

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **5 May 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

**Public redacted version of “Second Registry Request to Extend the Time Limit to
Submit Victim Applications for Participation”**

Source: The Registrar

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

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I. Introduction

1. Pursuant to regulation 35(1) of the Regulations of the Court (“ROC”), the Registry hereby requests an extension of the deadline to transmit victims’ applications for participation in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘Ali Kushayb’) (“Applications” and “Case”, respectively). The current deadline for the Registry to submit the Applications to the Chamber is the end of the presentation of the Common Legal Representative of victims’ (“CLR”) case.¹ Due to the time periods required to process the received Applications with the current (translation) capacity of the Registry, and the impact that the evolving security situation in Sudan has on the victim application process, the Registry requests a moderate extension of deadline to the effect that victims are allowed to submit their Applications to the Registry until the end of the presentation of the CLR case – and that all Applications received by the Registry until that date may be subject to transmission to the Chamber. The Registry would transmit the Applications thus received as soon as possible after that date, on a rolling basis.

II. Procedural History

2. On 9 July 2021, Pre-Trial Chamber II issued its decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’).²
3. On 19 October 2021, the Chamber issued its “Decision on victims’ participation and legal representation in trial proceedings”,³ in which it *inter alia* endorsed the

¹ See para. 6, *infra*.

² Pre-Trial Chamber II, “Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)”, 9 July 2021, ICC-02/05-01/20-433.

³ Trial Chamber I, “Decision on victims’ participation and legal representation in trial proceedings”, 19 October 2021, ICC-02/05-01/20-494.

victim application procedure previously adopted at the pre-trial stage of the proceedings.⁴

4. On 7 February 2022, the Chamber set the deadline for the submission of applications for participation in the present case at the end of the presentation of the Prosecution case.⁵
5. On 22 December 2022, the Registry filed a request for an extension of time limit to submit victims' applications in the present proceedings ("First Registry's Request").⁶
6. On 9 February 2023, the Chamber granted the First Registry's Request in part by extending the deadline for submitting victims' applications in the case until the end of the CLR case,⁷ which is currently scheduled between 22 and 26 May 2023.⁸

III. Classification

7. Pursuant to regulation 23*bis*(1) of the RoC this request is classified as confidential *ex parte*, only available to the Registry, since it contains sensitive information pertaining to the victim application process. The Registry is filing a public redacted version of the present request concomitantly.

⁴ *Id.*, para. 15, referring in footnote 26 to the admission system established by Pre-Trial Chamber II in its "Decision establishing the principles applicable to victims' participation and representation during the Confirmation Hearing", 18 January 2021, ICC-02/05-01/20-259 ("18 January 2021 Decision"), paras 13-20 and 34.

⁵ Transcript of hearing, 7 February 2022, ICC-02/05-01/20-T-020-CONF-ENG, p. 70, line 2 to p. 71 line 6. The Chamber further indicated that victims' applications transmitted between the end of the Prosecution's case and the end of the evidence in the case will not be automatically rejected, but considered on a case-by-case basis, see Transcript of hearing, 7 February 2022, ICC-02/05-01/20-T-020-CONF-ENG, p. 70, p. 8, lines 8-12.

⁶ Registry "Registry Request for Extension of Time Limit to Submit Victim Applications for Participation, ICC02/05-01/20-838-Conf-Exp. Confidential and public redacted versions were notified on the same day, ICC-02/05-01/20-838-Conf-Red and ICC-02/05-01/20-838-Red, respectively.

⁷ Trial Chamber I, "Decision on the Registry's request for extension of time limit to submit victims' applications for participation", 9 February 2023, ICC-02/05-01/20-868.

⁸ *Id.*, para. 19.

IV. Submissions

A. Update on the victim applications received and processed

8. To date, the Registry has received 1870 Applications in relation to the Case.⁹ Out of these, approximately:

- 600 Applications were assessed at the pre-trial stage as falling outside the scope of the Case;¹⁰
- 600 Applications were transmitted to the Chamber in accordance with the victim application procedure previously approved; as a result, the Chamber has authorized 488 victims to participate in the proceedings;¹¹
- 260 Applications are currently being processed by the Registry and translated from Arabic to English, following which they will be assessed by the Registry's Victims Participation and Reparations Section ("VPRS") for subsequent transmission to the Chamber;
- 250 Applications have been so far assessed as requiring additional information before their transmission to the Chamber as Group A Applications – these include 100 Applications for which the VPRS has already received additional information which are currently being processed, including their translation from Arabic to English.

⁹ 785 applications were submitted to the Registry before the commencement of the confirmation of charges hearing on 24 May 2021. To date, 1085 applications have been submitted to the Registry subsequent to the confirmation of charges hearing. The latter number is subject to frequent adjustment as forms – and translations – continue to be received.

¹⁰ Approximately 600 applications for participation in the proceedings were not transmitted during the pre-trial stage of the proceedings, either because they were assessed by the Registry as incomplete or as falling outside the scope of the Case. See Registry, "Third Registry Assessment Report and Transmission of Victim Applications for Participation in Pre-Trial Proceedings", 7 May 2021, ICC-02/05-01/20-383-Conf, paras 21 and 24.

¹¹ The VPRS had identified that two applications authorised to participate at trial stage, a/25132/21 and a/10018/22, emanate from the same victim.

9. As previously reported, the victim application process has faced several hurdles, slowing down the Registry's initial progress.¹² Yet, the number of Applications received has more recently continued to scale up, and quite significantly so during the first quarter of 2023, as an effect of the VPRS' increased capacity to interact with partners in the field. Since the First Registry's Request, the VPRS has received nearly 500 new Applications as well as additional information in relation to approximately 100 incomplete applications (such as identity documents, proofs of kinship, or clarifications on the events described by victims in their application forms).
10. Nonetheless, the pace of the processing of Applications is affected by the increasing volume of required translations. The majority of Applications and information received from victims are handwritten and in Arabic. In some instances, the copies of Applications received are of low quality and need IT assistance. This puts a heavy strain on the few Arabic translators available to the Registry, who also have to honour other translation requests in this Case (and Situations before the Court). Despite these competing priorities, the Registry continues to process the Applications in the most efficient manner,¹³ and transmits them to the Chamber as soon as possible thereafter.

B. Impact of the security situation in Sudan on the organization of the victim application process

11. [REDACTED].
12. Since 15 April 2023, armed conflict erupted in the Sudanese capital of Khartoum and has since spread to different regions in Sudan, including in particular Darfur.¹⁴

¹² First Registry's Request, paras 12 and 14.

¹³ VPRS' own Arabic staff capacity provides as much assistance as possible to keep the transmission system fast, efficient and reliable.

¹⁴ "UN chief and officials condemn fighting between Sudanese forces", 15 April 2023, at <https://news.un.org/en/story/2023/04/1135702> (accessed on 4 May 2023).

Multiple attempts at a ceasefire¹⁵ have reportedly been unsuccessful, leading to an increasingly dangerous security situation in many parts of the country.¹⁶ Also, telephone and internet communication networks are heavily impacted.

13. The rapid deterioration of the security situation has had major consequences on the organisation of the victim application process in Darfur, notably:

- Applicants and victims falling within the remit of the Case may have already moved or could soon move—depending on how the situation continues to evolve in Darfur—from their initial place of residence to other more secure sites/areas; some may move to neighbouring countries.¹³ Their change of location will expectedly hamper access to them, at least in the near future.
- VPRS faces difficulties in communicating with its intermediaries, due to the frequent blackouts of the internet and other communication services in Sudan.¹⁷ [REDACTED].
- The priorities of intermediaries are shifting away from conducting VPRS field activities to catering for their own safety and wellbeing, as the fighting in Sudan has caused further shortages of food, water, medicines, and fuel; this, in turn, has led to clashes, looting, and burning of houses in Darfur, adding to a situation where it is increasingly difficult for intermediaries to operate at all.¹⁸ [REDACTED].¹⁹ These factors either hinder or, in fact, stop the intermediaries' activities related to the victim application process.²⁰

¹⁵ "Sudan envoy calls for ceasefire compliance, as concern mounts over West Darfur", 26 April 2023, at <https://news.un.org/en/story/2023/04/1136062> (accessed on 4 May 2023).

¹⁶ "Statement by the Special Representative of the Secretary General for Sudan on Violence in El Geneina", 26 April 2023, at <https://unitams.unmissions.org/en/statement-special-representative-secretary-general-sudan-violence-el-geneina> (accessed on 4 May 2023).

¹⁷ "Internet blackout adds to woes of Sudanese civilians", 23 April 2023, at <https://www.thenationalnews.com/mena/2023/04/23/internet-blackout-adds-to-woes-of-sudanese-civilians/> (accessed on 4 May 2023).

¹⁸ "Today's top news: Sudan", 27 April 2023, at <https://www.unocha.org/story/todays-top-news-sudan-2> (accessed on 4 May 2023).

¹⁹ [REDACTED].

²⁰ The fighting throughout Sudan however, has created an increasing risk for the VPRS intermediaries in getting caught in the fire, with some reporting that their own homes have been shelled.

14. Nevertheless, some intermediaries have continued to submit to VPRS further complete Applications, as recently as a few days prior to the filing of this present request. They have also expressed their willingness to continue to collect further Applications, given the continued expressed interest to apply for participation on the part of the victims to whom they have access.

C. New deadline to be set for the transmission of Applications

15. Despite the intermediaries' resourcefulness in finding alternative solutions to reach more victims, the continuing conflict poses real obstacles that prevent, or at least delay their access to the victims. This in turn delays the receipt of completed Applications by the Registry to be transmitted by the Chamber's current deadline.²¹ The Registry continues to explore all possibilities to assist its partners on the ground. However, mindful of the present additional challenges slowing down its efforts, the Registry submits that a moderate modification of the current deadline would be warranted.

16. In light of the above-mentioned challenges, the Registry thus proposes to the Chamber to modify the deadlines to submit/transmit applications in the Case as follows:

- applicants are allowed to submit their Applications to the Registry until the end of the CLR's case, and
- the Registry transmits Applications to the Chamber thus received on a rolling basis as soon as possible thereafter.

17. The Registry submits that granting the suggested amendment to the deadline would afford victims much-needed certainty about the processing of their

²¹ The Registry takes note of the probability of the CLR's case ending beyond the currently assigned date (transcript of hearing, 19 April 2023, ICC-02/05-01/20-T-116-Red-ENG, p. 24, lines 10-23), and notes that some of the reasons that could prevent the case from ending by the assigned date are in fact impeding the collection of Applications (ICC-02/05-01/20-T-116-Red-ENG, p. 23, lines 5-18).

Applications while not negatively impacting the expeditiousness of proceedings or the rights of the Defence.

18. The Registry considers that the Applications assessed as complete following their translation could be transmitted within a few months.²² It proposes to provide updated information on the number of forms received, completeness and other factors as soon as the deadline for victims to submit their Applications has expired.



p.p. Marc Dubuisson, Director, Division of Judicial Services,
on behalf of
Osvaldo Zavala Giler, Registrar

Dated this 5 May 2023
At The Hague, the Netherlands

²² It is presently unclear how rapidly Applications assessed as requiring additional information could be completed. For these particular Applications, the Registry is currently unable to provide an estimate for their transmission to the Chamber.