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

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PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Kesia-Mbe Mindua

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

**Prosecution’s Observations on the Victim Applications for Participation
transmitted by the Registry on 21 April 2021**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci

Legal Representatives of the Victims

Ms Amal Clooney
Mr Nasser Mohamed Amin Abdalla

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (the “Prosecution”), in accordance with rule 89(1) of the Rules of Procedure and Evidence (“Rules”) and the Single Judge’s “Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing”¹ (the “First Decision”), submits its observations on the 12 applications submitted by the Registry on 12 April 2021. Of these, Applicants **a/25006/21, a/25007/21, a/25016/21, a/25017/21, a/25021/21, a/25026/21 and a/25061/21** meet the requirements to be admitted to participate as victims in the pre-trial proceedings of the case. Applicants **a/20684/20, a/25014/21 and a/25013/21** should be requested to provide further information before their applications be granted. The Prosecution defers to the discretion of the Chamber with respect to Applicants **a/25044/21 and a/25011/21**.

II. PROCEDURAL BACKGROUND

2. On 18 January 2021, the Single Judge issued the First Decision ordering the parties to submit their observations on the victim applications within 10 days of receiving them.²

3. On 29 March 2021, the Prosecution submitted the Document Containing the Charges (“DCC”) against Ali Muhammad Ali ABD-AL-RAHMAN.³

4. On 21 April 2021, the Registry transmitted to the parties 12 victim applications on which it could not make a clear determination in light of the DCC.⁴

III. OBSERVATIONS

Legal criteria for victim admission and procedure in the present case

¹ ICC-02/05-01/20-259.

² ICC-02/05-01/20-259, para. 34.

³ ICC-02/05-01/20-325, Conf-Anx1.

⁴ ICC-02/05-01/20-358.

5. Victims' participation before the Court is an essential feature of the ICC proceedings and victims must be allowed to play a meaningful role in a manner which is not prejudicial to or inconsistent with the rights of the suspects and a fair and impartial trial.⁵

6. Pursuant to article 68(3) of the Statute, a person may participate as a victim in the proceedings if:

- (i) s/he qualifies as a victim pursuant to rule 85 of the Rules; and
- (ii) her/his personal interests are affected by the proceedings at hand, i.e. by the issues, legal or factual, raised therein.⁶

7. With respect to the definition of rule 85 of the Rules, the jurisprudence has clarified that an applicant can qualify as a victim in the case, when the following criteria are satisfied *prima facie*:

- (i) the identity of the applicant (a natural person or an organisation or institution) is duly established;
- (ii) the applicant must have suffered physical, psychological and/or material harm;⁷ and
- (iii) there is a causal link between the harm suffered by the applicant 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 DCC.⁸

The factual analysis of 12 applications for participation

Applicants who meet the criteria for victim participation

⁵ In line with the object and purpose of article 68(3) of the Statute and Court's jurisprudence expressly grant certain rights to victims and other participatory privileges require specific authorisation by the Chamber. ICC-02/05-01/20-314, para. 28.

⁶ See, the Appeals Chamber decisions ICC-01/04-556, para. 45 and ICC-01/04-01/06-1335, para. 36; ICC-01/09-02/11-126, para. 10; ICC-02/04-01/15-309, para. 7.

⁷ ICC-01/04-01/06-1432, para. 1; ICC-02/04-179, paras. 1, 36 and 38; ICC-01/04-01/07-1491, para. 37.

⁸ ICC-02/05-01/20-314, para 21.

8. Applicants **a/25007/21**, **a/25006/21** and **a/25021/21** meet the necessary requirements for participation in the pre-trial proceedings of the case. They suffered harm which is linked to *at least one* of the crimes alleged in the DCC.

9. Applicants **a/25016/21**, **a/25017/21**, **a/25026/21** and **a/25061/21** do not specify the exact date of the crimes from which they allegedly suffered harm. However, the Prosecution considers that the information about the location and circumstances of the events is sufficient to determine *prima facie* that the Applicants did suffer harm as a result of the crimes with which the suspect is being charged. This is consistent with the Court's jurisprudence adopting a flexible approach in assessing victim applications with regard to the temporal and territorial scope of a case at this stage of the proceedings.⁹

Applicants whose applications require further clarification

10. For Applicant **a/20684/20**, the Prosecution is not in a position to provide its observations because the location where the incident took place is redacted in the application. In order for the Prosecution to determine whether the incident described by the Applicant falls within the geographic scope of the charges, the redactions applied to the location where the concerned crimes took place should be lifted.

11. Applicant **a/25013/21** describes having suffered harm from the crimes committed by Mr ABD-AL-RAHMAN's subordinates on his way back to Bindisi in December 2003. The Prosecution is charging Mr ABD-AL-RAHMAN with the crimes allegedly committed in Bindisi and surrounding areas between about 15 and about 16 August 2003. Therefore, the first event described by the Applicant falls outside the temporal scope of the charges. In the same application, the Applicant also stated that when the war in Bindisi broke out, his house and other goods were destroyed. As a consequence, the Applicant had to leave Bindisi. However, the Applicant does not provide any information about the timing of the second event.

⁹ ICC-01/14-01/18-227-Red, para. 24.

12. Applicant **a/25014/21** describes having suffered harm from the crimes allegedly committed by the Mr ABD-AL-RAHMAN in Deleig. The events described by the Applicant happened in Deleig twice. The Applicant stated that the first event happened during the harvest season in 2003. Later, the Applicant stated that the second event happened in the summer but was not specific about the year of this event. The Applicant would meet the criteria for victim participation if the second event indeed falls within the temporal scope of the Deleig incident, as charged in the DCC.¹⁰

Applicants who appear on face value not to meet the criteria for victim participation

13. Applicant **a/25044/21** describes having suffered harm as a result of an attack carried out by Janjaweed in Qaba village which is located in East Arawala. Applicant **a/25011/21** describes the attack in Deleig in December 2003.

14. The events described in these two applications appear, on face value, not to fall within the scope of the charged incidents. However, considering the lapse in time between the incidents and the submission of the victims applications, the Prosecution defers to the discretion of the Chamber in determining whether further verification with the Applicants is required to establish the causal link between the harm suffered by them 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 DCC.

IV. CONCLUSION

15. For the reasons set out above, the Prosecution considers that Applicants **a/25006/21**, **a/25007/21**, **a/25016/21**, **a/25017/21**, **a/25021/21**, **a/25026/21** and **a/25061/21** meet the requirements to participate as victims in the pre-trial proceedings in this case. More information is needed to determine whether Applicants **a/20684/20**,

¹⁰ ICC-02/05-01/20-325-Conf-Anx1, p. 32.

a/25013/21 and a/25014/21 meet the criteria under rule 85. The Prosecution defers to the discretion of the Chamber with respect to Applicants a/25044/21 and a/25011/21.



Fatou Bensouda
Prosecutor

Dated this 3rd day of May 2021

At The Hague, The Netherlands