

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/20
Date: 22 December 2022

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 “Registry Request for Extension of Time Limit to
Submit Victim Applications for Participation”, 22 December 2022,
ICC-02/05-01/20-838-Conf-exp**

Source: The Registrar

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and Reparations
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I. Introduction

1. Pursuant to regulation 35(1) of the Regulations of the Court (“ROC”), the Registry hereby requests an exceptional extension of the time limit to transmit applications for participation in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘Ali Kushayb’) (“Case”) until the end of presentation of the Defence case. Due to circumstances beyond its control - in particular operational constraints in Darfur - the pace of the collection of victims’ applications has been slower than anticipated. However, the victims’ interest in participating in the trial proceedings remains high, and the Registry has recently been able to increase its operational capacity in the field; is likely to generate an increased number of victims finally being able to access the ICC proceedings – which remains meaningful, it is submitted, throughout the entire trial phase.

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’) (“Confirmation Decision”).¹
3. On 19 October 2021, Trial Chamber I (“Chamber”) issued its “Decision on victims’ participation and legal representation in trial proceedings”,² in which it *inter alia* endorsed the victim application procedure previously adopted at the pre-trial stage of the proceedings (“Victim Application Procedure”).³

¹ 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.

² Trial Chamber I, “Decision on victims’ participation and legal representation in trial proceedings”, 19 October 2021, ICC-02/05-01/20-494.

³ *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.

4. On 16 August 2021, the Chamber issued an order scheduling the first status conference, in which it *inter alia* requested the Registry to provide an update and forecast on victim applications to participate in the proceedings.⁴
5. On 14 January 2022, the Chamber confirmed the continued participation of 130 victims admitted at pre-trial and authorised 12 new applicants to participate as victims in the trial proceedings (“First Decision”).⁵
6. 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 (“Deadline”).⁶
7. On 29 August 2022, the Registry filed a report in which it *inter alia* updated the Chamber on the collection and transmission of victim applications for participation in the Case.⁷
8. On 3 October and 11 November 2022, the Chamber authorised the participation of 31 and 101 new victims, respectively.⁸
9. During the status conference held on 6 December 2022, the Prosecution announced its intention to conclude the presentation of its evidence by January or February 2023.⁹

⁴ Trial Chamber I, “Order scheduling first status conference”, 16 August 2021, ICC-02/05-01/20-451, para. 2.

⁵ Trial Chamber I, “First decision on the admission of victims to participate in trial proceedings”, 14 January 2022, ICC-02/05-01/20-556,

⁶ 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.

⁷ Registry, “Observations of the Registry on the Defence’s ‘Requête aux fins de reconsidération de la Décision du 19 octobre 2021 (ICC-02/05-01/20-494) et mise en conformité de la procédure avec les Règles 89-1 et 94-2 du Règlement de Procédure et de Preuve’ (ICC- 02/05-01/20-717-Conf)”, 29 August 2022, ICC-02/05-01/20-730-Conf-Exp (“29 August 2022 Observations”).

⁸ Second decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761 (“Second Decision”) and Third decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761.

⁹ Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-CONF-ENG, p. 55, lines 15-23.

10. On 15 December 2022, the Chamber set the opening statements and the presentation of the Common Legal Representative of Victims' ("CLRv") case to begin on 8 May 2023. It further scheduled the opening statements of the Defence case and the start of testimony of any defence witnesses, respectively, for 20-21 July and 28 August 2023.¹⁰

III. Classification

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

IV. Submissions

A. Delays in the Collection of Applications for Participation

12. Despite its concerted efforts, which are detailed in the 29 August 2022 Observations and *infra*, the Registry has not been able to proceed with the collection, processing and transmission of applications as swiftly as projected. The current application process has faced several hurdles, including:

- the deterioration of the security situation in Darfur;
- the deterioration of the socio-economic situation of displaced groups and communities;
- the rainy/agricultural season; and
- the Registry capacity to conduct field missions to Darfur.¹¹

¹⁰ Trial Chamber I, "Second Directions on the Conduct of Proceedings", 15 December 2022, ICC-02/05-01/20-836, paras 15 and 20.

¹¹ 29 August 2022 Observations, paras 15-26.

13. Against this backdrop, the Victim Participation and Reparations Section of the Registry (“VPRS”) has nonetheless been able to conduct a series of activities,¹² and has received since its 29 August 2022 Observations:¹³ i) additional information in relation to approximately 20 incomplete applications (such as identity documents or clarifications on the events described by victims in their application forms); and ii) more than 350 new application forms for participation in the Case. These new applications are currently being processed and translated from Arabic to English, following which they will be assessed by the VPRS for transmission to the Chamber. The pace of receipt of applications is projected to increase.
14. [REDACTED].¹⁴ [REDACTED].¹⁵ Activities will also facilitate the ongoing mapping of potentially eligible beneficiaries of reparations, in accordance with the Second Decision.¹⁶

B. Victims’ Continued Interest in Applying for Participation

15. [REDACTED], intermediaries emphasised that the Court has only just started to access the universe of potential victims in the Case. [REDACTED].
16. According to the intermediaries, the victims’ interest for the Case has been steadily rising with the start of the trial and the OTP’s presentation of evidence. Intermediaries report that victims seek justice, they want to be heard by the Court and to exercise their rights in the current proceedings, regardless of their length and potential outcome.
17. After 19 years spent in IDP camps, victims see the ICC proceedings as a unique opportunity that the harm they have suffered is acknowledged, and for victims to seek redress. Noting the logistical constraints faced by the Court and the victims’ lawyers in reaching out to victims, intermediaries contend that the victims’ rights would be best preserved by allowing more victims the possibility to access

¹² *Id.*, paras 28-35, and *infra* para. 14.

¹³ 29 August 2022 Observations, para. 37.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ Second Decision, paras 15-19.

participation throughout the trial stage, in order for the existing operational barriers not to be unfairly detrimental to them.

18. Intermediaries also acknowledged the need not to unduly raise victims' expectations regarding potential reparations, while adopting a victim-centred approach. While the VPRS has emphasised that victims do not need to participate in proceedings to be considered as potential beneficiaries of reparations in the event of a conviction, the intermediaries stressed that by participating in the proceedings, victims would be able to timely engage with their legal representatives on the harm they have suffered, their needs and their expectations. In turn, this would put their legal representatives in a position to be informed, to understand, and hence to convey their views and concerns in a timely manner prior to a potential reparation order in case of a conviction.

19. It is submitted that the interest – and possibility - of victims to participate meaningfully in the proceedings continues beyond the CLRV case throughout the Defence case: victims remain in a position to interact and convey their views and concerns effectively through the CLRV at a number of procedural junctions. While the current edition of the Chambers Practice Manual sets a final time limit for the transmission of victim applications at the end of the Prosecutor's presentation of evidence,¹⁷ the Registry submits that the present case provides exceptional circumstances in the slow initial Registry progress in being able to reach out to victims for reasons outside its control, and the expressed continued interest of victims to partake in the proceedings throughout the entirety of the presentation of evidence before the Chamber.

V. Conclusion

20. To date, the VPRS has been in a position to collect but only a sample of the applications from potential applicants for participation in the Case. Since July 2022, the number of applications received has scaled up significantly as an effect

¹⁷ Chambers Practice Manual, edition of November 2022, para. 97(iii).

of the VPRS' recent increased capacity to interact with partners in the field. Given the high number of potential applicants in the Case, the current operational constraints and the time needed to assist victims in a meaningful manner, the VPRS respectfully requests the Chamber to exceptionally extend the deadline for submitting applications for participation in the Case, currently set at the end of the Prosecution case,¹⁸ until the end of the Defence case.¹⁹ It is argued that such an extension is also meaningful for victims in light of their participatory rights throughout the trial proceedings.



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

Dated this 22 December 2022

At The Hague, the Netherlands

¹⁸ See *supra*, footnote 6.

¹⁹ The VPRS considers that the adoption of the A-B-C approach in the Case ensures that the adoption process of participating victims remains efficient while respecting the rights of the accused person to a fair and expeditious Trial. The Defence will not have to review a large number of applications and the participation of new victims will be channelled through the common legal representative of victims, under the Chamber's command.