

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/05-01/20  
Date: **26 February 2021**

**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 28 annexes, confidential *Ex parte*, only available to the Registry**

**Registry’s First Assessment Report and Transmission of Victim Applications for  
Participation in Pre-Trial Proceedings**

**Source: Registry**

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

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**Unrepresented Victims**

**Unrepresented Applicants for  
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**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Trust Fund for Victims**

## I. Introduction

1. In paragraph 34 of the “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing” (“First Decision”), the Single Judge authorized an admission system whereby the Victims Participation and Reparations Section (“VPRS”) shall “classify all complete applications into three categories: **Group A:** Applicants who clearly qualify as victims of this case. **Group B:** Applicants who clearly do not qualify as victims of this case. **Group C:** Applicants for whom the Registry could not make a clear determination.”<sup>1</sup>
2. Additionally, the Single Judge ordered the VPRS to transmit only “complete” forms relating specifically to the *Prosecutor v. Ali Muhammad Abd-Al-Rahman (Ali Kushayb)* case (“Case”) and to accompany each transmission with a report “which categorises the applications into the aforementioned three groups” and is notified to the “Chamber, the parties, and to the legal representatives chosen to represent the victims authorised to participate.”<sup>2</sup>
3. The VPRS hereby transmits its first report which includes a brief description of the assessment criteria applied in relation to the 28 applicants who clearly, in the Registry’s assessment, qualify as victims of this Case (Group A). The applications themselves have been attached as annexes to the present submission and only made available to the Chamber in accordance with paragraph 34 (bullet point 4) of the First Decision.<sup>3</sup>

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<sup>1</sup> Pre-Trial Chamber II, ‘Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing’, 18 January 2021, ICC-02/05-01/20-259, para. 34.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

## II. Classification

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the annexes to the present report are classified confidential *ex parte*, only available to the Registry, in accordance with the First Decision.<sup>4</sup>

## III. Procedural history

5. On 9 October 2020, the VPRS requested authorization from Pre-Trial Chamber II (“Chamber”) to use a modified standard application form to facilitate victim participation in the Case.<sup>5</sup>
6. On 4 November 2020, the Single Judge of the Chamber issued the “Decision on the Registry’s Request for Authorisation to use a Modified Standard Application Form for Victim Participation”, approving the Registry request.<sup>6</sup>
7. On 17 November 2020, the VPRS filed the “Registry Observations on Aspects Related to the Admission of Victims for Participation in Proceedings”.<sup>7</sup>
8. On 18 December 2020, the Chamber postponed the commencement of the confirmation hearing to 24 May 2021.<sup>8</sup>
9. On 18 January 2021, the Single Judge issued the First Decision setting out *inter alia* the applicable procedure for the transmission of victim application forms in the

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<sup>4</sup> *Id.*

<sup>5</sup> Registry, “Registry Request for Authorization to use a Modified Standard Application Form to Facilitate Victim Participation in the Case”, dated 8 October 2020 and notified on 9 October 2020, ICC-02/05-01/20-178 (“Registry Request to Use Modified Form”).

<sup>6</sup> Pre-Trial Chamber II, Single Judge, “Decision on the Registry’s Request for Authorisation to use a Modified Standard Application Form for Victim Participation”, 4 November 2020, ICC-02/05-01/20-198.

<sup>7</sup> Registry, “Registry Observations on Aspects Related to the Admission of Victims for Participation in Proceedings”, 17 November 2020, ICC-02/05-01/20-203.

<sup>8</sup> Pre-Trial Chamber II, ‘Decision on the Prosecutor’s Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits’, 18 December 2020, ICC-02/05-01/20-238.

proceedings and instructing the VPRS to begin filing applications “after the document containing the charges has been filed.”<sup>9</sup>

10. On 5 February 2021, the Single Judge issued the “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance” (“Clarification Decision”).<sup>10</sup>
11. On 24 February 2021, the Single Judge instructed the Registry to file all Group A applications currently in the possession of the VPRS.

#### **IV. Applicable Law**

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

#### **V. Report**

*Details on the assessment criteria applied to victims falling within Group A*

13. Applying the criteria set out in paragraph 16 of the First Decision, the VPRS has assessed each of the 28 applications transmitted under Group A as complete. In conducting its *prima facie* assessment in accordance with paragraph 17 of the First Decision, the VPRS confirms that each of the 28 applicants whose applications have been transmitted in Group A have established the following criteria:

- i. His or her identity;
- ii. The harm suffered; and

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<sup>9</sup> First Decision, para 34 (bullet 2).

<sup>10</sup> Pre-Trial Chamber II, Single Judge, “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance”, 5 February 2021, ICC-02/05-01/20-277.

- 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 charges contained in the warrants of arrest.

14. The VPRS also notes that each of the 28 applicants classified under Group A have nominated a lawyer to represent them in proceedings.<sup>11</sup> Noting the language from the Clarification Decision stating that “the choices made by each individual victim as regards their own legal representation will be duly considered and honoured [...]”<sup>12</sup>, the VPRS has provided a table below that demonstrates each of the Group A victims’ choice in counsel.

| ApplicationNumber | Legal Representative        |
|-------------------|-----------------------------|
| a/15002/18        | CONSTANTINIDE Diana         |
| a/20218/20        | NASSER Mohamed Amin Abdalla |
| a/20221/20        | NASSER Mohamed Amin Abdalla |
| a/20222/20        | NASSER Mohamed Amin Abdalla |
| a/20223/20        | NASSER Mohamed Amin Abdalla |
| a/20668/20        | CLOONEY Amal                |
| a/20669/20        | CLOONEY Amal                |
| a/20670/20        | CLOONEY Amal                |
| a/20673/20        | CLOONEY Amal                |
| a/20674/20        | CLOONEY Amal                |
| a/25004/21        | CLOONEY Amal                |
| a/25005/21        | CLOONEY Amal                |
| a/25007/21        | CLOONEY Amal                |
| a/25009/21        | CLOONEY Amal                |
| a/25010/21        | CLOONEY Amal                |
| a/25012/21        | CLOONEY Amal                |
| a/25014/21        | CLOONEY Amal                |
| a/25015/21        | CLOONEY Amal                |
| a/25016/21        | CLOONEY Amal                |
| a/25017/21        | CLOONEY Amal                |
| a/25018/21        | CLOONEY Amal                |

<sup>11</sup> The VPRS notes that from the first Group A transmission of 28 applications, 22 applicants have nominated Ms Amal Clooney, 5 have nominated Mr Nasser Mohamed Amin Abdalla and 1 has nominated Ms. Diana Constantinide. A number of further forms submitted by said counsel remains on file with VPRS as within scope but presently unclear (Group C) and will be submitted immediately subsequent to the issuance of the document containing the charges.

<sup>12</sup> Clarification Decision, para. 21.

| ApplicationNumber | Legal Representative        |
|-------------------|-----------------------------|
| a/25019/21        | CLOONEY Amal                |
| a/25020/21        | CLOONEY Amal                |
| a/25022/21        | CLOONEY Amal                |
| a/25023/21        | CLOONEY Amal                |
| a/25024/21        | CLOONEY Amal                |
| a/25025/21        | CLOONEY Amal                |
| a/25031/21        | NASSER Mohamed Amin Abdalla |

*Overall figures of application forms received*

15. At present, the Registry has received altogether 725 application forms since October 2020. Of these, the large majority were received in the Arabic language (690 forms). The translation of these forms is in progress. Of the translated forms, altogether 300 have been assessed by the Registry as clearly falling outside the temporal and/or geographic scope of the case and are therefore not transmitted on the case file as per the Chamber's instruction.<sup>13</sup> Of the 690 forms received in Arabic, 310 remain and are currently undergoing translation. However, a preliminary assessment of these remaining forms indicated that they too are likewise out of scope.<sup>14</sup> The results of the final assessment will be communicated to the Chamber in due course as soon as translations are available.<sup>15</sup>

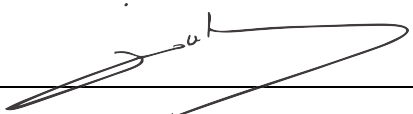
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<sup>13</sup> First Decision, para. 34 (second bullet point ("[...] the Registry shall transmit only applications which refer to crimes allegedly committed in 2003-2004 in Western Darfur. Applications referring only to crimes that were allegedly committed outside this temporal and geographical scope must not be transmitted to the Chamber").

<sup>14</sup> It is also suspected that the remaining forms contain over 120 duplicates of previously submitted forms.

<sup>15</sup> Should the final assessment lead to a classification within the scope of the Case, forms will be immediately shared with OPCV as per the Clarification Decision, p. 12.

16. In light of the instruction received in the Clarification Decision, the VPRS stands ready to submit recommendations to the Chamber in coordination with OPCV in matters of common legal representation should those recommendations be considered relevant and necessary.<sup>16</sup>

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

Dated this 26 February 2021  
At The Hague, The Netherlands

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<sup>16</sup> Clarification Decision, p. 12.