

## Annex A

Confidential redacted

## I. Introduction

1. Mr Nasser Amin Abdallah, former Common Legal Representative of Victims in the *Abd-Al-Rahman* case ("Former CLRV"), hereby respectfully requests reconsideration of Trial Chamber I's "Decision terminating the appointment of counsel", issued on 5 May 2022.<sup>1</sup>
2. Former CLRV submits that clear errors of reasoning in both the Registry's report to the Trial Chamber of 21 April 2022 ("Registry Report")<sup>2</sup> and in the Decision, justify reconsideration of the Decision and reinstatement of Former CLRV's mandate. Additionally, reconsideration of the Decision is necessary to prevent an injustice – namely, the Decision has removed Former CLRV from the case, thereby permanently depriving Former CLRV's clients from the benefit of his representation, assistance, and advice in the present proceedings. Former CLRV respectfully submits that a decision intervening in the attorney-client relationship in such a manner should only be taken as a last measure – particularly when it is the Chamber itself taking such decision<sup>3</sup> – in response to circumstances truly justifying a forced rupture in this important relationship.
3. The Decision erred in finding that: (i) Former CLRV was subject or previously subject to criminal proceedings (*this was never the case*); (ii) Former CLRV was

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<sup>1</sup> Decision terminating the appointment of counsel, confidential *ex parte*, 5 May 2022, ICC-02/05-01/20-683-Conf-Exp ("Decision") with two confidential and *ex parte* annexes.

<sup>2</sup> Annex 1 to the Decision, confidential *ex parte*.

<sup>3</sup> Former CLRV understands that under the Court's legal framework, once a counsel is appointed to represent a defendant or a participating victim before the Court, regardless of the method of appointment (directly by a client, by a Chamber acting under Regulation 76 or Regulation 80 of the Regulations of the Court, or the Registrar acting under Rule 90(3) of the Rules of Procedure and Evidence ("Rules")), the Code of Professional Conduct for counsel applies in full, including its regime for investigating, determining and sanctioning counsel for alleged misconduct breaching the Code. Former CLRV further understands that where allegations of misconduct exist, under the Court's legal framework (including the provisions of the Statute, Rules, Regulations of the Court, and Regulations of the Registry), Chambers of the Court are not normally empowered to unilaterally terminate or revoke a counsel's mandate. Instead, as determined by the ASP when adopting the Code of Conduct, the procedure set out under Chapter 4 of the Code is to be followed, which provides for investigation and if needed 'prosecution' by an independent Commissioner before an independent Disciplinary Board. Further, Article 43 of the Code provides for an automatic right of appeal for both sanctioned counsel and the Commissioner against the decision of the Disciplinary Board to a five-member Disciplinary Appeals Board composed of two members elected from the ICC List of Counsel, and three Judges of the Court, excluding any Judge dealing with the case from which the complaint arose. The ASP presumably adopted such a structure to ensure both the appearance and reality of the independence of counsel acting before the Court on behalf of their client(s) *vis-à-vis* the Chamber before which counsel are appearing, while also providing a robust and fair mechanism governing the ethical conduct of counsel practicing before the Court.

aware of the travel ban imposed on him prior to the submission of his candidate application form for the ICC List of Counsel ("ICC Application") or otherwise breached an applicable undertaking in the ICC Application by failing to inform the Registry of the travel ban once he became aware of it; (iii) Former CLRV pursued a "deliberate and continuing course of conduct [...] to mislead the Registry and the Chamber" in breach of the Code of Professional Conduct for counsel;<sup>4</sup> and (iv) the appropriate sanction was immediate termination of Former CLRV's mandate.<sup>5</sup>

4. In respect of point (iii) above, Former CLRV sincerely regrets and apologizes for having not informed the Trial Chamber and the Registry of the administrative travel ban imposed against him at the time his appointment as CLRV was being considered. In retrospect, Former CLRV acknowledges that this was relevant information that should have been placed before the Trial Chamber and Registry, and appreciates the Trial Chamber's principled finding that "Counsel's inability to travel and attend a hearing in person is not an issue which, if it stood alone, would be likely to warrant termination".<sup>6</sup> As addressed herein, Former CLRV respectfully advises that he had no intention of misleading the Trial Chamber or Registry.
5. Former CLRV respectfully requests that the Trial Chamber reconsider the Decision and reinstate his mandate as CLRV in the present proceedings.

## II. Classification

6. The present filing is classified as confidential *ex parte* CLRV and Registry only, as it is filed in response to a decision with this classification. A confidential redacted version of this submission will also be submitted, with limited redactions applied to sensitive personal information related to Former CLRV.

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<sup>4</sup> Decision, para. 18.

<sup>5</sup> *Id.*, paras 20-21.

<sup>6</sup> *Id.*, para. 11.

### III. Applicable Law and Receivability of request

7. As previously determined by the Trial Chamber, while the Court's legal texts do not specifically address the reconsideration of judicial decisions, "the Chamber has the power to reconsider its decisions upon request of the parties or *proprio motu*, particularly in light of Articles 64(2) and 67 of the Statute".<sup>7</sup> Reconsideration is an "exceptional" relief "and should only take place if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice".<sup>8</sup> Factors that could be relevant to determining whether reconsideration is warranted include the existence of new facts or "arguments arising since the decision was rendered".<sup>9</sup>
8. The Trial Chamber's mandate and obligations under Article 64(2) of the Statute – in particular ensuring that a trial is fair and expeditious and conducted with due regard for the protection of victims and witnesses – must also empower it to receive and determine requests for reconsideration from legal representatives of participating victims.<sup>10</sup>

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<sup>7</sup> Public Redacted Version of Decision on Defence request for reconsideration of "Decision on Defence submissions on cooperation with Sudan", 29 March 2022, ICC-02/05-01/20-650-Red ("Decision on Defence Reconsideration Request"), para. 10 (citing Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and familiarisation', 9 April 2020, ICC-01/12-01/18-734 ("Al Hassan Reconsideration Decision"), para. 11).

<sup>8</sup> Decision on Defence Reconsideration Request, para. 10 (*Al Hassan* Reconsideration Decision, para. 11; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Defence request seeking partial reconsideration of the 'Decision on Defence request for admission of evidence from the bar table', 22 February 2018, ICC-01/04-02/06-2241 ("*Ntaganda* Reconsideration Decision"), para. 4; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, ICC-02/04-01/15-468 ("*Ongwen* Reconsideration Decision"), para. 4).

<sup>9</sup> Decision, para. 26 (citing *Al Hassan* Reconsideration Decision, para. 11; *Ntaganda* Reconsideration Decision, para. 4; *Ongwen* Reconsideration Decision, para. 4; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba et al.*, Decision on Defence Request for Reconsideration of or Leave to Appeal 'Decision on "Defence Request for Disclosure and Judicial Assistance"', 24 September 2015, ICC-01/05-01/13-1282, para. 8; Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813, para. 19).

<sup>10</sup> See Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on the Legal Representative Request for Reconsideration of the Decision on Witnesses to be Called by the Victims Representatives, 26 March 2018, ICC-02/04-01/15-1210, para. 6 (accepting reconsideration as a remedy that must be available to the legal representatives of victims); Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Legal Representatives' Request Regarding Opening Statements, 29 November 2016 ICC-02/04-01/15-610, para. 7 (accepting reconsideration as a remedy that must be available to the legal representatives of victims).

9. Former CLRV notes that while he is no longer appointed in the case,<sup>11</sup> principles of natural justice weigh heavily in favour of the receivability of the present request in view of the Decision primarily being directed at Former CLRV and fundamentally impacting his status in the proceedings.

#### IV. Submissions on reconsideration

##### a. Non-existence of any criminal proceedings

10. Both the Decision and the 21 April 2022 Registry Report include clear errors when determining that the travel ban imposed on Former CLRV by Egyptian authorities was connected to past or pending criminal proceedings *against* Former CLRV, or that there were any past or pending criminal proceedings against Former CLRV whatsoever.
11. The clear error in the Registry Report, later repeated in the Decision when relying on the Report,<sup>12</sup> arises from the Registry Report taking as uncontroverted fact<sup>13</sup> two sentences from an NGO press release (“EuroMed Rights Alert”)<sup>14</sup> that Former CLRV provided to the Trial Chamber on 1 April 2022, for purposes of demonstrating the existence of the travel ban against him and the targeting of human rights lawyers and activists in Egypt.<sup>15</sup>
12. The Decision makes a similar clear error when concluding that, according to a press release from the NGO “Frontline Defenders” submitted by Former CLRV to the Trial Chamber, “criminal proceedings by the Egyptian authorities against him [Former CLRV] and others, had been resumed in March 2016”.<sup>16</sup>
13. Former CLRV hereby unequivocally confirms that he has received no notification and otherwise has no knowledge of any past or pending criminal proceedings

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<sup>11</sup> Former CLRV’s mandate was terminated by way of letter from the Counsel Support Section, dated 6 May 2022. On 19 October 2021, the Trial Chamber “appoint[ed] Ms von Wistinghausen and Mr Abdalla to work as a single team of CLRs to represent victims throughout the trial proceedings”. Decision on victims’ participation and legal representation in trial proceedings, 19 October 2021, ICC-02/05-01/20-494, para. 16(i).

<sup>12</sup> Decision, para. 16 (citing Registry Report).

<sup>13</sup> Registry Report.

<sup>14</sup> Annex 1 to the Decision, confidential *ex parte*.

<sup>15</sup> Former CLRV’s email to Trial Chamber I, 1 April 2022 at 14:54 (included in Annex 1 to the Decision, confidential *ex parte*).

<sup>16</sup> Decision, para. 15 (emphasis added).

against him. It was a clear error for the Decision to have determined otherwise.

14. Former CLRV submits as confidential *ex parte* **Annex A1** a criminal record inspection certificate issued by the Egyptian Ministry of Interior on 4 June 2022, which states that “no felonies are found in” Former CLRV’s criminal record. Former CLRV also submits as confidential *ex parte* **Annex A2**, a certificate of good standing issued by the Egyptian Bar Association on 4 June 2022.

*i. The Registry Report*

15. As noted in the Registry Report, the press release from the EuroMed organization includes the following two sentences: “*The ban [against Amin] is a result of the investigation in case 173/2011, known as the NGO foreign funding trial, which targets NGOs that receive funds from abroad. EuroMed Rights is particularly worried at this news as the ban could result in criminal charges for which Amin [sic] incur up to 25 years in prison.*”
16. Strikingly, given its foundational reliance on this source, the Registry’s 12 April 2022 email inquiry to Former CLRV (further to the Presiding Judge’s 6 April 2022 email instruction to CSS),<sup>17</sup> makes no mention or inquiry whatsoever of the existence or possibility of criminal proceedings against Former CLRV. The Registry’s queries were limited to whether the ban is compatible with Former CLRV’s mandate, when the travel ban may be resolved, and Former CLRV’s previous information to the Trial Chamber of his inability to travel due to Covid-19 restrictions. The Registry’s final request in this email, that Former CLRV “kindly comment” on “[a]ny other information which may be relevant to the present matter”, cannot reasonably be considered an inquiry into the serious concern that the Registry apparently held – based on the EuroMed Rights Alert – that Former CLRV had failed to inform the Court about past or pending criminal proceedings.
17. Had such inquiry been made, Former CLRV would have advised the Registry, as

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<sup>17</sup> Both communications included in Annex 1 to the Decision, confidential *ex parte*.

he aimed to correct in his 25 April 2022 email to the Trial Chamber,<sup>18</sup> that he has “not received any judicial notification that” he is subject or has ever been subject to any criminal proceedings whatsoever, whether related to Case 173 (the ‘foreign funding’ case) or otherwise. The 11 February 2020 memorandum from the Egyptian Public Prosecutor’s Office transmitted with Former CLRV’s 25 April 2022 communication<sup>19</sup> confirms this; it states that Former CLRV is among six individuals in respect of whom the investigating judge in charge of Case 173 has **not** provided “any decisions related to them”.

18. As explained in his communication to the Trial Chamber of 25 April 2022, Former CLRV only learned that he was subject to an *administrative* travel ban on 14 July 2016, at Cairo International Airport, when attempting to travel to Beirut for a conference. This ban was implemented “without prior notification” given to Former CLRV, as related in the 18 July 2016 press release from the NGO Front Line Defenders (also attached to the 25 April 2022 communication).<sup>20</sup> While Former CLRV understands that the travel ban was imposed on him (among other human rights lawyers and activists) in retaliation for his representation of some of the targeted NGO employees in Case 173 in court, seeking to lift travel bans against them, and more generally for his work advocating on behalf of human rights lawyers and civil society activists targeted by arbitrary government measures, Former CLRV has never been notified, and is otherwise not aware, of any criminal proceedings against him.<sup>21</sup>

19. Accordingly, it is an unequivocal error for the Registry Report to have determined that Former CLRV breached any undertaking in his ICC Application in respect of reporting to the Court any past or pending criminal proceedings against him. The EuroMed Rights Alert, while undoubtedly written in good faith, is legally and logically faulty in this particular respect; the administrative travel ban could not itself “result in criminal charges” as the Alert suggests. Any

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<sup>18</sup> Annex 2 to the Decision, confidential *ex parte*.

<sup>19</sup> Annex 2 to the Decision, confidential *ex parte*.

<sup>20</sup> Annex 2 to the Decision, confidential *ex parte*.

<sup>21</sup> See also confidential *ex parte* Annex A1 (criminal record inspection certificate).



criminal charges would result, of course, from allegations of criminal activity, not from the imposition of a travel ban. For sake of clarity, Former CLRV further informs that the domestic NGO with which he is associated – The Arab Center for the Independence of the Judiciary and the Legal Profession (ACILJP) – was not one of the organisations targeted in Case 173 when the case was reopened in 2016.<sup>22</sup>

*ii. The Decision*

20. As submitted above, the Decision clearly erred when it relied on the flawed finding in the Registry Report that, based on the EuroMed Rights Alert, Former CLRV had breached his undertaking in the ICC Application to inform or update the Court in respect of past or pending criminal proceedings against him.<sup>23</sup>
21. The Decision contains a further clear error when assessing the “Frontline Defenders” press release, concluding that the item reveals that “criminal proceedings by the Egyptian authorities against him [Former CLRV] and others, had been resumed in March 2016”.<sup>24</sup> This understanding is incorrect and constitutes a clear error.
22. Contrary to the conclusion in the Decision, the Frontline Defenders press release does not report that criminal proceedings had resumed against Former CLRV in March 2016. The press release only informs that the “ongoing” “foreign funding case” (Case No. 173) resumed its proceedings in March 2016, and that “[t]he Egyptian judiciary, among other authorities, have ordered travel bans against staff members of human rights organisations in the framework of” this case (emphasis added). It specifically names three individuals – Mr Gamal Eid, Mr Hossam Bahgat, and Mr Mohamed Zarea – against whom the investigating judge

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<sup>22</sup> As reported in the Frontline Defender Urgent Appeal: “Nasser Amin is an Egyptian human rights defender and director of the Arab Centre for the Independence of the Judiciary and the Legal Profession in Egypt and a member of the National Council for Human Rights. He advocates for legal reform in the judicial system, including ensuring that the right to a fair trial is upheld.” Former CLRV was a member of the National Council for Human Rights (a state-affiliated body) from 2014 through December 2021.

<sup>23</sup> Decision, para. 16.

<sup>24</sup> *Id.*, para. 15 (emphasis added).



in Case No. 173 ordered travel bans between February and June 2016.

23. In respect of Former CLRV, the press release advises that: *"On the evening of 14 July 2016, security officers at Cairo International airport prevented Nasser Amin from travelling to Beirut for a conference, following an order by the Public Prosecutor[[].] No reason or any additional information were provided as the basis for the ban, however it is believed to be related to the ongoing foreign funding case [...]"* (emphasis added). The Frontline Defenders press release does not report that Former CLRV was a suspect or defendant in Case No. 173, or that the investigating judge in the case ordered the travel ban against Former CLRV. Instead, as indicated in the press release, and as Former CLRV hereby confirms, he was informed by security officers at the airport that the travel ban had been issued by the Prosecutor General. The Egyptian State Council – Supreme Administrative Court has determined that travel restriction decisions issued by the Prosecutor General are administrative in nature, not criminal law decisions, as the Prosecutor General has no authority under Egyptian criminal procedure law to impose travel bans.<sup>25</sup>
24. As the press release informs, and as Former CLRV likewise understands, the Egyptian authorities were cracking down and retaliating in general against human rights lawyers and members of civil society in Egypt in the context of the Case No. 173 proceedings, regardless of whether or not individuals were defendants in or subjects of the case itself: *"Egyptian authorities are increasing their pressure on human rights defenders and journalists using various measures including travel bans, the freezing of bank accounts, and arbitrary detention. Front Line Defenders is concerned by the travel bans imposed on Nasser Amin and Reda El Danbouki, as it believes that they are being restricted solely as a result of their legitimate and peaceful work in the defence of human rights"* (emphasis added). Accordingly, the call to

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<sup>25</sup> State Council – Supreme Administrative Court, Department of Guidelines Unification, *Ab Al Raheem Mohammad Mustafa Jad Qindil v. Prosecutor General, Minister of Interior, and President of Administration Board of the Egyptian Tourism Company*, Judgment No. 12251, 6 April 2013, available at: <https://manshurat.org/node/1115> (Disposition: *"The Court rules that the State Council has the jurisdiction of an administrative judiciary body to adjudicate in cases of appeals against the decisions issued by the Public Prosecution to ban travel, in the manner indicated in the grounds, and orders that the appeal be returned to the competent chamber to decide on the issue."*). A copy of the decision is provided in confidential **Annex A3**. A full translation in English of the decision is provided in confidential **Annex A4**.

action “urges the authorities in Egypt to: 1. Immediately and unconditionally remove the travel ban[] imposed against Nasser Amin [...]” (emphasis added).

25. As Former CLRV sought to clarify in his 25 April 2022 communication to the Trial Chamber, and as addressed above, the 11 February 2020 memorandum from the Egyptian Public Prosecutor’s Office<sup>26</sup> confirms that Former CLRV is not among the eight individuals against whom a travel ban was issued in connection with criminal proceedings – namely, by the investigating judge in Case 173. As explained in Former CLRV’s 25 April 2022 communication (and addressed above), the travel ban imposed on Former CLRV is wholly administrative in nature.<sup>27</sup>

26. For the reasons above, it was a clear error for the Decision to have determined, at paragraphs 15 to 17, that Former CLRV breached any undertaking in his ICC Application to inform or update the Court regarding any past or pending criminal proceedings against him. Former CLRV respectfully submits that this clear error, in conjunction with the additional errors and issues addressed below, justify the Trial Chamber’s reconsideration of the Decision.

27. Former CLRV respectfully submits that, at the very least, the record should be corrected so that the Trial Chamber confirms they are no longer operating under the misapprehension that Former CLRV failed to inform the Court about any past or pending criminal proceedings against him.

b. ICC Application does not envision candidates or ICC List Counsel informing the Court about administrative travel bans

28. The Decision committed a clear error in determining that the ICC Application includes a “clear question” in respect of administrative travel bans<sup>28</sup> imposed

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<sup>26</sup> Annex 2 to the Decision, confidential *ex parte*.

<sup>27</sup> Sixteen Egyptian government agencies possess the authority, or at least have exercised authority, to issue travel restrictions. This reality is alluded to in the Frontline Defenders Appeal (“Travel bans have been ordered by the Egyptian judiciary, among other authorities, against staff members of human rights organisations [...]” (emphasis added)).

<sup>28</sup> As addressed in the previous section, both the Registry Report and Decision erred in determining that the travel ban imposed on Former CLRV was connected to criminal proceedings against him; Former CLRV has never been notified and is otherwise not aware of any past or pending criminal proceedings against him.

against a candidate or admitted ICC List counsel,<sup>29</sup> or that Former CLRV otherwise breached his undertaking under the ICC Application by “fail[ing] to communicate the aforesaid travel ban to the Court”.<sup>30</sup>

29. First, as explained by Former CLRV in his 25 April 2022 communication to the Trial Chamber, and as corroborated by the Frontline Defenders Urgent Appeal,<sup>31</sup> Former CLRV only became aware of the existence of the administrative travel ban on 14 July 2016 – almost four months after submission of his ICC Application dated 20 March 2016 – when Former CLRV was prevented by security officers at Cairo International Airport from boarding his scheduled flight to Lebanon. It was accordingly a clear error for both the Registry Report and Decision<sup>32</sup> to have determined that Former CLRV should have noted a travel ban on his ICC Application, which he did not become aware of until almost four months later.

30. Second, and of crucial importance, it was in any event clear error for the Decision to have determined that the ICC Application includes a “clear question” in respect of (administrative) travel bans imposed against a candidate or admitted ICC List counsel,<sup>33</sup> or that Former CLRV otherwise breached his undertaking under the ICC Application by “fail[ing] to communicate the aforesaid travel ban to the Court”.<sup>34</sup> The purpose of the ICC Application, as confirmed by the Court’s website,<sup>35</sup> is to ascertain whether a lawyer has the necessary qualifications, professional experience and ethical fitness required by Rule 22 of the Rules of Procedure and Evidence and Regulation 67 of the Regulations of the Court, to practice before the Court as an independent counsel representing defendants, participating victims, or other persons (such as witnesses pursuant to Rule 74). The ICC Application does not inquire whether, for example, counsel is actually available to practice before the Court at that moment (and that this information be continually updated), whether counsel has health issues that might impact their

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<sup>29</sup> Decision, para. 16.

<sup>30</sup> *Id.*, para. 17.

<sup>31</sup> Annex 2 to the Decision, confidential *ex parte*.

<sup>32</sup> Decision, para. 15.

<sup>33</sup> *Id.*, para. 16.

<sup>34</sup> *Id.*, para. 17.

<sup>35</sup> ICC website, ‘Legal professionals and the ICC’, <https://www.icc-cpi.int/get-involved/legal-professionals>.

ability to practice before the Court (and that this information be continually updated), or indeed, whether Counsel is able to travel to the Seat of the Court or other locations (and that this information be continually updated).

31. The ICC Application is solely aimed at assessing a counsel's qualifications, competence, and ethical fitness for practice before the Court, which, if deemed satisfactory, merely permits counsel to be admitted on to the ICC List of Counsel. Under the "Additional information" section of the ICC Application (starting at page 9 of the Application), the first, third and fourth questions concern disciplinary or criminal offences / proceedings.<sup>36</sup> As addressed above, the travel ban against Former CLRV is administrative in nature, and does not arise from any criminal proceedings against Former CLRV. The second question under this section asks: "*Are you eligible for appointment as counsel at an international criminal court?*  *Yes (please provide details)*  *No*" (emphasis added). This question is clearly aimed at eliciting whether or not a candidate meets the criteria to be appointed before *any* international criminal tribunal; it does not enquire into a candidate's health, current availability for appointment, or ability to travel, etc. It was accordingly a clear error for the Decision to have determined that the ICC Application included a "clear question" in respect of whether a candidate was subject to an (administrative) travel ban.<sup>37</sup>

32. Paragraph 17 of the Decision notes the undertaking in the ICC Application signed by Former CLRV, emphasizing in particular the language: "*I hereby undertake to inform the Court in the event of a change in my circumstances*" and "*I hereby undertake to inform the Court of any future criminal proceedings that may be initiated against me*". Former CLRV breached neither of these undertakings. As submitted above, no criminal proceedings have ever been brought against Former CLRV.

33. In respect of the undertaking to "inform the Court in the event of a change in []

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<sup>36</sup> The questions are, respectively: (i) "Have you ever been subject of a disciplinary sanction by the bar association(s) or the controlling administrative authority with which you are registered or by an international criminal court?"; (iii) "Have you ever been convicted of a criminal offence, excluding minor traffic violations?"; (iv) "Are any criminal proceedings currently being brought against you?"

<sup>37</sup> Decision, para. 16.

circumstances”, this language, in view of the purpose and content of the ICC Application, and more importantly Regulation 69(3) of the Regulations of the Court,<sup>38</sup> must be understood as limited to information concerning counsel’s qualifications and ethical fitness for practice before the Court – *i.e.* the information specifically requested by the Registry and provided in the Application Form (for example, disciplinary proceedings brought against counsel or revocation of counsel’s license to practice).<sup>39</sup> This language cannot reasonably be understood as requiring an admitted ICC List Counsel to regularly update the ICC Registry on their life circumstances (including, for example, an administrative travel ban, and/or a health condition that might impact their ability to travel) falling outside the parameters of the professional, experiential, and ethical requirements set out under Rule 22 of the Rules and Regulation 67 of the Regulations of the Court.

34. At the very least, given the ambiguity of this language, and the lack of any question in the ICC Application related to a candidate’s ability to travel internationally (which is not a requirement for admittance to the List of Counsel), it was a clear error for the Decision to have determined that Former CLRV, as presumably one of several hundred individuals on the ICC List of Counsel as of 2016, committed a clear and knowing breach of the applicable undertaking through his non-notification to the ICC Registry of the imposition of the administrative travel ban, after he became aware of such a ban.<sup>40</sup>

c. Former CLRV did not pursue a deliberate and continuing course of conduct to mislead the Court in breach of the Code of Conduct

35. The Decision committed a clear error in determining that Former CLRV pursued a “deliberate and continuing course of conduct [...] to mislead the Registry and

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<sup>38</sup> Regulation 69(3) of the Regulations of the Court provides that: “Counsel and persons seeking to act as counsel shall immediately inform the Registrar of any changes to the information he or she has provided that are more than *de minimis*, including the initiation of any criminal or disciplinary proceedings against him or her.” (emphasis added)

<sup>39</sup> See ICC Disciplinary Board, *The Registrar v. Mr Herve Diakiese*, DO-01-2010, [Decision of the Disciplinary Board](#), 9 July 2010, paras 43-48 (finding that counsel practicing as a Legal Representative of Victims in the *Mbarushimana* case (ICC-01/04-01/10) failed to notify the Registrar of counsel’s suspension by counsel’s national bar of his right to practice law, in breach of his undertaking in the ICC Application to update a change in the circumstances reported in counsel’s original application).

<sup>40</sup> Decision, para. 17.

the Chamber" in breach of the Code of Professional Conduct for counsel ("Code of Conduct").<sup>41</sup>

36. Former CLRV sincerely regrets and apologizes for not having informed the Trial Chamber and the Registry of the administrative travel ban imposed against him, at the time his appointment as CLRV was being considered. Former CLRV understands, in retrospect, that this was relevant information that should have been placed before the Trial Chamber and Registry. Former CLRV greatly appreciates the Trial Chamber's principled finding that "Counsel's inability to travel and attend a hearing in person is not an issue which, if it stood alone, would be likely to warrant termination".<sup>42</sup>

37. Former CLRV respectfully advises that he had no intention of misleading the Trial Chamber or Registry in breach of the Code of Conduct. Instead, when accepting his appointment as co-CLRV, Former CLRV acted on his good faith understanding that: (i) the administrative travel ban against him would be lifted in the near future, as has been the case for many other similarly targeted human rights lawyers and civil society activists in Egypt beginning in 2021; (ii) his co-CLRV would be fully available to attend proceedings at the Seat of the Court in the interim; and (iii) that Former CLRV would otherwise be able to conduct his mandate remotely in view of the location of the vast majority of the participating victims (in Darfur, Chad, or the diaspora) and the prevailing security situation in Chad and Sudan. Former CLRV also appreciates CLRV Ms von Wistinghausen's expression of solidarity with Former CLRV in respect of the travel ban issued against him due to Former CLRV's human rights work, and her assurance to the Trial Chamber "that the travel ban has at no time affected the effective representation" of the participating victims and "will not, if it happened for some more time".<sup>43</sup>

38. There was, accordingly, no deliberate misleading of the Chamber or the Registry

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<sup>41</sup> Decision, para. 18.

<sup>42</sup> *Id.*, para. 11.

<sup>43</sup> CLRV Ms von Wistinghausen's email to the Trial Chamber, 28 April 2022 (Annex 2 to the Decision, confidential *ex parte*).



in respect of Former CLRV's non-notification of the administrative travel ban at the time his appointment as CLRV was being considered. As submitted above, Former CLRV acknowledges that the appropriate course of action would have been to advise the Trial Chamber and Registry, in a confidential communication, of the existence of the travel ban. Former CLRV's failure to do so was an error of judgment, for which he hereby unreservedly apologizes; it was not, however, a deliberate plan to mislead the Court in violation of the Code of Conduct.

39. The Decision further found a "continuing course of conduct" to mislead the Chamber and Registry in breach of the Code of Conduct in respect of Former CLRV's requests to attend court hearings remotely and Former CLRV's request to the Registry to facilitate a mission to the Seat of the Court for trial opening. As regards Former CLRV's requests to attend court hearings remotely due to COVID-19 restrictions and health complications, and as Former CLRV explained to the Registry<sup>44</sup> and the Trial Chamber,<sup>45</sup> Former CLRV would have been unable to travel to the Netherlands due to such restrictions and health complications even in the absence of the travel ban. Former CLRV again confirms the veracity of this information. Former CLRV sincerely advises that there was no intention to mislead the Chamber and Registry in respect to the existence of the travel ban.

40. In advance of the 5 April 2022 opening of trial, by the time of which Former CLRV had fully recovered from the effects of his COVID-19 infection, Former CLRV requested the Registry to facilitate a mission to the Seat of the Court. Former CLRV made such request after having received a verbal confirmation by an Egyptian government official that the administrative travel ban against Former CLRV would be lifted, and that he would be able to travel to the Netherlands to attend the opening of trial and participate in-person in the proceedings. Unfortunately, the undertaking from the Egyptian government official went unfulfilled, and Former CLRV therefore instructed the CLRV case manager, on 31 March 2022, to cancel the mission request on the basis that Former CLRV was not

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<sup>44</sup> Annex 1 to the Decision, confidential *ex parte*.

<sup>45</sup> Annex 2 to the Decision, confidential *ex parte*.



able to travel to the Seat of the Court.<sup>46</sup> The very next day, 1 April 2022, Former CLRV wrote to the Trial Chamber to request permission to attend the opening of trial, and subsequent trial hearings, remotely, in light of the travel ban imposed on him.

41. Former CLRV respectfully advises, once again, that he had no intention to mislead the Court. Former CLRV's mission request to the Registry was made based on Former CLRV's good faith understanding that the travel ban against him would be lifted sufficiently in advance of the 5 April 2022 commencement of trial, and not with a deliberate intention to mislead the Court about Former CLRV's ability to travel to The Hague.

42. Former CLRV also wishes to clarify an apparent misunderstanding in the Decision<sup>47</sup> in respect of his request to the Registry, in his communication of 13 April 2022,<sup>48</sup> for the Registry's assistance, "if this is something that can be appropriately addressed [REDACTED]" (*emphasis added*). Former CLRV's prefacing information that he had [REDACTED] "refrained from involving the Chamber or the Registry of the Court in the matter" (*emphasis added*) is solely in relation to requesting the Court's active assistance in respect to resolving the travel ban *vis-à-vis* the Egyptian authorities. Former CLRV's request was not intended as an explanation or comment on why Former CLRV did not inform the Chamber and Registry of the existence of the travel ban at the time his appointment as CLRV was being considered. Once the Egyptian authorities became aware of Former CLRV's involvement in the *Abd-Al-Rahman* proceedings (as evidenced by the aforementioned communications with and undertaking given by an Egyptian government official),<sup>49</sup> [REDACTED].

43. For the reasons above, Former CLRV respectfully submits that the Decision committed a clear error in determining that Former CLRV pursued a "deliberate and continuing course of conduct [...] to mislead the Registry and the Chamber"

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<sup>46</sup> See Registry Report.

<sup>47</sup> Decision, para. 13.

<sup>48</sup> Annex 1 to the Decision, confidential *ex parte*.

<sup>49</sup> See para. 40 *supra*.

in breach of, *inter alia*, articles 24, 7(3), 9(3) and 12 of the Code of Conduct.<sup>50</sup> Former CLRV fully acknowledges and accepts committing an error in judgment in having not notified the Chamber and Registry of the travel ban; however, as set out above, Former CLRV never intended to deliberately mislead the Court in this respect.

d. Immediate termination of Former CLRV's appointment was disproportionate

44. Former CLRV respectfully submits that in light of the preceding submissions on reconsideration, it was a clear error, and disproportionate, for the Decision<sup>51</sup> to order the immediate termination of Former CLRV's mandate.
45. As submitted above, and contrary to the determinations in the Decision, Former CLRV did not breach his undertaking in the ICC Application to inform the Court of any past or pending criminal proceedings against him. Further, Former CLRV did not breach any applicable undertaking in the ICC Application in respect of reporting the administrative travel ban imposed on him. Accordingly, Former CLRV submits that there was no legal basis for the Court to terminate his appointment "without notice", as provided in the ICC Application undertaking.
46. In respect of the Decision's determination that Former CLRV pursued a deliberate and continuing course of conduct to mislead the Court in breach of the Code of Conduct, Former CLRV has explained above that his actions were an error in judgment, but without any intent to deliberately mislead the Court.
47. Former CLRV further observes that no material harm to the rights and interests of the participating victims in this case has occurred as a result of Former CLRV having not informed the Trial Chamber and Registry of the existence of the travel ban at the time his appointment as CLRV was being considered, to date.<sup>52</sup>

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<sup>50</sup> Decision, paras 14, 18.

<sup>51</sup> In this respect, Former CLRV refers to his submissions in footnote 3 *supra*, regarding the applicable legal framework of the Court and the restrained approach a Chamber should adopt when considering whether it is appropriate to terminate the appointment of a counsel practicing in a case before that same Chamber.

<sup>52</sup> See CLRV Ms von Wistinghausen's email to the Trial Chamber, 28 April 2022 (Annex 2 to the Decision, confidential *ex parte*).

48. Lastly, Former CLRV respectfully submits that reconsideration of the Decision's sanction of termination of appointment is necessary to prevent an injustice. The Decision has removed Former CLRV from the case, and thereby permanently deprived Former CLRV's clients from the benefit of his representation, assistance and advice in the present proceedings.
49. In view of the above factors, Former CLRV respectfully submits that a sanction less than termination of Former CLRV's appointment is appropriate in the circumstances, and that it was disproportionate, a clear error, and not in the interests of justice, for the Decision to have immediately terminated Former CLRV's appointment.
50. As regards the proportionality of sanction, and as far as Former CLRV is aware based on publicly available information, it appears that the Decision's ordering the termination of Former CLRV's mandate is the most serious sanction thus far issued against a counsel for a (alleged) violation of the Code of Conduct since the Court's establishment. This includes cases where counsel continued practicing before the Court after being suspended by their national bar (*public reprimand issued*),<sup>53</sup> conducted themselves inappropriately with a female subordinate member of male counsel's team while on mission in violation of Article 7.1 of the Code (*public reprimand issued*),<sup>54</sup> addressed the client of another counsel without approval of other counsel and interfered with the mandate of duty counsel (*public reprimand issued*),<sup>55</sup> or against a professional investigator found to have violated the Code of Conduct for Investigators (speaking with a protected OTP witness and revealing the names of two other protected witnesses (*two month suspension from practice before ICC*)).<sup>56</sup>

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<sup>53</sup> ICC Disciplinary Board, *The Registrar v. Mr Herve Diakiese*, DO-01-2010, [Decision of the Disciplinary Board](#), 9 July 2010, paras 43-48.

<sup>54</sup> ICC Disciplinary Board, *Disciplinary Complaint against Mr. Paul Djunga*, SDO-2017-18-DB, [Decision of the Disciplinary Board](#), 6 September 2017.

<sup>55</sup> ICC Disciplinary Board, *Disciplinary Complaint against Mr. Goran Sluiter*, SDO-2019-89-DB, [Decision of the Disciplinary Board in the Case of Mr Goran Sluiter](#), 19 December 2019.

<sup>56</sup> ICC Disciplinary Board, *Disciplinary Complaint against Mr Jean Logo Dhengachu*, [Decision of the Disciplinary Board](#), SDO-2020-23-DB, 6 July 2020.

## V. Relief Requested and Undertaking

51. For the reasons set out above, Former CLRV respectfully requests the Trial Chamber to reconsider the Decision to terminate his appointment and to restore his mandate as CLRV in these proceedings.
52. Former CLRV hereby undertakes, should his mandate be restored, to:
- i. Submit ongoing updates to the Trial Chamber and Registry on a minimum two-week basis in respect of all relevant information concerning Former CLRV's continuing efforts to have the administrative travel ban lifted. In this respect, Former CLRV advises that on 30 May 2022, he was informed by an official of the National Council for Human Rights (a state-affiliated institution)<sup>57</sup> that the procedure to lift the administrative travel ban is advancing, and that the finalisation of this procedure may be completed in the coming days; *AND*
  - ii. Submit an application seeking the Trial Chamber's permission to withdraw from the case pursuant to Regulation 82 of the Regulations of the Court, should the travel ban remain in place at the time of re-commencement of trial hearings after the Court's summer recess.<sup>58</sup>

Respectfully submitted,



Nasser Mohamed Amin Abdalla  
Former Common Legal Representative of Victims

Dated this 10 June 2022  
At Cairo, Egypt

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<sup>57</sup> Former CLRV was a member of the National Council for Human Rights from 2014 to December 2021.

<sup>58</sup> In this respect, Former CLRV confirms the position he is expressed to CSS in an email dated 13 April 2022 that, should the travel ban continue to remain in place, it would significantly limit his capacity to carry out the mandate of CLRV in the long term (see Annex 1 to the Decision, confidential *ex parte*). In accordance with this position, Former CLRV has provided the undertaking in paragraph 52(ii).