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No.: ICC-02/05-01/20  
Date: 17 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**

**Registry Observations on Aspects Related to the Admission of Victims for  
Participation in the Proceedings**

**Source: Registry**

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

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**Legal Representatives of Victims**

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Participation/Reparation**

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**REGISTRY**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

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**Trust Fund for Victims**

## I. Introduction

1. In view of the confirmation of charges hearing presently scheduled to start on 22 February 2021, the Registry hereby submits, pursuant to instructions received from the Chamber (“Instructions”),<sup>1</sup> observations and recommendations on aspects related to the admission process for victims seeking to participate in the proceedings (“Admission Process”) in the *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* case (“Case”).

## II. Procedural history

2. On 9 October 2020, the Victims Participation and Reparations Section of the Registry (“VPRS”) requested authorization from Pre-Trial Chamber II (“Chamber”) to use a modified standard application form to facilitate victim participation in the Case (VPRS Request).<sup>2</sup>
3. On 2 November 2020, the Chamber issued its “Decision on the Prosecutor’s Request for Postponement of the Confirmation Hearing and related deadlines”, postponing the start of the confirmation of charges hearing to 22 February 2021.<sup>3</sup>
4. 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” whereby he *inter alia* granted the VPRS Request

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<sup>1</sup> Email Correspondence, Pre-Trial Chamber II Communications to Chief of VPRS, 16 September 2020 at 09:57 and 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, para. 14.

<sup>2</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>3</sup> Pre-Trial Chamber II, “Decision on the Prosecutor’s Request for Postponement of the Confirmation Hearing and related deadlines”, 2 November 2020, ICC-02/05-01/20-196, p. 20.

and noted that the Registry was still to submit a filing in relation to additional matters concerning victim participation in the Case.<sup>4</sup>

### III. Applicable Law

5. The Registry submits the present observations in accordance with articles 68(1), (3) and 75 of the Rome Statute (“Statute”), rules 16(1), 85, 89, 90 and 94 of the Rules of Procedure and Evidence (“Rules”), regulations 23(2), 23bis(1), 86 and 88 of the Regulations of the Court (“RoC”), regulations 98, 106 to 111 of the Regulations of the Registry (“RoR”) and pursuant to the Instructions.

### IV. Submissions

6. In the present submissions the Registry sets out its recommendations for the victim application process in the Case. The submissions will include specific recommendations on the admission process, and a proposal to submit more detailed observations on legal representation of victims in due course.

#### *The Admission Process*

7. To prepare and organize the victim application process in light of the contextual realities of the Case, the VPRS recommends the victim admission processes adopted at pre-trial and trial in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”),<sup>5</sup> and the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaiisona*

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<sup>4</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. The Defence has since sought leave to appeal this decision, “Demande d’autorisation d’interjeter appel de la Décision ICC-02/05-01/20-198”, 9 November 2020, ICC-02/05-01/20-201.

<sup>5</sup> *Al Hassan*, Pre-Trial Chamber I, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 24 May 2018, ICC-01/12-01/18-37-tENG; Trial Chamber X, “Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial”, 12 March 2020, ICC-01/12-01/18-661.

(“*Yekatom and Ngaïssona* case”),<sup>6</sup> as well as at trial in the *Prosecutor v. Bosco Ntaganda* case (“*Ntaganda* case”).<sup>7</sup> As recently reported in the final report of the Independent Expert Review of the International Criminal Court and the Rome Statute System, in those cases where the proposed admission system has been adopted, “[t]he task for the Judiciary is greatly simplified and expedited.”<sup>8</sup> The admission process (described in detail below) aims at enhancing procedural efficiencies and maximizing victims’ access to the Court while at the same time respecting the accused’s fair trial rights.<sup>9</sup>

### The *Ntaganda*, *Al Hassan* and *Yekatom and Ngaïssona* Approach

8. The following admission process recommendation is informed mostly by the approaches adopted in the aforementioned cases and mindful of relevant provisions of the Chambers Practice Manual.<sup>10</sup> This approach includes the following features:

) The VPRS receives victim applications and assesses these applications against rule 85 of the Rules and any other criteria that the Chamber may find appropriate. Further, it categorizes the applicants into three groups:

**Group A:** Applicants who clearly qualify as victims;

**Group B:** Applicants who clearly do not qualify as victims;

<sup>6</sup> *Yekatom and Ngaïssona*, Pre-Trial Chamber II, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 5 March 2019, ICC-01/14-01/18-141; Trial Chamber V, “Order Scheduling First Status Conference”, 19 March 2020, ICC-01/14-01/18-459, fn. 5.

<sup>7</sup> *Ntaganda*, Trial Chamber VI, “Decision on victims’ participation in trial proceedings”, 6 February 2015, ICC-01/04-02/06-449.

<sup>8</sup> Independent Expert Review of the International Criminal Court and the Rome Statute System, “Final Report”, 30 September 2020, para. 847.

<sup>9</sup> See similar pre-trial submissions from the Registry in the *Yekatom and Ngaïssona* and *Al Hassan* cases: *Yekatom and Ngaïssona*, Registry, “Registry’s Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings”, 6 February 2019, ICC-01/14-01/18-78; *Al Hassan*, Registry, “Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings”, 9 May 2018, ICC-01/12-01/18-28-Conf.

<sup>10</sup> See [https://www.icc-cpi.int/about/judicial-divisions/Pages/chambers\\_practice\\_manual.aspx](https://www.icc-cpi.int/about/judicial-divisions/Pages/chambers_practice_manual.aspx), section C. I. (i).

**Group C:** Applicants for whom the VPRS could not make a clear determination for any reason.<sup>11</sup>

- ) The VPRS transmits all complete applications to the Chamber, in accordance with the abovementioned grouping, on a rolling basis.
- ) The applications that, in the VPRS's view, are incomplete and/or fall clearly outside the scope of the concerned case are not transmitted to the Chamber.<sup>12</sup>
- ) The VPRS prepares reports that accompany each transmission and list the victim applications falling into the aforementioned three groups. These reports are notified to the Chamber, the parties and participants. The reports need not include application-by-application reasoning or analysis and need not justify the respective classifications.
- ) For Groups A and B, barring a clear, material error in the VPRS's assessment, the Chamber would ratify the assessments regarding these applicants through a decision.
- ) As regards the transmission of applications to the parties pursuant to rule 89(1) of the Rules, only Group C applications presenting unclear or borderline issues on which the VPRS is unable to make a clear determination would be transmitted to the parties (with the necessary redactions) for observations.<sup>13</sup> The VPRS would also provide a report to the Chamber and parties that clearly highlights the issue(s) arising from the application forms that the VPRS was unable to make a clear determination on. Once the parties' observations have been received on the unclear applications, the Chamber would assess the Group C

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<sup>11</sup> Chambers Practice Manual, section C. I. (ii).

<sup>12</sup> Chambers Practice Manual, section C. I. (ii), (iii), (iv).

<sup>13</sup> The *Ntaganda/Al Hassan* practice of transmitting only group C applications to the parties would be in slight deviation from the Chambers Practice Manual, section C. I. (v). It is noted however that all forms would remain on file with the Registry and could be transmitted to the parties at any stage as necessary (with redactions as appropriate).

applications individually and determine whether the victims concerned shall be admitted to participate or not.<sup>14</sup>

9. The benefit of the abovementioned approach, as it can be observed in the proceedings in the *Ntaganda*, *Al Hassan* and *Yekatom and Ngaïssona* cases, is that the parties as well as the Chamber can concentrate on pre-assessed unclear or borderline issues arising from victim applications in a bundled fashion. In addition, the VPRS's processing and redaction obligations would extend to only a fraction of the relevant forms (*ie* only the Group C applications submitted to the parties), leading to considerable time and resource savings. This, in turn, would enable the VPRS to process the highest number of victim applications with a view to their timely participation in the proceedings leading up to the confirmation of charges hearing in the present proceedings. This is particularly relevant in the present circumstances, due to (1) security and health-related concerns faced in the Case;<sup>15</sup> (2) the resulting likelihood for the administration of redactions; and (3) the potentially high number of victim applicants due to the broad scope of the Case alongside the imminent date of commencement of the confirmation of charges hearing.
10. A separate Registry report on available identity documents to accompany victim applications will be submitted shortly.<sup>16</sup>

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<sup>14</sup> This suggested approach follows Trial Chamber VI, "Decision on victims' participation in trial proceedings", 6 February 2015, ICC-01/04-02/06-449, para. 24(iv), (vi) and (vii) and Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37-tENG, pp. 28-30.

<sup>15</sup> Registry's Request to Use Modified Form, para. 5; Registry, "Registry Observations on the Defence's 'Réponse à la Requête ICC-02/05-01/20-178' (ICC-02/05-01/20-182-Conf)", ICC-02/05-01/20-194-Conf, para. 39.

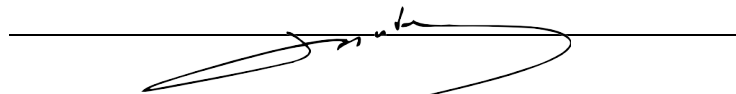
<sup>16</sup> *See*, for instance, Registry, "Registry Report on Proof of Identity Documents Available in the Central African Republic and Transmission of Proposed Application Form for Victims Under Rule 85(b) of the Rules of Procedure and Evidence", 27 February 2019, ICC-01/14-01/18-133.

### *Legal Representation*

11. Finally, in line with prior practice in pre-trial proceedings,<sup>17</sup> the Registry stands ready to submit, in a timely manner, observations on how an approach that prioritizes victims' choice of counsel may proceed, in accordance with rule 90 of the Rules. These observations would include a description of the steps necessary for the Registry to facilitate the coordination of victim representation before the confirmation of charges hearing.

### **Conclusion**

12. The Registry respectfully requests the Chamber's guidance as to its preferred *modus operandi* in relation to the admission process and legal representation of victims.



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

Dated this 17 November 2020

At The Hague, The Netherlands

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<sup>17</sup> See in particular, *Yekatom and Ngaissona*, Pre-Trial Chamber II, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141, para(s) 50-52; *Al Hassan*, Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37-tENG, para(s) 64-71.