



Original: English

**No. ICC-02/05-01/20
Date: 14 January 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

First 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:

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Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
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**Victims Participation and Reparations
Section**

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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 (‘CLRVs’).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 (the ‘Registry’s Report’).⁴ It also transmitted 142 Group A applications to the Chamber.⁵

Applicable law

4. The Chamber notes Article 68(1) and (3) of the Rome Statute; Rules 85, 86 and 89 to 92 of the Rules of Procedure and Evidence (the ‘Rules’); and Regulation 86 of the Regulations of the Court. It further notes the consistent jurisprudence of the Court regarding the assessment of victims’ applications pursuant Rule 85 of the Rules.⁶ The Chamber recalls, in particular, that individuals seeking to be admitted as participating victims will have to demonstrate *prima facie* that they are victims within the meaning

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

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) (hereinafter: ‘Registry’s Report’). 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 Appeals Chamber, *The Prosecutor v. Germain Katanga*, Public redacted Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, 9 March 2018, ICC-01/04-01/07-3778-Red A3 A4 A5, para. 117; Trial Chamber V, *The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaiisona*, Tenth Decision on Victims’ Participation in Trial Proceedings (Groups A and B), 24 August 2021, ICC-01/14-01/18-1092; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Fifth decision on the admission of victims to participate in trial proceedings, 29 January 2021, ICC-01/12-01/18-1271.

of Rule 85(a) of the Rules, according to the following criteria: (i) the applicant has established his/her identity as a natural person; (ii) the applicant is alleged to have suffered harm; and (iii) the personal harm reported by the applicant resulted from an incident falling within the temporal, geographic and material parameters of the case (the ‘Rule 85(a) Test’).

Group A applications

5. Pre-Trial Chamber II authorised the participation of 151 victims.⁷ The Chamber emphasises that the admitted victims continue to participate at trial, insofar as the reassessment of their applications in light of the confirmed charges still places them under Group A.⁸ This is the case for 130 out of the 151 victims admitted at the pre-trial stage.

6. The Registry reports that the remaining 21 pre-trial applications contain narratives which need to be verified with the CLRVs for clarity. This is due to the fact that the decision confirming the charges ‘redefined [the] geographical parameters of the Case’.⁹ It found that the term ‘surrounding areas’ is to be understood as: (i) ‘extending to the roads and fields surrounding Kodoom and Bindisi insofar as the victims were present in these locations when initially targeted’ and (ii) ‘beyond the boundaries of [Mujkar and Deleig] only insofar as some of the victims were transported from there to other locations where they were allegedly executed’.¹⁰ In the Registry’s view, it would be premature to classify them as Group B, suggesting instead to first liaise with the CLRVs in order to confirm whether those applications capture their clients’ full account.¹¹ The Chamber accepts this course of action and instructs the Registry to report accordingly. The Chamber will rule on the status of the 21 prospective victims upon receipt of the Registry’s report.

⁷ Decision on victim applications for participation, legal representation, leave to appeal and *amicus curiae* requests, 20 May 2021, ICC-02/05-01/20-398, p. 22.

⁸ Chambers Practice Manual, paras 57-58, 98(iv). See Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008, 10 July 2008, ICC-01/04-01/06-1432 OA9 OA10, paras 58, 62; Trial Chamber V, *The Prosecutor v. Alfred Yekatom & Patrice-Edouard Ngaïssona*, Decision on Victims’ Participation in Trial Proceedings, 23 November 2020, ICC-01/14-01/18-738, para. 20.

⁹ Registry’s Report, ICC-02/05-01/20-528, para. 14.

¹⁰ Corrected version of ‘Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’), 9 July 2021, ICC-02/05-01/20-433, 23 November 2021, ICC-02/05-01/20-433-Corr. See Registry’s Report, ICC-02/05-01/20-528, paras 12-16.

¹¹ Registry’s Report, ICC-02/05-01/20-528, paras 15-16.

7. The Registry has further transmitted 12 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.

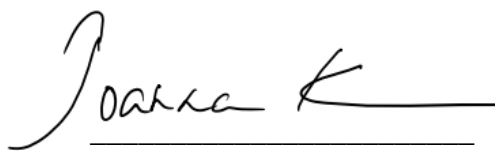
8. A full list with the victims admitted to participate in trial is annexed to the present decision.

Legal representation

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

10. For these reasons, the Chamber:

- i. **Confirms** the continued participation of 130 victims admitted at pre-trial as identified in Group A of the Registry's Report;
- ii. **Authorises** the following 12 new applicants identified in Group A of the Registry's Report to participate as victims in the trial proceedings: a/25054/21; a/25055/21; a/25146/21; a/25207/21; a/25210/21; a/25211/21; a/25212/21; a/25213/21; a/25215/21; a/25216/21; a/25217/21; a/25219/21;
- iii. **Decides** that the CLRVs will represent the 12 new victims hereby authorised to participate in the proceedings henceforth.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 14 January 2022

At The Hague, The Netherlands

¹² Victims' Decision, ICC-02/05-01/20-494, paras 7-13.