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No.: ICC-02/05-01/20
Date: 2 November 2020

PRE-TRIAL CHAMBER II

Before: Judge Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN DARFUR, SUDAN
IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN
(“ALI KUSHAYB”)**

**Public
With Confidential Annex**

**Public Redacted version of “Registry Request for Authorization to use a Modified
Standard Application Form to Facilitate Victim Participation in the Case”,
8 October 2020, ICC-02/05-01/20-178-Conf**

Source: Registry

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

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**Victims Participation and Reparations
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I. Introduction

1. The Victims Participation and Reparations Section (“VPRS”) of the Registry hereby respectfully requests authorization from the Chamber to use a modified standard application form (“Modified Form”) to facilitate victim participation in the *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* case (“Case”). The Modified Form has been attached as a confidential annex to the present submission.

II. Applicable Law

2. The following provisions are of particular relevance to the present submissions: article 68(1) and (3) of the Rome Statute, rules 16, 85, 89 and 94 of the Rules of Procedure and Evidence (“Rules”), regulations 86 and 88 of the Regulations of the Court (“RoC”), and regulations 97, 98, and 100 of the Regulations of the Registry (“RoR”).

III. Classification

3. Pursuant to regulation 23*bis*(1) of the RoC, the annex to this document is classified as “confidential” so as to prevent the inadvertent use/circulation of the Modified Form before it has been authorized by the Chamber.

IV. Submissions

Background

4. The VPRS is presently in the process of facilitating victim engagement with the Court by *inter alia* communicating with relevant stakeholders, preparing relevant

information sessions and training various interlocutors on how best to complete the standard victim application form for participation in the proceedings.¹

5. Due to COVID-19 related restrictions and concerns, the physical contact normally associated with information sessions and victim application processes will remain extremely limited. There are also security considerations arising out of some of the Case locations (and their environs) compounding this limitation.
6. These challenges, set against a backdrop of relatively high interest in participation among the sizeable and geographically dispersed victim communities, are part of the reason why the VPRS has developed a different data format of the standard application form (presently available for download as a PDF document) allowing for electronic data entry by typing relevant information into the form in all designated spaces. In order to make the form entirely fillable through electronic means (*ie* on a PC, tablet or even smart phone), the VPRS is respectfully requesting to make one content amendment to the standard form, namely to remove the physical signature box for forms submitted electronically, as further outlined below.²

Prior Jurisprudence

7. Previous Chambers, including this present one, have held that for an application form to be complete, it requires 'a signature or thumb print of the applicant on the document'.³ Yet, the VPRS notes that the signature is not a statutory or otherwise regulatory requirement.⁴ In addition, in certain situation countries with low

¹ The VPRS notes that the standard form presently available for download on the ICC webpage specific to the *Abd-Al-Rahman* case (*see* at: <https://www.icc-cpi.int/pages/victims-info-page.aspx?for=%27abd-al-rahman%27>) was approved for use also specifically for the present case by Pre-Trial Chamber II via Pre-Trial Chamber II Communications, 8 July 2020 at 11:34. This form is currently available on the ICC website in English, French and Arabic.

² Paras. 8 *et seq.*

³ *See, eg, Pre-Trial Chamber II, The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision Establishing the Principles Applicable to Victims' Applications for Participation, ICC-01/14-01/18-141, 5 March 2019 (*Yekatom* Participation Decision), para. 31.

⁴ *See* Rule 94 of the RPE and Regulations 86, 88 of the RoC.

literacy levels or where cultural practices do not include a formal written tradition, the signature of victims is often a mere mark on the form (eg. an “X”). These marks have been accepted by Chambers in previous cases as satisfying the above-referenced signature requirement.

The Request

8. To address some of the challenges presented in facilitating victim engagement in the Case, the VPRS proposes, as one of many tools, a wholly electronic form that can be completed by victims in Darfur or neighbouring diaspora communities⁵ *off-line* with the assistance of trained VPRS intermediaries. The VPRS has had electronic form templates approved for use by Pre-Trial Chambers in previous cases before the Court.⁶ Following implementation, two of the key limitations of the previous electronic form template are that it demanded a steady internet connection (for the online form⁷) and that it needed to be printed out, signed and scanned before submission (for the PDF version of the application form). These seemingly minor additional requirements have resulted in the form being deemed at times unfit for purpose in the field in contexts where internet connectivity, access to IT technology and basic computing access remains limited or non-existent. Particularly in the relevant areas in and around-Sudan where the VPRS is interacting with relevant interlocutors, the level of communication technology is generally low, and IT hardware is often limited to simple devices such as portable PCs, tablets and smart phones (and no scanning and/or printing capacity). It is for

⁵ It may also be used to facilitate the victim application process in refugee camps in neighboring Chad.

⁶ *Yekatom* Participation Decision, para. 23; Pre-Trial Chamber I, “Décision fixant les principes applicables aux demandes de participation des victimes”, 24 May 2018, ICC-01/12-01/18-37, para(s). 32-33.

⁷ See at: <https://www.icc-cpi.int/pages/victims-info-page.aspx?for=%27abd-al-rahman%27>, presently available in English and French, and soon also in Arabic. This form can be filled in entirely online on a platform hosted by the ICC server; the use does not have to download anything on his/her own PC, thus leaving no trace of engagement with the ICC other than the browsing history (which can easily be deleted).

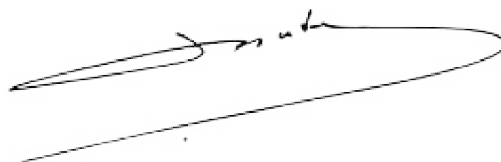
this reason that the VPRS respectfully requests to modify the electronic form by removing the physical signature box (which requires a print-out, signature and scan of the document to then be sent electronically) and replacing it with a *solemn undertaking*⁸ text box in the form that can be completed by filling in the victim's name electronically.

9. Owing to COVID-19 as well as the prevailing security/political situation in Sudan, a document that can be downloaded from the ICC homepage and filled in wholly electronically on a tablet or smart device, and then sent back to the Court electronically, could significantly help facilitate victim engagement ahead of the confirmation hearing.⁹
10. The VPRS considers that the present circumstances, as well as the limited overall value of the physical signature on the application form, militate in favour of exploring an even more accommodating electronic application process which allows the Registry to make more intelligent use of modern means of communication – and in particular those means of communication which are at victims' disposition in the present circumstances. Beyond Covid-19 related concerns, by way of example, this approach would enable [Redacted] to complete numerous applications on a single device (and later upload them upon reaching an internet connection) rather than having to secure considerable amounts of paperwork for which the relevant individual(s) would then have to try to physically ship [Redacted]. This does not obviate the necessary direct interaction between Registry staff and victims; yet, said interaction could be facilitated virtually (phone/Whatsapp/etc.) and the process of filling an application form could be entirely electronic and feasible already through a comparably simple device (e.g. a smart phone).

⁸ See attached annex.

⁹ It is noted that a copy/scan/photo of an applying victim's ID document still remains necessary to be submitted alongside an application for the latter to be complete.

11. A final benefit from encouraging the use of a wholly electronic application form is translation. Though the standard victim application form is available on the website in Arabic, the Court's capacity for translating completed forms submitted in Arabic remains limited. This is particularly true in a case involving potentially tens of thousands of victims. Having the forms completed electronically opens up the possibility of using a range of secure translation software solutions to help facilitate the translation into one of the working languages of the Court.¹⁰
12. The VPRS therefore respectfully requests the Chamber's authorization to deploy the attached fillable standard application form with the above-referenced amendment of the signature box in the *Abd-Al-Rahman* case.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 2 November 2020

At The Hague, The Netherlands

¹⁰ The Registry notes that this would be for the sole purpose of facilitating a preliminary, *prima facie*, legal assessment and would not take the place of a more formal translation service of an official court document.