



**Original: English**

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

**Date: 9 February 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**

**Decision on the Registry's request for extension of time limit to submit victims'  
applications for participation**

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

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Participation/Reparations**

**The Office of Public Counsel for Victims**

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

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**Detention 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 (the ‘CLR.V’) (the ‘Decision on victims’ participation’).<sup>1</sup>
2. 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.<sup>2</sup>
3. On 7 February 2022, the Chamber set the deadline for the submission of applications for participation at the end of the presentation of the Prosecution’s case.<sup>3</sup>
4. On 3 October 2022, the Chamber authorised the participation of 31 victims in the present trial proceedings,<sup>4</sup> and instructed the Registry to start mapping potentially eligible beneficiaries of reparations.<sup>5</sup>
5. On 22 November 2022, the Chamber authorised the participation of 101 victims in the present trial proceedings.<sup>6</sup>
6. During the status conference held on 6 December 2022, the Prosecution announced that it would conclude the presentation of its case by the end of January or early February 2023.<sup>7</sup>
7. On 15 December 2022, the Chamber issued a decision setting the opening statements and the presentation of the CLR.V’s case, if leave is granted, to 8 May 2023.<sup>8</sup> This date was later amended to 22 May 2023.<sup>9</sup> The Chamber also set the opening

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

<sup>2</sup> First decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-556.

<sup>3</sup> Transcript of hearing, 7 February 2022, ICC-02/05-01/20-T-020-CONF-ENG, p. 70, line 1 to p. 71, line 6. A public redacted version was notified on 31 May 2022, ICC-02/05-01/20-T-020-Red-ENG.

<sup>4</sup> Second decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761.

<sup>5</sup> Second decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761, paras 13-20.

<sup>6</sup> Third decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-817.

<sup>7</sup> Transcript of hearing, 6 December 2022, ICC-02/05-01/20-T-105-CONF-ENG, p. 55, lines 15-23.

<sup>8</sup> Second Directions on the Conduct of Proceedings, ICC-02/05-01/20-836, para. 15.

<sup>9</sup> Email from the Chamber, 31 January 2023, at 11:58; Email from the Chamber, 1 February 2023, at 17:17.

statements of the Defence's case and the start of testimony of any defence witnesses, respectively, for 20-21 July and 28 August 2023.<sup>10</sup>

8. On 22 December 2022, the Registry filed a request for an extension of time limit to submit victims' applications in the present proceedings (the 'Registry's Request').<sup>11</sup>

9. On 3 January 2023, the Defence filed a response (the 'Defence's Response')<sup>12</sup> and the CLRV filed observations (the 'CLRV's Observations')<sup>13</sup> to the Registry's Request.

10. On 1 February 2023, the Chamber further authorised the participation of 102 victims in the present trial proceedings.<sup>14</sup>

## I. SUBMISSIONS

11. In its request, the Registry states that, due to operational constraints in Darfur, the pace of collection of victims' applications has been slower than anticipated. The Registry therefore requests an extension of time limit to transmit applications for participation until the end of presentation of the Defence's case.<sup>15</sup>

12. The Registry further states that victims have continued to show interest in applying to participate in the present case.<sup>16</sup> Furthermore, the Registry avers that, while the Chambers Practice Manual sets the final time limit for the transmission of victims' applications at the end of the presentation of the Prosecution's case,<sup>17</sup> the present case 'provides exceptional circumstances in the slow initial Registry progress in being able to reach out to victims for reasons outside its control'.<sup>18</sup>

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<sup>10</sup> Second Directions on the Conduct of Proceedings, ICC-02/05- 01/20-836, para. 20.

<sup>11</sup> Registry Request for Extension of Time Limit to Submit Victim Applications for Participation, ICC-02/05-01/20-838-Conf-Exp. Confidential and public redacted versions were notified on the same day, ICC-02/05-01/20-838-Conf-Red and ICC-02/05-01/20-838-Red, respectively.

<sup>12</sup> Réponse à la Requête ICC-02/05-01/20-838-Conf-Red, ICC-02/05-01/20-842 (the document was reclassified as Public pursuant to the Chamber's instructions, *see* Email from the Chamber, 10 January 2023, at 14:01).

<sup>13</sup> Observations on behalf of Victims on the "Registry Request for Extension of Time Limit to Submit Victim Applications for Participation", ICC-02/05-01/20-843.

<sup>14</sup> Fourth decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-861.

<sup>15</sup> Registry's Request, ICC-02/05-01/20-838-Red, para. 1.

<sup>16</sup> Registry's Request, ICC-02/05-01/20-838-Red, paras 15-19.

<sup>17</sup> Chambers Practice Manual, edition of November 2022, para. 97(iii).

<sup>18</sup> Registry's Request, ICC-02/05-01/20-838-Red, para. 19.

13. In its response, the Defence contends that the Registry has no *locus standi* and that the Request has no legal basis and must therefore be dismissed *in limine*.<sup>19</sup> The Defence further argues that granting the Registry's Request would only aggravate the harm suffered by the Defence as a result of the application of the ABC Approach.<sup>20</sup> The Defence also submits that there would be no benefit to victims who would be admitted to participate after the presentation of the CLRV's case.<sup>21</sup> Alternatively, the Defence submits that the good cause requirement under Regulation 35 of the Regulations of the Court (the 'Regulations') has not been met.<sup>22</sup>

14. The CLRV contend in their observations that good cause exists under Regulation 35 of the Regulations to authorise an extension of time limit to submit victims' applications for participation.<sup>23</sup> The CLRV further submit that '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.'<sup>24</sup>

## II. ANALYSIS

15. The Chamber refers to the legal framework applicable to the extension of time limits pursuant to Regulation 35(2) of the Regulations.<sup>25</sup>

16. The Chamber notes the Defence's preliminary objection that the Registry lacks *locus standi* to file a request for an extension of time limit to transmit victims' applications. The Chamber recalls that pursuant to Rule 89(1) of the Rules of Procedure and Evidence (the 'Rules'), the Registry is the only entity responsible for transmitting victims' applications to a chamber.<sup>26</sup> It follows naturally that the Registry is the only

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<sup>19</sup> Defence's Response, ICC-02/05-01/20-842, paras 3-7.

<sup>20</sup> Defence's Response, ICC-02/05-01/20-842, paras 8-9.

<sup>21</sup> Defence's Response, ICC-02/05-01/20-842, para. 1.

<sup>22</sup> Defence's Response, ICC-02/05-01/20-842, paras 10-14.

<sup>23</sup> CLRV's Observations, ICC-02/05-01/20-843, paras 6-10.

<sup>24</sup> CLRV's Observations, ICC-02/05-01/20-843, paras 3, 11.

<sup>25</sup> Decision on the Prosecution's request for an extension of time limit to disclose and add items to its list of evidence and list of witnesses, 24 December 2021, ICC-02/05-01/20-545-Conf, para. 3. A public redacted version was notified on 25 April 2022, ICC-02/05-01/20-545-Red.

<sup>26</sup> Rule 89(1) of the Rules reads as follows: 'In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber.' (emphasis added).

entity that can request an extension of time limit to transmit these applications to the Chamber. The Chamber therefore rejects the Defence's preliminary objection.

17. Turning to the Defence's main objection, the Chamber notes that the Defence attempts to litigate the Chamber's application of the ABC Approach once again, without presenting new arguments. The Chamber reiterates its findings on the application of the ABC Approach in the present case<sup>27</sup> and rejects the Defence's argument.

18. The Chamber recalls that, at the time of its decision setting the cut-off date to submit victims' applications, the Prosecution's case was projected to last longer and the list of Prosecution witnesses included 96 *viva voce* and/or Rule 68(3) witnesses.<sup>28</sup> The Prosecution's case is projected to end soon after hearing the 56<sup>th</sup> witness. Due to the fast pace of the current trial proceedings and the end of the Prosecution's case being earlier than expected, the originally expected cut-off date for the submission of victims' applications has been shortened considerably.

19. Moreover, the Chamber notes the Registry's submission that victims have showed continued interest in participating in the present case and that 'they want to be heard by the Court and to exercise their rights in the current proceedings, regardless of their length and potential outcome'.<sup>29</sup> Although the Defence claims that there would be no benefit to victims who would be admitted to participate after the presentation of the CLRV's case and that participation in the present case would be meaningless to the victims concerned,<sup>30</sup> the CLRV submit that victims admitted after the conclusion of the Prosecution's case could still meaningfully participate in the proceedings.<sup>31</sup> The Chamber notes in this regard, as noted above, that the CLRV's case is scheduled for 22-26 May 2023.

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<sup>27</sup> Decision on victims' participation, ICC-02/05-01/20-494; 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; Decision on the Defence's request for reconsideration of the Decision on victims' participation, 29 September 2022, ICC-02/05-01/20-759; Decision on the Defence's request for leave to appeal the Decision on the Defence's request for reconsideration of the Decision on victims' participation, 24 October 2022, ICC-02/05-01/20-774.

<sup>28</sup> ICC-02/05-01/20-551-Conf-Exp-Anx.

<sup>29</sup> Registry's Request, ICC-02/05-01/20-838-Red, para. 16.

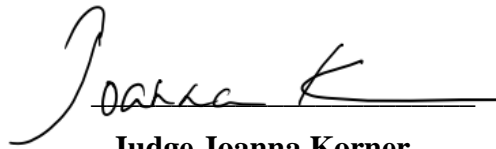
<sup>30</sup> Defence's Response, ICC-02/05-01/20-842, para. 1.

<sup>31</sup> CLRV's Observations, ICC-02/05-01/20-843, para. 11.

20. The Chamber understands that the Registry has faced challenges in collecting victims' applications for participation in the present case. The Chamber also notes that recently, the Registry has been able to collect more applications and is planning to transmit more to the Chamber in the upcoming months. Consequently, the Chamber finds it more appropriate to extend the time limit to submit victims' applications for participation until the end of the CLRV's case, rather than until the end of the Defence's case.<sup>32</sup>

21. The Chamber further recalls its instructions to the Registry to start mapping potentially eligible beneficiaries of reparations.<sup>33</sup> In the view of the Chamber, the mapping of potentially eligible beneficiaries of reparations presents another opportunity for victims to make themselves known to the Court once the above deadline has expired.

22. Accordingly, the Chamber finds that good cause was shown and grants the Registry's request in part by extending the deadline for submitting victims' applications in the present case until the end of the CLRV's case.

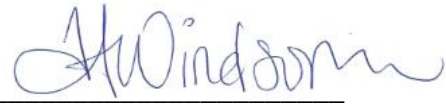


**Judge Joanna Korner**

**Presiding Judge**



**Judge Reine Alapini-Gansou**



**Judge Althea Violet Alexis-Windsor**

Dated this 9 February 2023

At The Hague, The Netherlands

<sup>32</sup> See Registry's Request, ICC-02/05-01/20-838-Red, para. 12.

<sup>33</sup> Second decision on the admission of victims to participate in trial proceedings, ICC-02/05-01/20-761, paras 13-20.