



Original: English

No. ICC-02/05-01/20

Date: 10 March 2023

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 public Annex

Fifth decision on the admission of victims to participate in trial proceedings

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

The Office of the Prosecutor

Karim A.A. Khan
Nazhat Shameem Khan
Julian Nicholls

Counsel for the Defence

Cyril Laucci
Iain Edwards

Legal Representatives of Victims

Natalie von Wistinghausen
Anand Shah

Legal Representatives of Applicants

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

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

1. On 19 October 2021, Trial Chamber I (the ‘Chamber’) issued a decision on victims’ participation and representation in trial proceedings, in which it adopted Pre-Trial Chamber II’s victim application process (the ‘ABC Approach’) and appointed a team of Common Legal Representatives for Victims (the ‘CLRv’) (the ‘Decision on victims’ participation’).¹
2. On 12 November 2021, as a result of a Defence request, the Chamber issued an oral decision confirming the use of the ABC Approach.²
3. On 6 December 2021, as instructed by the Chamber,³ the Registry filed its first assessment report on victims’ applications for participation in trial proceedings.⁴ It also transmitted 142 Group A applications to the Chamber.⁵
4. On 14 January 2022, the Chamber confirmed the continued participation of 130 victims admitted by Pre-Trial Chamber II and authorised 12 new applicants identified in Group A within the First Registry Report to participate as victims in the trial proceedings.⁶
5. On 25 August 2022, the Registry transmitted 31 victims’ applications for participation from Group A,⁷ as well as an accompanying assessment report.⁸

¹ Decision on victims’ participation and legal representation in trial proceedings, ICC-02/05-01/20-494.

² Transcript of hearing, 12 November 2021, ICC-02/05-01/20-T-017-Red-ENG, p. 44, line 18 to p. 47, line 8. A request for leave to appeal this decision was also rejected. *See* Decision on the Defence’s requests for leave to appeal the oral decisions on the inadmissibility of evidence and victims’ participation, 2 December 2021, ICC-02/05-01/20-525. *See* Requête aux fins d’autorisation d’interjeter appel de la décision orale de rejet la Requête ICC-02/05-01/20-497, 18 November 2021, ICC-02/05-01/20-520. *See* Requête relative au processus d’admission des victimes à participer à la procédure, ICC-02/05-01/20-497. *See also* Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing, 18 January 2021, ICC-02/05-01/20-259.

³ Decision on victims’ participation and legal representation in trial proceedings, 19 October 2021, ICC-02/05-01/20-494, para. 16(ix).

⁴ First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-02/05-01/20-528+ 528-Conf-Anx. None of the parties or participants responded to the Registry’s Report.

⁵ First Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings, 6 December 2021, ICC-02/05-01/20-529 (with 142 confidential *ex parte* annexes).

⁶ First decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-556.

⁷ Second Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-02/05-01/20-727 (with 31 confidential *ex parte* annexes).

⁸ Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-02/05-01/20-728+728-Conf-Anx-Corr. None of the parties or participants responded to the Registry’s Report.

6. On 3 October 2022, the Chamber authorised the participation of the 31 victims in the present trial proceedings,⁹ and instructed the Registry to start mapping potentially eligible beneficiaries of reparations.¹⁰

7. On 31 October 2022, the Registry transmitted 101 victims' applications for participation from Group A,¹¹ as well as an accompanying assessment report.¹²

8. On 22 November 2022, the Chamber authorised the participation of the 101 victims in the present trial proceedings.¹³

9. On 23 December 2022, the Registry transmitted 102 victims' applications for participation from Group A,¹⁴ as well as an accompanying assessment report.¹⁵

10. On 1 February 2023, the Chamber authorised the participation of the 102 victims in the trial proceedings.¹⁶

11. On 24 February 2023, the Registry transmitted 113 victims' applications for participation from Group A,¹⁷ as well as an accompanying assessment report.¹⁸

Applicable law

12. The Chamber incorporates by reference the general framework applicable to the assessment of victims' applications.¹⁹

Group A applications

13. The Registry has transmitted 113 new applications which it concludes fall within Group A. The Chamber accepts this assessment as they meet the required conditions

⁹ Second decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761.

¹⁰ Second decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761, paras 13-20.

¹¹ Third Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-02/05-01/20-804 (with 101 confidential *ex parte* annexes).

¹² Third Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-02/05-01/20-805 + 805-Conf-Anx. None of the parties or participants responded to the Registry's Report.

¹³ Third decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-817.

¹⁴ Fourth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-02/05-01/20-840 (with 102 confidential *ex parte* annexes).

¹⁵ Fourth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-02/05-01/20-841 + 841-Conf-Anx. None of the parties or participants responded to the Registry's Report.

¹⁶ Fourth decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-861.

¹⁷ Fifth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-02/05-01/20-882 (with 113 confidential *ex parte* annexes).

¹⁸ Fifth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-02/05-01/20-881 (with confidential annex). None of the parties or participants responded to the Registry's Report.

¹⁹ First decision on the admission of victims, ICC-02/05-01/20-556, para. 4.

for granting victim status under the Rule 85(a) Test. The Chamber has not identified any clear, material error in the Registry's assessment and therefore authorises their participation as victims.

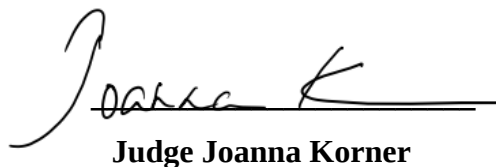
14. A full list with the victims admitted to participate in trial is annexed to the present decision.

Legal representation

15. In line with the legal representation system already in place, the CLRV will represent the newly admitted victims.²⁰

16. For these reasons, the Chamber:

- i. Authorises the 113 new applicants identified in Group A of the Registry's Report to participate as victims in the trial proceedings;
- ii. Decides that the CLRV will represent the 113 newly admitted victims hereby authorised to participate in the proceedings henceforth.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 10 March 2023

At The Hague, The Netherlands

²⁰ Decision on victims' participation, ICC-02/05-01/20-494, paras 7-13. Following a decision by the Chamber, the team representing the participating victims is presently composed of Ms von Wistinghausen and Mr Shah, *see* Transcript of hearing, 9 May 2022, ICC-02/05-01/20-T-038-CONF-ENG, p. 2, lines 9-14.