



Original: English

No. ICC-02/05-01/20

Date: 3 October 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 with public Annex

Second decision on the admission of victims to participate in trial proceedings

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

The Office of the Prosecutor

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Nazhat Shameem Khan
Julian Nicholls

Counsel for the Defence

Cyril Laucci
Iain Edwards

Legal Representatives of Victims

Natalie von Wistinghausen
Anand Shah

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

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REGISTRY

Registrar

Peter Lewis

Counsel Support Section

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**Victims Participation and Reparations
Section**

Philipp Ambach

Other

1. On 19 October 2021, Trial Chamber I (the ‘Chamber’) issued a decision on victims’ participation and representation in trial proceedings, in which it adopted Pre-Trial Chamber II’s victim application process (the ‘ABC Approach’) and appointed a team of Common Legal Representatives for Victims (‘CLRv’) (the ‘Decision on victims’ participation’).¹
2. On 12 November 2021, as a result of a Defence request, the Chamber issued an oral decision confirming the use of the ABC Approach.²
3. On 6 December 2021, as instructed by the Chamber,³ the Registry filed its first assessment report on victims’ applications for participation in trial proceedings.⁴ It also transmitted 142 Group A applications to the Chamber.⁵
4. On 14 January 2022, the Chamber confirmed the continued participation of 130 victims admitted at pre-trial and authorised 12 new applicants identified in Group A of the First Registry Report to participate as victims in the trial proceedings.⁶
5. On 12 July 2022, the Registry notified applications for reparations to the Defence pursuant to Rule 94(2) of the Rules of Procedure and Evidence.⁷
6. On 22 July 2022, the Defence requested the reconsideration of the Decision on victims’ participation, and of the ABC approach in particular (the ‘Defence’s request for reconsideration’).⁸

¹ Decision on victims’ participation and legal representation in trial proceedings, ICC-02/05-01/20-494.

² Transcript of hearing, 12 November 2021, ICC-02/05-01/20-T-017-Red-ENG, p. 44, line 18 to p. 47, line 8. A request for leave to appeal this decision was also rejected. *See* Decision on the Defence’s requests for leave to appeal the oral decisions on the inadmissibility of evidence and victims’ participation, 2 December 2021, ICC-02/05-01/20-525. *See* Requête aux fins d’autorisation d’interjeter appel de la décision orale de rejet la Requête ICC-02/05-01/20-497, 18 November 2021, ICC-02/05-01/20-520. *See* Requête relative au processus d’admission des victimes à participer à la procédure, ICC-02/05-01/20-497. *See also* Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing, 18 January 2021, ICC-02/05-01/20-259.

³ Decision on victims’ participation and legal representation in trial proceedings, 19 October 2021, ICC-02/05-01/20-494, para. 16(ix).

⁴ First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-02/05-01/20-528 (with 1 confidential annex). None of the parties or participants responded to the Registry’s Report.

⁵ First Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings, 6 December 2021, ICC-02/05-01/20-529 (with 142 confidential *ex parte* annexes).

⁶ First decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-556.

⁷ Notification to the Defence of Applications for Reparations pursuant to Rule 94(2) of the Rules of Procedure and Evidence, ICC-02/05-01/20-712.

⁸ 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,

7. On 25 August 2022 the Registry transmitted 31 victims' applications for participation from Group A,⁹ as well as an accompanying assessment report.¹⁰

8. On 29 September 2022, the Chamber rejected the Defence's request for reconsideration.¹¹

Applicable law

9. The Chamber incorporates by reference the general framework applicable to the assessment of victims' applications.¹²

Group A applications

10. The Registry has transmitted 31 new applications which it concludes fall within Group A. The Chamber accepts this assessment as they meet the required conditions for granting victim status under the Rule 85(a) Test. The Chamber has not identified any clear, material error in the Registry's assessment and therefore authorises their participation as victims.

11. A full list with the victims admitted to participate in trial is annexed to the present decision.

Legal representation

12. In line with the legal representation system already in place, the CLRV will represent the newly admitted victims.¹³

ICC-02/05-01/20-717-Conf. A public redacted version was notified on the same day, ICC-02/05-01/20-717-Red.

⁹ Second Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, ICC-02/05-01/20-727.

¹⁰ Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-02/05-01/20-728+728-Conf-Anx-Corr. None of the parties or participants responded to the Registry's Report.

¹¹ Decision on the Defence's request for reconsideration of the Decision on victims' participation, ICC-02/05-01/20-759.

¹² First decision on the admission of victims, ICC-02/05-01/20-556, para. 4.

¹³ Decision on victims' participation, ICC-02/05-01/20-494, paras 7-13. Following a decision by the Chamber, the team representing the participating victims is presently composed of Ms von Winstinghausen and Mr Shah, *see* Transcript of hearing, 9 May 2022, ICC-02/05-01/20-T-038-CONF-ENG, p. 2, lines 9-14.

Mapping of potentially eligible beneficiaries of reparations

13. Following the precedent recently set by Trial Chamber VI in the case of *The Prosecutor v. Mahamat Said Abdel Kani* ('*Said* case'),¹⁴ in which it was held that 'experience has shown that leaving issues of reparations until the end of the trial may lead to significant delays',¹⁵ the Chamber finds it appropriate, at this stage of the trial proceedings, to take certain measures in relation to potential reparations in the present case.

14. Subsequently, ruling on an appeal against a decision on reparations in the *Ntaganda* case, the Appeals Chamber endorsed the mapping of potentially eligible beneficiaries of reparations, and specifically the abovementioned decision in the *Said* case, when it held that:

'[i]t also seems advisable, as suggested by Trial Chamber VI in a recent decision in the *Said* case, for trial chambers, already to seek and identify victim applicants, and collect their applications, from the early stages of proceedings; in fact, rule 94(2) of the Rules and regulation 56 of the Regulations of the Court suggest this approach and aim to advance reparations proceedings with all expedition.'¹⁶

15. The Chamber therefore adopts the following approach in relation to the mapping of potentially eligible beneficiaries of reparations.¹⁷

16. Ideally, in order for the design and implementation of potential reparations to proceed expeditiously, all potential beneficiaries of reparations arising out of a case should be identified or their approximate total number should be at least estimated by the time a chamber renders its judgment under Article 74 of the Statute. This task can only be carried out by the VPRS, as a neutral organ of the Court.

17. Victims do not need to participate in the trial proceedings to be considered potential beneficiaries for reparations. Only direct and indirect victims of the crimes for

¹⁴Trial Chamber VI, *The Prosecutor v. Mahamat Said Abdel Kani*, Decision on matters relating to the participation of victims during the trial, ICC-01/14-01/21-278, paras 86-90 (hereinafter: '*Said* Decision on victims' participation').

¹⁵ *Said* Decision on victims' participation, ICC-01/14-01/21-278, para. 86.

¹⁶ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled "Reparations Order", 12 September 2022, ICC-01/04-02/06-2782 (A4 A5), paras 9, 340.

¹⁷ *Said* Decision on victims' participation, ICC-01/14-01/21-278, paras 88-90.

which an accused has been convicted may qualify to be considered potential beneficiaries. The VPRS should endeavour to have fully identified, mapped, or at least traced the relevant potential victim population by the time the parties have concluded their closing statements. To that end, the VPRS is authorised to take all necessary proactive measures to identify potential beneficiaries of reparations during the trial proceedings. At all times, the VPRS should ensure that it does not unduly raise the victim's expectations, adopts a victim-centred approach and complies with the 'do no harm' and other applicable principles.

18. Should the Chamber enter a conviction, the VPRS is instructed to submit a report of its mapping of the population of potential beneficiaries of reparations within 4 weeks of the notification of the Article 74 judgment. This report should provide the following information for each of the incidents for which a conviction was entered: (i) the approximate number of direct and indirect victims that may qualify as potential beneficiaries of reparations; and (ii) if available, the different types of harm the potential beneficiaries allege to have suffered.

19. Individuals or groups of individuals who would like to be considered as potential beneficiaries of potential future reparations should make themselves known to the VPRS during the trial proceedings before VPRS submits its report. Victims identified after the VPRS has submitted its report, will be assessed on a case-by-case basis. The estimation of potential beneficiaries of reparations by the VPRS is necessarily provisional and cannot give rise to any rights or expectations on the part of the individuals concerned.

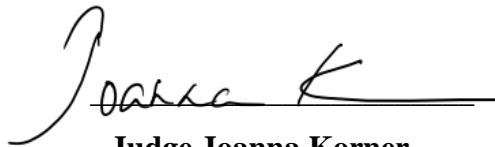
20. The Chamber stresses that the above mapping mechanism does not affect the fact that the accused benefits from the presumption of innocence, until proven guilty beyond reasonable doubt.¹⁸ Indeed, Mr Abd-Al-Rahman can only be found liable for reparations if he is convicted pursuant to Article 75(2) of the Rome Statute.

21. For these reasons, the Chamber:

- i. **Authorises** the following 31 new applicants identified in Group A of the Registry's Report to participate as victims in the trial proceedings;

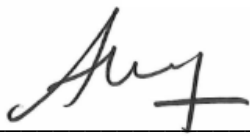
¹⁸ See Article 66 of the Rome Statute.

- ii. **Decides** that the CLRV will represent the 31 new victims hereby authorised to participate in the proceedings henceforth.
- iii. **Instructs** the Registry to start mapping potentially eligible beneficiaries of reparations in line with the instructions at paragraphs 15-19 above.

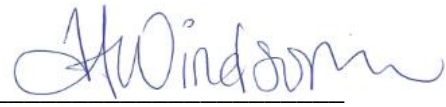


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 3 October 2022

At The Hague, The Netherlands