

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **4 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

CLR V Request for Leave to Reply to Defence “Response to Request ICC-02/05-01/20-1076-Corr-Red”

Source: The Common Legal Representative of Victims

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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Defence**

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**Victims Participation and Reparations
Section**

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I. Introduction

1. The Common Legal Representative of Victims (“CLRV”) respectfully requests Trial Chamber I’s leave, pursuant to Regulation 24(5) of the Regulations of the Court, to file a reply to the Defence for Mr Abd-Al-Rahman’s (“Defence”) response¹ to the public redacted version of the corrigendum to the “CLRV Request for Trial Chamber guidance on mapping of potential beneficiaries”.²
2. The CLRV submits that there are three new issues arising from the Response – as identified hereunder – that could not reasonably have been anticipated, and in respect of which submissions in reply will assist the Trial Chamber in properly considering and determining the Request.

II. Submissions on request for leave to reply

(a) Issue 1: alleged lack of clarity in respect of request for guidance on the outer bounds of direct and indirect victims

3. The Response submits that the Request does not ask the Chamber to take a position on the outer bounds of direct and indirect victims who may qualify as potential beneficiaries arising from the four charged incidents in the case, nor specify the nature of the clarifications requested.³ Accordingly, it is submitted that the Chamber cannot take a position ‘in the absence of a question’.⁴
4. The CLRV submits that the Response demonstrates a misinterpretation of the relief sought in the Request, which could not have reasonably been anticipated in light of the relevant contents of the Request.⁵
5. If granted leave, the CLRV will address this misinterpretation. Such submissions in reply will ensure that the Chamber is not misled on the nature and content of the relief sought in the Request.

¹ Réponse à la Requête ICC-02/05-01/20-1076-Corr-Red, 29 February 2024, [ICC-02/05-01/20-1091](#) (“Response”).

² Corrigendum to “CLRV Request for Trial Chamber guidance on mapping of potential beneficiaries”, 16 February 2024 (ICC-02/05-01/20-1076-Conf), 22 February 2024, ICC-02/05-01/20-1076-Conf-Corr (public redacted version filed on 27 February 2024: [ICC-02/05-01/20-1076-Corr-Red](#)) (“Request”).

³ Response, para. 4.

⁴ *Id.*

⁵ *See* Request, paras 12, 18, 20, 21, 23, 24, 27, 28, 31, 32.

(b) Issue 2: proposed standard of evidence, Defence rights, and the presumption of innocence

6. The Response submits that only the beyond a reasonable doubt standard of assessment may be applied for factual findings at the trial stage,⁶ not the balance of probabilities standard proposed in the Request in respect of the preliminary and non-binding factual guidance sought, and that to proceed with such findings at this stage would require the exercise of ‘prejudgment’ by the Chamber, including in respect of the admissibility of evidence, which is incompatible with the rights of the Defence and the presumption of innocence.⁷
7. The CLRV submits that the uncompromising position taken by the Defence, as summarised above, could not have been reasonably anticipated in view of the Defence having initiated and agreed to a motion for acquittal procedure before the Trial Chamber.⁸
8. If granted leave, the CLRV will demonstrate how the motion for acquittal procedure initiated by the Defence in these proceedings – and in particular the standard of proof and presumptions applied, and the Trial Chamber’s exercise of its power as a finder of fact in that context – are relevant to determining the basis and propriety of the CLRV Request, including in respect of the above noted complaints raised in the Response.

(c) Issue 3: alleged lack of substantiation on the necessity of the relief requested

9. Similar to the matter identified under ‘Issue 1’, the Response submits that the Request does not provide ‘any indication’ that would enable the Trial Chamber’s understanding of why the requested factual and legal guidance are necessary at this stage of the proceedings, beyond submitting that the requested guidance

⁶ Response, para. 6.

⁷ *Id.*, paras 11-15.

⁸ *See, e.g.*, Application for leave to present a motion for acquittal, 6 March 2023, [ICC-02/05-01/20-891](#); Skeleton Argument in Defence Motion for Acquittal, 17 March 2023, ICC-02/05-01/20-903-Conf (public redacted version: [ICC-02/05-01/20-903-Red](#)).

would facilitate the work of the CLRV and the Victims Participation and Reparations Section.⁹

10. The CLRV submits that the Response demonstrates a misinterpretation of the Request, which could not have reasonably been anticipated in light of the relevant contents of the Request.¹⁰

11. If granted leave, the CLRV will address this misinterpretation. Such submissions in reply will ensure that the Chamber is not misled on the purpose, value, and application of the relief sought in the Request.

III. Conclusion

12. For the foregoing reasons, the CLRV respectfully requests Trial Chamber I to grant the CLRV leave to reply to the three issues arising from the Defence Response identified above.

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 4 March 2024
At Berlin, Germany

⁹ Response, paras 7-10.

¹⁰ See Request, paras 1, 2, 11, 12, 15, 18, 33, 34, 37, 40.