

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **3 January 2023**

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

**Observations on behalf of Victims on the “Registry Request for Extension of Time
Limit to Submit Victim Applications for Participation”**

Source: The Common Legal Representative of Victims

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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I. Introduction

1. The Common Legal Representative of Victims (“CLR V”) files these observations on the “Registry Request for Extension of Time Limit to Submit Victim Applications for Participation”.¹
2. The CLR V shares the view of the Registry that good cause exists under Regulation 35 of the Regulations of the Court (“Regulations”) to authorise an extension of the time limit to submit applications for participation as victims in the *Abd-Al-Rahman* trial proceedings to the end of the presentation of the defence case.²
3. In particular, the CLR V confirms the Registry’s submissions on the continuing difficulties of conducting operations on the ground in Darfur, and submits that, in the circumstances of these proceedings, the prospect of meaningful participation would remain viable for those individuals who might be granted the status of participating victim during the period running from the end of the Prosecution case through the end of the defence case.
4. These observations, while responding to the confidential redacted version of the Application, are filed publicly as they refer only to information in the public redacted version of the Application.

II. Submissions

5. The CLR V files these observations from the perspective of her mandate representing the interests and acting on behalf of the 274 participating victims in these proceedings,³ as well as the prospective interests of individuals who may be

¹ Registry Request for Extension of Time Limit to Submit Victim Applications for Participation, 22 December 2022, ICC-02/05-01/20-838-Conf-Exp (“Application”). Confidential redacted (ICC-02/05-01/20-838-Conf-Red) and public redacted ([ICC-02/05-01/20-838-Red](#)) versions of the filing were submitted on the same day.

² *Id.*, para. 1.

³ See First decision on the admission of victims to participate in trial proceedings, 14 January 2022, [ICC-02/05-01/20-556](#); Second decision on the admission of victims to participate in trial proceedings, 3 October 2022, [ICC-02/05-01/20-761](#); Third decision on the admission of victims to participate in trial proceedings, 11 November 2022, [ICC-02/05-01/20-817](#).

granted the status of participating victim⁴ within the current deadline for submission of applications for participation – namely, by the conclusion of the Prosecution case.⁵ The CLRV's observations also take into account the prospective interests of individuals to meaningfully participate as victims in the trial proceedings should such status be granted after the conclusion of the prosecution case.

6. In the CLRV's view, and after assessing the interests identified above, good cause exists under Regulation 35 of the Regulations to grant the extension requested in the Application.
7. The Trial Chamber, when setting the deadline for submission of applications for participation during trial proceedings, provided that should one or more applications be filed after the deadline, there would not be an automatic denial, and consideration would be given on a case-by-case basis.⁶ The Application does not utilize this safe harbour, but instead seeks a wholesale extension of the deadline itself.
8. The Application demonstrates good cause for the requested extension of the deadline to the end of the presentation of the defence case,⁷ noting in particular the following significant and ongoing impediments to the collection, processing and transmission of applications for participation: 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.⁸ The CLRV advises that the difficulties identified by the Registry have similarly impacted the CLRV team's ability to carry out consultations and activities with participating victims residing in Darfur.

⁴ See Fourth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, 23 December 2022, [ICC-02/05-01/20-840](#) (transmitting to the Trial Chamber for its determination 102 additional applications of individuals for participation whom the Registry has assessed as clearly qualifying as victims in these proceedings ('Group A' applications)).

⁵ Transcript of hearing, 7 February 2022, [ICC-02/05-01/20-T-020-Red-ENG](#), p. 70, line 2 to p. 71 line 6.

⁶ *Id.*, p. 70, lines 8-12.

⁷ Application, paras 12-14.

⁸ *Id.*, para. 12.

9. The CLRV agrees with the Registry that these impediments, which fall outside the Registry's control, and in view of the Registry's diligent efforts to move forward with its work,⁹ constitute exceptional circumstances¹⁰ justifying an extension of the application submission deadline established by the Trial Chamber.¹¹ As articulated in the Application, the requested extension is not for the benefit of the Registry, but instead to preserve the right of potential victims – a majority of whom the Court has likely not yet managed to reach¹² – to meaningfully participate in the trial proceedings of the *Abd-Al-Rahman* case.
10. The Application provides compelling evidence that, in the circumstances of this case, where nineteen years have passed since the events that are the subject of the proceedings, potential participating victims would find real value in the Chamber's recognition of their status as victims, even if such status was granted after the end of the Prosecution case.¹³ The CLRV submits that this aspect of the *Abd-Al-Rahman* proceedings should be given due consideration by the Chamber in its determination of the Application, including in respect of the efficiency and efficacy of potential reparations proceedings should the accused be convicted.¹⁴
11. The CLRV also concurs with the Registry on the viability of meaningful participation by victims who may be admitted after the conclusion of the Prosecution case.¹⁵ Many important procedural events will take place after the close of the Prosecution's case, including the CLRV submission of a trial brief, the CLRV's opening statement on behalf of participating victims and, if leave is granted, a victims' case, the defence case, and the CLRV's final trial brief and closing statement on behalf of the participating victims. Participating victims who are admitted after the close of the Prosecution case will have the opportunity to provide their views and concerns to the Trial Chamber during one or more of

⁹ Application, para. 13.

¹⁰ *Id.*, para 19.

¹¹ This deadline has also been adopted as the standard deadline for submission of applications for participation at the trial stage, in the latest version of the Chambers' Practice Manual ([Chambers Practice Manual](#), Sixth ed., November 2022, para. 97(iii)).

¹² Application, para. 15.

¹³ *Id.*, paras 16, 17, 19.

¹⁴ *See id.*, para. 18.

¹⁵ *Id.*, para. 19.

these procedural junctures through consultation with and instructions provided to the CLRV. Additionally, the CLRV's periodic updates to the victims on the status of the proceedings is an important and integral part of the process of meaningful participation.

12. Admission of additional participating victims after the conclusion of the Prosecution case will also have limited impact on the expeditiousness of the proceedings given the application of the 'A-B-C' approach in this case. The expeditiousness of the proceedings is of great importance to the 274 individuals who have been granted the status of participating victims, and the CLRV expects that any additional individuals admitted as victims prior to the conclusion of the Prosecution case¹⁶ will likewise hold this view.
13. Similarly, admission of additional participating victims under the A-B-C approach will not impact the accused's right to an expeditious trial, nor otherwise compromise the fairness of the proceedings given the scope and purpose of procedural rights granted to participating victims in ICC trials, which are primarily directed at issues and interests other than the guilt and innocence of the accused.
14. Lastly, the CLRV submits that while the basis of the Application is primarily centred on difficulties impacting the Registry's ability to interact with potential victims residing in Darfur, any extension of the deadline granted by the Trial Chamber should apply to all potential applicants, regardless of their location. Limiting an extension to individuals submitting applications from Darfur may have unintended but nevertheless harmful consequences by drawing dividing lines between those potential victims in Darfur, with those located in Chad or elsewhere in the diaspora. The Court's actions towards a victim community should seek to avoid such an outcome wherever possible.

¹⁶ See Fourth Registry Transmission of Group A Applications for Victim Participation in Trial Proceedings, 23 December 2022, [ICC-02/05-01/20-840](#) (transmitting to the Trial Chamber for its determination 102 additional applications of individuals for participation whom the Registry has assessed as clearly qualifying as victims in these proceedings ('Group A' applications)).

III. Conclusion

15. For the reasons above, the CLRV supports the Application and submits that the Registry has demonstrated good cause for granting the requested extension to the end of the defence case for the submission of applications for participation as a victim during the trial stage of these proceedings.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'N. Wistinghausen', with a long horizontal flourish extending to the right.

Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 3rd of January 2022

At Berlin, Germany