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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**

**Thirteenth Registry Assessment Report on Victim Applications for Participation
in Trial Proceedings**

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. On 19 October 2021, Trial Chamber I ("Chamber") issued its "Decision on victims' participation and legal representation in trial proceedings" ("Decision"),¹ in which it *inter alia* endorsed the victim application procedure previously adopted at the pre-trial stage of the proceedings ("Victim Application Procedure").²
2. In compliance with the Decision, the Victims Participation and Reparations Section of the Registry ("VPRS") shall:
 - A. classify victim applicants into three categories: (a) applicants who clearly qualify as victims ("Group A"); (b) applicants who clearly do not qualify as victims ("Group B"); and (c) applicants for whom the Registry could not make a clear determination for any reason ("Group C") ("A-B-C Approach"),³ and
 - B. transmit complete applications to the Chamber and produce assessment reports periodically and on a rolling basis.⁴
3. The Registry hereby submits its thirteenth assessment report on a total of seven complete applications to participate in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')* ("Applications" and "Case", respectively).
4. The Applications are listed in the annex to the present submission ("Annex") and are being transmitted separately to the Chamber in accordance with the Victim Application Procedure.⁵

¹ Trial Chamber I, "Decision on victims' participation and legal representation in trial proceedings", 19 October 2021, ICC-02/05-01/20-494.

² *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.

³ 18 January 2021 Decision, para. 34.

⁴ Decision, paras 15 and 16 (ix).

⁵ 18 January 2021 Decision, para. 34.

II. Procedural History

5. On 9 July 2021, Pre-Trial Chamber II (“PTC”) issued its decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’) (“Confirmation Decision”).⁶
6. On 19 October 2021, the Chamber issued the Decision, in which it adopted the Victim Application Procedure.⁷
7. Between 14 January 2022 and 14 August 2024, the Chamber has authorised the participation of 1458 victims⁸ in the trial proceedings.⁹
8. On 17 October 2024, the Registry transmitted to the Chamber 129 Group A victim applications (“Transmission”),¹⁰ together with an assessment report (“Report”).¹¹
9. On 22 October 2024, the Registry informed the Chamber that: i) it had erroneously included in its Transmission one application which it had assessed as falling

⁶ 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.

⁷ Trial Chamber I, “Decision on victims’ participation and legal representation in trial proceedings”, 19 October 2021, ICC-02/05-01/20/494, para. 15. On 16 May 2023, the Chamber set the deadline for victims to submit to the Registry applications to participate in the proceedings to 7 June 2023, see “Decision on the Second Registry’s Request to Extend the Time Limit to Submit Victim Applications for Participation”, 16 May 2023, ICC-02/05-01/20-943, para. 12(a) and (c).

⁸ The VPRS detected that two applications authorised to participate at the trial stage, namely a/25132/21 and a/10018/22, emanated from the same victim. It has therefore considered a/10018/22 as a duplicate of a/25132/21.

⁹ Trial Chamber I, “First decision on the admission of victims to participate in trial proceedings”, 14 January 2022, ICC-02/05-01/20-556; “Second decision on the admission of victims to participate in trial proceedings”, 3 October 2022, ICC-02/05-01/20-761 (“Second Decision”); “Third decision on the admission of victims to participate in trial proceedings”, 11 November 2022, ICC-02/05-01/20-817; “Fourth decision on the admission of victims to participate in trial proceedings”, 1 February 2023, ICC-02/05-01/20-861; “Fifth decision on the admission of victims to participate in trial proceedings”, 10 March 2023, ICC-02/05-01/20-901; “Sixth decision on the admission of victims to participate in trial proceedings”, 10 May 2023, ICC-02/05-01/20-933; and “Seventh decision on the admission of victims to participate in trial proceedings”, 16 August 2023, ICC-02/05-01/20-1001; “Eighth decision on the admission of victims to participate in trial proceedings”, 3 November 2023, ICC-02/05-01/20-1038 ; “Ninth decision on the admission of victims to participate in trial proceedings”, 12 March, ICC-02/05-01/20-1100; “Tenth decision on the admission of victims to participate in trial proceedings”, 6 May 2024, ICC-02/05-01/20-1120 and “Eleventh decision on the admission of victims to participate in trial proceedings”, 14 August 2024, ICC-02/05-01/20-1165.

¹⁰ Registry, “Twelfth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings”, 17 October 2024, ICC-02/05-01/20-1193.

¹¹ Registry, “Twelfth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 17 October 2024, ICC-02/05-01/20-1192. The Registry informed the Chamber that, given the stage of the proceedings, it would seek authorisation from the Chamber before transmitting any further completed Group A or Group C applications for participation, see para. 20.

outside the scope of the case or requiring additional information;¹² and ii) omitted to include seven further applications it had assessed as falling within Group A.¹³

10. On 23 October 2024, the Chamber issued the Twelfth decision on the admission of victims to participate in trial proceedings,¹⁴ in which it admitted 128 new participating victims in the trial proceedings and authorised the Registry to transmit the aforesaid additional seven applications for participation assessed as falling under Group A.

III. Classification

11. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC") and in accordance with the Victim Application Procedure,¹⁵ the Annex to the present report is classified as confidential.

IV. Applicable Law

12. The Registry submits the present observations pursuant to article 68(1) and (3) of the Rome Statute, rules 85 to 89 and 92 of the Rules of Procedure and Evidence, regulation 86 of the RoC, and regulations 107 to 109 of the Regulations of the Registry.

V. Submissions

13. Applying the criteria set out in paragraph 16 of the 18 January 2021 Decision,¹⁶ the VPRS has assessed each of the aforesaid seven Applications transmitted herewith under Group A as complete. In conducting its *prima facie* assessment in accordance

¹² A corrected version of the Report was filed on the same day (ICC-02/05-01/20-1192-Corr).

¹³ Email from the Registry to Trial Chamber I on 22 October 2024 at 13:01.

¹⁴ Trial Chamber I, "Twelfth decision on the admission of victims to participate in trial proceedings", 23 October 2024, ICC-02/05-01/20-1197.

¹⁵ 18 January 2021 Decision, para. 34.

¹⁶ 18 January 2021 Decision, para. 16.

with the Victim Application Procedure,¹⁷ the VPRS confirms that each of the applicants in Group A meets the following criteria in establishing:

- i. The victim's identity;
- ii. The harm suffered; and
- iii. The causal link between the harm suffered and one or more of the crimes allegedly committed during an incident falling within the temporal, geographic and material parameters of the Case as described in the Confirmation Decision.

Observations in relation to criterion (i):

14. In line with the Court's jurisprudence, indirect victims must establish the identity of both themselves and the direct victims as well as their respective kinship.¹⁸ The VPRS has noted in the present case that in many instances, while applicants hold identity documents which display their full names and consequently their patrilineality, they do not possess other specific documents establishing kinship or the identity of the direct victims. In accordance with the Chamber's authorisation,¹⁹ the VPRS considers that:

- any identity document displaying the full name of the applicant is sufficient to establish proof of identity of/ kinship with an applicant's father/grandfather;²⁰ and

¹⁷ 18 January 2021 Decision, para. 17.

¹⁸ See for instance, Appeals Chamber, *The Prosecutor v. Joseph Kony and Vincent Otti*, "Judgment on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06'", 25 February 2009, ICC-02/04-01/05-371, para. 36; and Pre-Trial Chamber II, *The Prosecutor v. Yekatom and Ngaïssona*, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141, para. 35.

¹⁹ Emails from Trial Chamber I to VPRS on 22 December 2022 at 16:49 and on 12 October 2023 at 16:37.

²⁰ Unlike other naming conventions, which usually consist of first name and surname, the Arabic naming convention in print (i.e. in official documents) follows a system that consists of, *inter alia*: *Ism* (a given name), *Nasab* (parentage), and in some cases *Laqab* (epithet or surname). Therefore, the full name appearing on any official identification document intrinsically provides a proof of kinship for the patriarchal descent of any person.

- an applicant may qualify as indirect victim as a result of the harm suffered by:
 - (i) direct victims who are their siblings, and/or (ii) direct victims who are a child of the indirect victim when:
 - the direct victim's name is listed in the Prosecution Trial Brief,²¹ and
 - (i) both the applicant's and the direct victim's name display the same patriarchal descent - in case of siblings -; or (ii) the direct victim's name displays the name of the applicant – in case of children.

Observations in relation to criterion (iii):

15. Some applications do not explicitly state specific dates²² (omitting to specify either the day or the month of the alleged crimes, and/or using expressions such as “in the summer 2004”).
16. As the Registry has previously highlighted,²³ some victims face difficulties recalling the precise dates of the crimes allegedly committed due to the passage of time. In accordance with the 20 May 2021 Decision²⁴ and the Court's jurisprudence,²⁵ the VPRS assessed these applications mindful of the specific circumstances around every individual application, as well as the general context of the events at the time

²¹ Prosecution, “Corrected Version of ‘Prosecution’s Trial Brief’”, 5 January 2022, ICC-02/05-01/20-550-Conf-Exp-Corr (“Trial Brief”), annexes 11, 12, 17 and 23. A public redacted version of the Trial Brief was filed on 4 February 2022 (ICC-02/05-01/20-550-Corr-Red2).

²² This includes a/05152/23, a/05286/23 and a/10623/22.

²³ Registry, “Second Registry Assessment Report and Transmission of Victim Applications for Participation in Pre-Trial Proceedings”, 21 April 2021, ICC-02/05-01/20-358, paras 24-31. The issues with retrospective memory is compounded for victims who have suffered from a series of events, at different times and locations, over a long period of time.

²⁴ Pre-Trial Chamber II, “Decision on victim applications for participation, legal representation, leave to appeal and amicus curiae requests”, 20 May 2021, ICC-02/05-01/20-398, para. 44.

²⁵ See for instance, Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, “Second Decision on the Principles Applicable to Victims’ Applications for Participation”, dated 8 October 2018, ICC-01/12-01/18-146-tENG, paras. 18-22, and reference cited, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on 270 applications by victims to participate in the proceedings”, 25 October 2011, ICC-01/05-01/08-1862, para. 24, and “Public redacted version of ‘Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings’”, ICC-01/05-01/08-2247-Red, 19 July 2012, para. 36, and Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, “Decision on victims’ participation status”, 7 January 2016, ICC-02/11-01/15-379, para. 45 and references cited.

at issue. Specifically, it individually considered the relevant applications' internal coherence in the overall context of the alleged acts. In each of these applications, the applicants described specific events that correspond with the present case record, such as the arrests or killings of community leaders listed in the Prosecution Trial Brief,²⁶ or provided other sufficiently detailed contextual descriptions that sufficiently date the events.²⁷

17. The Registry anticipates it will keep receiving additional information in relation to incomplete applications.²⁸ It will continue to assess them according to the criteria established by the Chamber.²⁹ However, given the stage of the proceedings, it would seek authorisation from the Chamber before transmitting any completed Group A or Group C applications for participation.



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

Dated this 25 October 2024

At The Hague, the Netherlands

²⁶ See Trial Brief, annexes 11, 17 and 23.

²⁷ In these cases, the applicants provided contextual elements which match with the Prosecution Trial Brief. For instance, in relation to the Mukjar charges, applicants would describe the arrests of Fur males at checkpoints and during house-to-house searches (Trial Brief, paras 195, 341, and 345), the presence of Mr Abd-Al-Rahman or other alleged perpetrators (Trial Brief, para. 345), torture and inhumane conditions (Trial Brief, para. 196), as well as the execution of Fur men outside of Mukjar (Trial Brief, paras 198, 342, 346 and 36).

²⁸ The Registry is still seeking additional information in relation to approximately 200 applications received before the deadline set by the Chamber.

²⁹ 18 January 2021 Decision, paras 16-17.