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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 Confidential Annex**

**Fifth Registry Assessment Report on Victim Applications for Participation in Trial
Proceedings**

Source: The Registrar

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

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I. Introduction

1. On 19 October 2021, Trial Chamber I (“Chamber”) issued its “Decision on victims’ participation and legal representation in trial proceedings” (“Decision”),¹ in which it *inter alia* endorsed the victim application procedure previously adopted at the pre-trial stage of the proceedings (“Victim Application Procedure”).²
2. In compliance with the Decision, the Victims Participation and Reparations Section of the Registry (“VPRS”) shall:
 - A. classify victim applicants into three categories: (a) applicants who clearly qualify as victims (“Group A”); (b) applicants who clearly do not qualify as victims (“Group B”); and (c) applicants for whom the Registry could not make a clear determination for any reason (“Group C”) (“A-B-C Approach”),³ and
 - B. transmit complete applications to the Chamber and produce assessment reports periodically and on a rolling basis.⁴
3. The Registry hereby submits its fourth assessment report on a total of 113 complete applications to participate in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)* (“Applications” and “Case”). The Registry has assessed all of these Applications to fall in Group A.
4. The Applications are listed in the annex to the present submission (“Annex”) and are being transmitted separately to the Chamber in accordance with the Victim Application Procedure.⁵

¹ Trial Chamber I, “Decision on victims’ participation and legal representation in trial proceedings”, 19 October 2021, ICC-02/05-01/20-494.

² *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.

³ 18 January 2021 Decision, para. 34.

⁴ Decision, paras 15 and 16 (ix).

⁵ 18 January 2021 Decision, para. 34.

II. Procedural History

5. On 20 May 2021, Pre-Trial Chamber II (“PTC”) authorised 151 applicant victims to participate in the confirmation proceedings (“20 May 2021 Decision”).⁶
6. On 9 July 2021, PTC issued its decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’) (“Confirmation Decision”).⁷
7. 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.⁸
8. On 1 September 2021, the Registry provided its update on victim participation.⁹
9. On 8 September 2021, the Chamber held the first status conference and set the start of the trial on 5 April 2022.¹⁰
10. On 19 October 2021, the Chamber issued the Decision, in which it adopted the Victim Application Procedure.¹¹
11. On 6 December 2021, the VPRS transmitted 142 Applications in Group A,¹² and submitted an assessment report thereon.¹³

⁶ Pre-Trial Chamber II, “Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests”, 20 May 2021, ICC-02/05-01/20-398, para. 50.

⁷ 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.

⁸ Trial Chamber I, “Order scheduling first status conference”, 16 August 2021, ICC-02/05-01/20-451, para. 2.

⁹ Registry, “Public redacted version of Update on Victim Applications for Participation”, 1 September 2021, ICC-02/05-01/20-462-AnxII-Red.

¹⁰ Transcript of 8 September 2021, ICC-02/05-01/20-T-013. See Trial Chamber I, “Directions on the conduct of proceedings”, 4 October 2021, ICC-02/05-01/20-478, para. 4.

¹¹ Trial Chamber I, “Decision on victims’ participation and legal representation in trial proceedings”, 19 October 2021, ICC-02/05-01/20/494, para. 15.

¹² Registry, “First Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 6 December 2021, ICC-02/05-01/20-529.

¹³ Registry, “First Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 6 December 2021, ICC-02/05-01/20-528.

12. On 5 January 2022, the Prosecution filed its Trial Brief.¹⁴
13. On 14 January 2022, the Chamber authorised the 142 applicants to participate as victims in the trial proceedings.¹⁵ It further instructed the Registry to report on its reassessment of 21 pre-trial applications, which contained narratives that needed to be verified with the Common Legal Representative of Victims (“CLRV”) for clarity.¹⁶
14. Between 25 August and 23 December 2022, the VPRS transmitted 234 applications categorised as Group A,¹⁷ together with assessment reports thereon.¹⁸
15. Between 3 October 2022 and 1 February 2023, the Chamber authorised the participation of 234 victims in the Trial proceedings.¹⁹

III. Classification

16. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”) and in accordance with the Victim Application Procedure,²⁰ the Annex to the present report is classified as confidential.

¹⁴ Prosecution, “Corrected Version of ‘Prosecution’s Trial Brief’”, 5 January 2022, ICC-02/05-01/20-550-Conf-Exp-Corr (“Trial Brief”). A public redacted version was filed on 4 February 2022 (ICC-02/05-01/20-550-Corr-Red2).

¹⁵ Trial Chamber I, “First decision on the admission of victims to participate in trial proceedings”, 14 January 2022, ICC-02/05-01/20-556, para. 10.

¹⁶ *Id.* para. 6.

¹⁷ Registry, “Second Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 25 August 2022, ICC-02/05-01/20-727, “Third Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 31 October 2022, ICC-02/05-01/20-804 and “Fourth Registry Transmission of Group A Applications for Victims’ Participation in Trial Proceedings”, 23 December 2022, ICC-02/05-01/20-840.

¹⁸ Registry, “Second Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 25 August 2022, ICC-02/05-01/20-728, “Third Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 31 October 2022, ICC-02/05-01/20-805 and “Fourth Registry Assessment Report on Victim Applications for Participation in Trial Proceedings”, 23 December 2022, ICC-02/05-01/20-841.

¹⁹ Trial Chamber I, “Second decision on the admission of victims to participate in trial proceedings”, 3 October 2022, ICC-02/05-01/20-761 (“Second Decision”) “Third decision on the admission of victims to participate in trial proceedings”, 11 November 2022, ICC-02/05-01/20-817, and “Fourth decision on the admission of victims to participate in trial proceedings”, 1 February 2023, ICC-02/05-01/20-861.

²⁰ 18 January 2021 Decision, para. 34.

IV. Applicable Law

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

V. Submissions

18. Applying the criteria set out in paragraph 16 of the 18 January 2021 Decision,²¹ the VPRS has assessed each of the 113 new victim applications transmitted herewith under Group A as complete. In conducting its *prima facie* assessment in accordance with the Victim Application Procedure,²² the VPRS confirms that each of the applicants in Group A meet the following criteria in establishing:

- i. The victim's identity;
- ii. The harm suffered; and
- 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 Confirmation Decision.²³

Observations in relation to criterion (i):

²¹ 18 January 2021 Decision, para. 16.

²² *Id.*, para. 17.

²³ In accordance with the 20 May 2021 Decision (para. 47), the VPRS has categorised within Group A applicants who allege to have suffered personal harm by virtue of witnessing atrocities committed against other individuals in their community. This includes a/10168/22, a/10047/22, a/10189/22, a/10245/22, a/10379/22, a/10511/22, a/10516/22, a/10519/22, a/10521/22, a/10522/22, a/10523/22, a/10525/22, a/10527/22, a/10529/22, a/10530/22, a/10531/22, a/10533/22, a/10535/22, a/10537/22, a/10539/22, a/10543/22, a/10545/22, a/10546/22, a/10547/22, a/10548/22, a/10549/22, a/10550/22, a/10552/22 and a/10553/22.

19. In line with the Court's jurisprudence, indirect victims must establish the identity of both themselves and the direct victims as well as their respective kinship. The VPRS has noted in the present case that in many instances, while applicants hold identity documents which display their full names and consequently their patrilineality, they do not possess other specific documents establishing kinship. In accordance with the Chamber's authorisation,²⁴ the VPRS considers that any identity documents displaying the full name of the applicant are sufficient to establish proof of identity of/ kinship with an applicant's father/grandfather.²⁵
20. Certain applications falling under Group A contain minor discrepancies,²⁶ pertaining *inter alia* to: the applicant's date of birth, an inversion of the applicant's first and last name or the spelling of the applicant's name, or other minor inconsistencies in the information provided which appear to be the result of inadvertent errors. In line with the Court's jurisprudence,²⁷ the VPRS applied in those instances a certain degree of flexibility and considered that the discrepancies presented in these applications do not call into question the overall credibility of the information provided by the applicant.

²⁴ Email from Trial Chamber I to VPRS on 22 December 2022 at 16:49.

²⁵ Unlike other naming conventions, which usually consist of First name and Surname, the Arabic naming convention in print (i.e. in official documents) follows a system that consists of, *inter alia*: *Ism* (a given name), *Nasab* (parentage), and in some cases *Laqab* (epithet or surname). Therefore, the full name appearing on any official identification document intrinsically provides a proof of kinship for the patriarchal descent of any person.

²⁶ This includes: a/10248/22, a/10251/22, a/10255/22, a/10280/22, a/10282/22, a/10284/22, a/10286/22, a/10288/22, a/10295/22, a/10299/22, a/10433/22, a/10448/22, a/10450/22, a/10454/22, a/10460/22, a/10464/22, a/10474/22 and a/10516/22.

²⁷ See for instance *Pre-Trial Chamber I, Prosecutor v. Al Hassan*, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37-tENG, para. 50 and references cited, *Pre-Trial Chamber II, The Prosecutor v. Yekatom and Ngaiisona*, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 5 March 2019, ICC-01/14-01/18-141, para. 34 and references cited, *Trial Chamber III, The Prosecutor v. Jean-Pierre Bemba Gombo*, "Decision on 270 applications by victims to participate in the proceedings", 25 October 2011, ICC-01/05-01/08-1862, para. 28, and *Trial Chamber VI, The Prosecutor vs. Bosco Ntaganda*, "Decision on victims' participation in trial proceedings", 6 February 2015, ICC-01/04-02/06-449, para. 46 and references cited.

Observations in relation to criterion (iii):

21. Some applications do not explicitly state specific dates²⁸ (omitting to specify either the day or the month of the crimes,²⁹ and/or using expressions such as “during the harvest days”³⁰).
22. As the Registry previously highlighted,³¹ some victims face difficulties recalling the precise dates of the crimes allegedly committed due to the passage of time. In accordance with the 20 May 2021 Decision³² and the Court’s established jurisprudence,³³ the VPRS assessed these applications mindful of the specific circumstances around every individual application, as well as the general context of the events at the time at issue. Specifically, it considered the relevant applications’ internal coherence in the overall context of the alleged acts. In each of these applications, the applicants described specific events that correspond with the case record, such as the arrests or killings of community leaders listed in the

²⁸ This includes: a/10005/22, a/10181/22, a/10247/22, a/10248/22, a/10249/22, a/10250/22, a/10251/22, a/10252/22, a/10253/22, a/10255/22, a/10272/22, a/10278/22, a/10279/22, a/10280/22, a/10281/22, a/10282/22, a/10283/22, a/10284/22, a/10285/22, a/10286/22, a/10287/22, a/10288/22, a/10289/22, a/10290/22, a/10291/22, a/10292/22, a/10293/22, a/10295/22, a/10299/22, a/10308/22, a/10314/22, a/10408/22, a/10409/22, a/10410/22, a/10411/22, a/10433/22, a/10447/22, a/10448/22, a/10449/22, a/10450/22, a/10451/22, a/10452/22, a/10453/22, a/10454/22, a/10455/22, a/10456/22, a/10457/22, a/10458/22, a/10459/22, a/10460/22, a/10461/22, a/10462/22, a/10463/22, a/10464/22, a/10465/22, a/10466/22, a/10467/22, a/10468/22, a/10469/22, a/10470/22, a/10471/22, a/10472/22, a/10473/22, a/10474/22, a/10475/22,

²⁹ See for example a/10281/22 or /10287/22.

³⁰ See for example a/10005/22.


³¹ Registry, “Second Registry Assessment Report and Transmission of Victim Applications for Participation in Pre-Trial Proceedings”, 21 April 2021, ICC-02/05-01/20-358, paras 24-31. The issues with retrospective memory is compounded for victims who have suffered from a series of events, at different times and locations, over a long period of time.

³² Pre-Trial Chamber II, “Decision on victim applications for participation, legal representation, leave to appeal and amicus curiae requests”, 20 May 2021, ICC-02/05-01/20-398, para. 44.

³³ See for instance, Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, “Second Decision on the Principles Applicable to Victims’ Applications for Participation”, dated 8 October 2018, ICC-01/12-01/18-146-tENG, paras. 18-22, and reference cited, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision on 270 applications by victims to participate in the proceedings”, 25 October 2011, ICC-01/05-01/08-1862, para. 24, and “Public redacted version of ‘Decision on the tenth and seventeenth transmissions of applications by victims to participate in the proceedings’”, ICC-01/05-01/08-2247-Red, 19 July 2012, para. 36, and Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, “Decision on victims’ participation status”, 7 January 2016, ICC-02/11-01/15-379, para. 45 and references cited.

Prosecution's Trial Brief,³⁴ or provided any other sufficiently detailed contextual descriptions that sufficiently date the events.³⁵

23. The Registry will continue to assess all applications in its possession according to the criteria established by the Chamber and will transmit all complete applications on a rolling basis.

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

Dated this 24 February 2023

At The Hague, the Netherlands

³⁴ See Trial Brief, annexes 11, 17 and 23.

³⁵ In these cases the applicants provided contextual elements, which match with the Prosecution's Trial Brief. For instance, in relation to the Mukjar charges, applicants would describe the arrests of Fur males at checkpoints and during house-to-house searches (Trial Brief, paras 195, 341, and 345), the presence of Mr Abd-Al-Rahman or other alleged perpetrators (Trial Brief, para. 345), the torture and inhumane conditions (Trial Brief, para. 196), as well as the execution of Fur men outside of Mukjar (Trial Brief, paras 198, 342, 346 and 36).