

**Cour
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**International
Criminal
Court**



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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**

**First 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 In light of the confirmed charges,³ the Chamber further instructed the Registry to i) reassess the applications of the 151 victims admitted at the confirmation of charges stage of the proceedings; ii) assess, pursuant to the Registry’s “ABC Approach” of assessing victim applications, any new applications received to date for the purpose of participation in trial; and iii) produce a report on both aspects by 6 December 2021 and thereafter periodically and on a rolling basis.⁴
2. The Registry hereby submits its report which includes:
 - Details on the reassessment of the 151 applications admitted at the confirmation of charges stage of the proceedings; and
 - 12 new applications⁵ submitted by persons that clearly, in the Registry’s assessment, qualify as victims of this Case (Group A), together with a brief description of the assessment criteria applied.

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

² Ibid., para.15. During the confirmation of charges stage of the proceedings, Pre-Trial Chamber II (“PTCII”) adopted an admission system whereby the Victims Participation and Reparations Section (“VPRS”) should “classify all complete applications into three categories: **Group A**: Applicants who clearly qualify as victims of this case; **Group B**: Applicants who clearly do not qualify as victims of this case; and **Group C**: Applicants for whom the Registry could not make a clear determination” (“ABC Approach”) See “Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing”, 18 January 2021, ICC-02/05-01/20-259, para. 34 (“First Decision”).

³ See 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. A corrected version of the decision was filed on 23 November 2021.

⁴ Decision, para 15.

⁵ The Registry has included in this category application a/25146/21 which was rejected at the pre-trial stage of the proceedings and is transmitted again in light of supplementary information received.

3. The reassessed and new applications classified as Group A 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.⁶

II. Procedural History

4. On 20 May 2021, PTC II authorised 151 applicant victims to participate in the confirmation decision (“20 May 2021 Decision”).⁷
5. On 9 July 2021, PTC II issued its decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’) (“Confirmation Decision”).⁸
6. 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.⁹
7. On 1 September 2021, the Registry provided its Update on victim participation.¹⁰
8. On 8 September 2021, the Chamber held the first status conference and set the start of the trial on 5 April 2022.¹¹
9. On 19 October 2021, the Chamber issued the Decision.¹²

III. Classification

10. Pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”) and in accordance with the First Decision, the annex to the present report is classified as confidential.

⁶ First Decision, para. 34 (bullet point 4),

⁷ 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. 53.

⁸ 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.

⁹ Trial Chamber I, “Order scheduling first status conference”, 16 August 2021, ICC-02/05-01/20-451.

¹⁰ Registry, “Public redacted version of Update on Victim Applications for Participation”, 1 September 2021, ICC-02/05-01/20-462-AnxII-Red.

¹¹ 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.

¹² Trial Chamber I, “Decision on victims’ participation and legal representation in trial proceedings”, 19 October 2021, ICC-02/05-01/20/398, para. 15.

IV. Applicable Law

11. 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

A. Details on the reassessment of victim applications admitted at the confirmation of charges stage.

12. During the pre-trial stage of the proceedings, the Single Judge adopted a broad approach in relation to the geographical scope of the “surrounding areas” of Kodoom, Bindisi, Mukjar and Deleig.¹³ Accordingly, applicants referring “to events the date and description of which correspond to the charges” were admitted in the proceedings, irrespective of whether they mentioned expressly one of these towns in their applications.¹⁴ The Confirmation Decision clarifies that said surrounding areas are to be understood as i) “the roads and fields surrounding Kodoom and Bindisi insofar as the victims were present in these locations when initially targeted”;¹⁵ and ii) “beyond the boundaries of [Mukjar and Deleig] only insofar as some of the victims were transported from there to other locations where they were allegedly executed”.¹⁶
13. In accordance with the Decision, the Registry has reviewed the 151 applications authorized to participate at the pre-trial stage of the proceedings in order to assess whether the Confirmation Decision could affect the victim status of any of the participating victims. It found that while 130 of these applications remain in Group

¹³ 20 May 2021 Decision, para. 46. The Single Judge further anticipated that the matter would be “deliberated upon by the Chamber in the context of its decision on the confirmation of the charges”.

¹⁴ *Ibid.*

¹⁵ Confirmation Decision, para. 25.

¹⁶ *Ibid.*

A, 21 require additional information from the victims for the Registry to make a clear determination.

14. The victims' narratives in these 21 applications relate to crimes committed in locations now falling outside the redefined geographical parameters of the Case. This includes attacks, while launched in relevant timeframes, of villages which are located in the Wadi Salih and Mukjar localities, such as Marly, Seder, Gausir or Tiro.¹⁷
15. The Registry considers premature to classify these applications as Group B applications. It notes that, in view of the manner and the particular context in which participation forms are completed in the field, it is possible, that, at times, the content of application forms does not reflect entirely what the victim experienced.¹⁸ In particular, the Registry observes that some applicants narrate their displacement from the Bindisi surrounding area to Mukjar as a result of Janjaweed attacks between August 2003 and March 2004, omitting to detail their experience during their stay in Mukjar. While these applicants appear to fall outside the geographical scope of the Bindisi charges, they might still have suffered from crimes falling within the scope of the Mukjar charges.
16. For these reasons, and before these applications are given a definite classification for the Chamber's consideration, the Registry considers appropriate to liaise with the common legal representatives of victims ("CLRVs") on the above-referenced forms, for the latter to confirm whether relevant applications capture their clients' full account.

¹⁷ See for geographical reference, the map provided in Annex A6 to the Prosecution's submission of the Pre-Confirmation Brief and the List of Evidence (ICC-02/05-01/20-346-AnxA6, 16 April 2016).

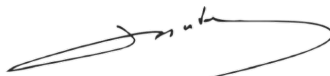
¹⁸ This can be explained by a variety of factors - inherent to the nature of the process - that come into play, which include issues related to the memory, traumatising, the nature of the relationship between the victim and the interviewer, inadequate interpretation, cultural taboo, etc. In the Registry's experience, victims also often recount in their application form the part of their story they believe is the most significant for the admission process, and retain other parts which might be equally relevant.

B. Details on the assessment criteria applied to New Applications falling within Group A

17. Applying the criteria set out in paragraph 16 of the First Decision, the VPRS has assessed each of the 12 newly received applications for participation transmitted herewith under Group A as complete. In conducting its *prima facie* assessment in accordance with paragraph 17 of the First Decision, the VPRS confirms that each of the 12 applicants in Group A have met *prima facie* 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.¹⁹

18. 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.



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

Dated this 6 December 2021

At The Hague, the Netherlands

¹⁹ 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/25207/21, a/25213/21 and a/25217/21.