium doloris* is predicated precisely on preventing the risks with which the LRV is concerned. It will ultimately be for the Chamber to determine a fair compensation for each eligible victim of the Case. The Defence's proposal is for the Chamber to be assisted by the appointment of an appropriate expert.

7. Instead of a schedule prepared by a qualified expert in reparations appointed by the Chamber, as proposed by the Defence, the only thing that the LRV proposes is what is conceded to be an "*indicative only*" list of prices[10] aimed at representing the victims' "*basic needs identified by the CLRV and her Field Assistants*", with respect to "*education; health; psychological support; livelihood and income-generating activities; water and sanitation; restoration of institutions; necessary infrastructure; land mapping; shelter and energy; and individual*

[6] Defence Consolidated Response, para. 31.
[7] LRV's Additional Submissions, paras. 4, 23.
[8] LRV's Additional Submissions, para. 24.
[9] LRV's Additional Submissions, paras. 26-28.
[10] LRV's Additional Submissions, para. 12.

rehabilitation." [11] The list is provided in the LRV's Annex 1. As emphasised, Annex 1's list provides "*figures provided by Field Assistants and trusted interlocutors, as well as extensive open-source research*", for whatever that means, and which "*cannot be verified*".[12] A cursory look at the LRV's Annex 1 shows that most of the prices listed there are prices "*received from CLRV interlocutors*", whose identities and qualifications to usefully and reliably inform the Chamber are not stated.[13]

8. What the LRV is proposing as the sole alternative to the Defence's proposal of appointing an expert to establish a schedule of specific amounts of *pretium doloris* for the various types of harm following a scientific approach is an "*indicative only*" estimation of prices corresponding to various "*needs*" of the victims. There is no explanation as to how and why the LRV's proposed list of prices would be less detrimental, more beneficial to the victims, would avoid tensions among the victims or would avoid unrealistic expectations, compared to the Defence's approach. There is also no explanation as to how the provided list of indicative prices for the fulfilment of various needs is intended to assist the Chamber in its determination of reparations measures in the present case. In its Order, the Chamber instructed the LRV and the TFV to "*file written observations on the amount of liability, including any calculations on the cost to repair the harm caused by the crimes of which Abd-Al-Rahman was convicted*".[14] "*Needs*" and reparations measures are two different things. Even admitting that the LRV's list of prices can assist in the determination of the victims' "*needs*", it is unclear how these may assist the Chamber in its determination of concrete reparations measures.

9. Turning to the specific question as to why the Defence recommends non-reliance on the Sudanese *diya*, one element of the answer is in the very same paragraph of the LRV's submissions: "*the appropriate* diya *is subject to several factors, including the status of the person that was killed* […] *the highest end representing compensation when the victim has a specific status such as an* umdah".[15] This should be enough to exclude *diya* from the Chamber's determination on reparations, as the described distinction is irreconcilable with the principle of non-discrimination before the Court enshrined in Article 21(3) of the Statute. The Sudanese *diya* is a clearly unfair and unequal system that creates distinctions between beneficiaries on various grounds such as their social status. It would be inappropriate to apply that system before the Court. The Defence also submits that the Court's independence requires it to determine

[11] LRV's Additional Submissions, para. 13.
[12] LRV's Additional Submissions, para. 14.
[13] LRV's Annex 1.
[14] Order requesting Additional Submissions, par. 3.
[15] LRV's Additional Submissions, para. 29.

reparations without being limited by the criteria of a specific domestic system, much less one that discriminates unfairly between beneficiaries. Darfur victims may receive reparations in Sudan based on *diya* or on any other system, pursuant to Article 75(6) of the Statute. The Defence hopes that they might. But this should have no effect on reparations granted to the victims in the Case by the Court. Should the Chamber consider relying on Sudanese *diya* further, the Defence would seek authorization to make further, more complete submissions on this specific aspect.

10. With the two above exceptions on the relevance of appointing an expert to establish a schedule of *pretium doloris* for the various types of harm and reliance on Sudanese *diya*, the Defence is in agreement and supports the LRV's submissions at paragraphs 15 to 22 of her Additional Submissions on (i) separating reparations costs from administrative and support costs and (ii) the impact of inflation.[16] The Defence further notes that, despite her stated disagreement with the Defence, the LRV's proposal of "*symbolic awards ordered by this Court, either as a form of individual reparation and/or collective community reparations*"[17] is essentially the same as the multi-phased approach proposed at paragraphs 52 to 60 of the Defence Consolidated Response.[18]

11. The Defence finally notes that the LRV takes no position as to the number of direct and indirect victims who may be found eligible for reparations in the case.[19] On this aspect, the Defence refers to its submissions made at paragraphs 7 to 12 of its Consolidated Response,[20] with the following precision. The 1,592 participating victims represented by the LRV should be the first priority targets for reparations, without further need to establish their eligibility. They form the group of beneficiaries of the first phase of reparations in the Defence's proposed multi-phased approach.[21] With respect to additional applications for reparations that the Registry may collect and transmit to the Court, these should all be notified to the Defence pursuant to Rule 94(2) of the Rules of Procedure and Evidence for the purpose of its representations under Article 75(3) of the Statute. The Defence will strongly oppose any attempt to circumvent its right to make representations on the eligibility of victim applicants, other than the 1,592 victim participants represented by the LRV, under Article 75(3) of the Statute.

12. Disagreements between the LRV and the Defence are essentially on the proper modalities of determining fair amounts for individual financial compensations: where the Defence proposes

[16] LRV's Additional Submissions, paras. 15-22.
[17] LRV's Additional Submissions, para. 25.
[18] Defence Consolidated Response, paras. 52-60.
[19] LRV's Additional Submissions, para. 7.
[20] Defence Consolidated Response, paras. 7-12.
[21] Defence Consolidated Response, paras. 52-60.

the assistance of an expert to establish a schedule of *pretium doloris*, the LRV offers an "*indicative only*" estimation of prices corresponding to various "*needs*" of the victims. The LRV and the Defence both agree on the need to provide victims with fair, meaningful and timely reparation, without creating "*expectations with respect to reparations that can never be met by this Court*".[22] But the best way of ensuring that expectations are not met is to oppose their fulfilment. This is the reason why the Defence is advancing solutions, albeit imperfect, to assist the Chamber in making fair and meaningful reparations for victims in Darfur a reality.

II – Response to TFV Additional Submissions

13. The Defence notes with satisfaction that, unlike the LRV, the TFV is essentially in agreement with the Defence's proposal to appoint an expert to establish a schedule of *pretium doloris*, as this "*may promote consistency and equal treatment among similarly situated victims*".[23]

14. The anticipated time frame of "*an initial five-year implementation period*" followed by "*a further five-year period of TFV engagement*", for a total of 10 years, mentioned at paragraph 13 of the TFV Additional Submissions[24] only reinforces the Defence's submission that its multi-phased approach proposed at paragraphs 52 to 60 of its Consolidated Response is the right way forward to achieve meaningful reparations for victims of the case within a decent period of time.[25] The Defence thus can only reiterate its earlier submissions on that matter.

III – Submissions on the Way Forward

15. Since the issuance of the Order, the Defence has been engaged in the identification of a possible candidate for appointment as an expert by the Chamber with a mandate to propose a schedule of specific amounts of *pretium doloris* for the various types of harm. The Defence has consulted the ICC List of Experts, has considered experts who have appeared before other international tribunals, in particular the International Court of Justice, on reparations issues, and members of various international boards entrusted with reparations issues. When candidates seemed to have a promising profile, the Defence tried to contact them by email or any other available means to introduce itself as the Defence team of Mr Ali Muhammad Ali Abd-Al-Rahman before the International Criminal Court and to explain that it was looking for potential candidates for appointment by the Court – not by the Defence – as experts mandated to assist the Chamber in the establishment of the proposed schedule. The Defence sent them for reference its

[22] LRV's Additional Submissions, para. 32.
[23] TFV's Additional Submissions, paras. 28, 31.
[24] TFV's Additional Submissions, para. 13.
[25] Defence Consolidated Response, paras. 52-60.

Observations[26], its Consolidated Response,[27] pointing specifically at its paragraph 31, and the Order to explain that, should they be interested and available, they should let us know so that we can include them in our Response to the Additional Submissions. Some potential candidates expressed interest, but had to decline for various reasons. One potential candidate confirmed interest and availability. The Curriculum Vitae of that person is provided in Confidential Annex 1 for consideration by the Chamber, the LRV and the TFV. Annex 1 is classified as confidential to avoid unnecessary and premature public exposure of the candidate.

16. The Defence therefore respectfully proposes the appointment by the Chamber of the candidate whose Curriculum Vitae is provided in Annex 1 as an expert tasked with assisting the Chamber with the establishment of a schedule of *pretium doloris* for the various types of harm. The exact parameters and instructions to provide to the expert will be determined by the Chamber. The Defence only reiterates its earlier submissions at paragraph 31 of its Consolidated Response, regarding the desirability of a comparative approach to various national reparations schemes in place in the various legal systems of the world, and thus not focused on Sudan, and the determination of indicia that could be used in combination with the relevant country's applicable GDP and/or any other indicia that that the expert may propose, to determine fair amounts of *pretium doloris* for each type of harm.

Respectfully submitted,

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

Dated this 06 November 2026
At The Hague, The Netherlands.

[26] Defence Observations.
[27] Defence Consolidated Response.