

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **26 October 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

**CLRV Notification of intention to file a Trial Brief and Preliminary Submissions
on the scheduling of a victims’ case**

Source: The Common Legal Representative of Victims

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Nazhat Shameem Khan
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci
Mr Iain Edwards

Legal Representative of the Victims

Ms Natalie von Wistinghausen
Mr Anand Shah

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Pieter Vanaverbeke

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. Introduction

1. In view of the progression of the presentation of evidence by the Office of the Prosecutor (“Prosecution”), and the possibility for the completion of its case before Easter of 2022,¹ the Common Legal Representative of Victims (“CLR V”) respectfully submits this notification in relation to the submission of a trial brief and the presentation of a possible victims’ case. This notification is also filed in advance of a potential hearing on scheduling matters indicated by Trial Chamber I,² to assist and facilitate relevant discussions at such a hearing.
2. The CLR V refers to the Trial Chamber’s “Directions on the conduct of proceedings”, which indicated that “[t]he Chamber may issue further directions at a later stage of the proceedings, in particular with regard to the Defence’s presentation of evidence, as well as the LRV presentation of evidence and/or of their views and concerns, should leave be granted”.³
3. The CLR V also refers to her Notification of 21 March 2022, which advised the Trial Chamber, *inter alia*, that the CLR V has elected to submit a trial brief in advance of her opening statement,⁴ and that any request the CLR V may pursue in respect of presentation of views and concerns and/or evidence will, subject to any additional instructions, be made towards the end of the Prosecution’s case.⁵
4. The CLR V hereby notifies the Trial Chamber of her intention to submit a trial brief in advance of the CLR V opening statement. The CLR V also provides, for the Trial Chamber’s assistance and consideration, proposals on the applicable deadlines for the CLR V trial brief and possible presentation of a victims’ case, as well as preliminary indications in respect to a victims’ case.

¹ Transcript of Hearing of 10 October 2022, ICC-02/05-01/20-T-088-CONF-ENG RT, p. 6, lines 10 to 22.

² Email from the Legal Officer of Trial Chamber I to the parties and participants, 19 October 2022 (advising that the Trial Chamber may schedule a hearing in the course of December 2022, to discuss, *inter alia*, the conclusion of the Prosecution case, and the timing of any case by the CLR V and by the Defence).

³ Directions on the conduct of proceedings, 4 October 2021, [ICC-02/05-01/20-478](#) (“Directions”), para. 21.

⁴ Common Legal Representatives of Victims Notification on opening statement and procedural matters for trial, 21 March 2022, [ICC-02/05-01/20-640](#) (“CLR V Notification”), para. 6.

⁵ *Id.*, para. 12.

II. Submissions

a. CLRV Opening Statement and Trial Brief

5. In accordance with the Trial Chamber's Directions,⁶ and as indicated in her Notification of 21 March 2022,⁷ the CLRV has elected to make an opening statement prior to the presentation of the victims' case, should leave be granted. The CLRV respectfully submits that the deadlines set out in the Directions, for information on and objections to material the CLRV intends to use in the course of the CLRV opening statement, should continue to apply.⁸
6. The CLRV further advises that she intends to file a trial brief in advance of the CLRV opening statement. The CLRV recalls in that regard the Trial Chamber's oral decision permitting the CLRV to submit a trial brief when she considers it appropriate.⁹ The CLRV will stay well within the page limit established in Regulation 38(1) of the Regulations of the Court for trial briefs.¹⁰
7. The CLRV proposes that the deadline for submission of the CLRV trial brief is set for the expected end of the Prosecution case, and the CLRV opening statement scheduled for no earlier than one month after the expected end of the OTP case. In view of the deadline set by the Trial Chamber for submission of victim applications by the end of the OTP case,¹¹ this schedule will provide a reasonable opportunity for the CLRV to attempt to consult with as many possible clients as feasible, including newly admitted clients, in advance of the submission of a trial brief and presentation of an opening statement, also taking into account the existing security and logistical realities involved in meeting and communicating

⁶ Directions, paras 13-14 (ruling that the CLRV is granted three hours to make an opening statement, either at the commencement of trial or just prior to the presentation of evidence by the CLRV, if any).

⁷ CLRV Notification, para. 2.

⁸ Directions, para. 17. The applicable reference point would accordingly be the date of the CLRV opening statement, instead of the commencement of the trial.

⁹ Transcript of hearing, 8 February 2022, [ICC-02/05-01/20-T-022-Red-ENG CT](#), p. 45, lines 3-6.

¹⁰ Regulation 38(1) provides that a pre-trial brief, trial brief, and a closing brief shall not exceed 120 pages.

¹¹ Transcript of hearing, 7 February 2022, [ICC-02/05-01/20-T-020-Red-ENG](#), p. 70, line 2 to p. 71, line 6. However, the Trial Chamber further advised that victims' applications transmitted between the end of the Prosecution's case and the end of the evidence in the case will not be rejected automatically, but be considered on a case-by-case basis.

with the participating victims in these proceedings, the bulk of whom are located in Darfur and Eastern Chad.

8. The CLRV also notes the current schedule indicated by the Trial Chamber for trial hearings for March through May of 2022,¹² would appear to provide sufficient flexibility for scheduling the limited case the CLRV would seek to present, without any significant (if any) impact on the efficiency and expeditiousness of the proceedings.

b. Presentation of views and concerns and/or presentation of evidence

9. The CLRV intends to seek the Trial Chamber's leave to present evidence and/or call participating victims to present views and concerns, in accordance with Articles 68(3) and 69(3) of the Rome Statute and the Trial Chamber's Directions.¹³
10. The CLRV preliminarily advises that she will seek permission for up to three victims to present their views and concerns in-person or by video-link to the Trial Chamber. In addition, the CLRV may seek the Trial Chamber's leave to call one expert witness and one fact witness to present evidence. A final assessment cannot yet be made at this stage and is subject to further consideration and communication with participating victims and potential (expert) witnesses, but – and in order to assure an efficient way forward – the CLRV wishes to inform the Trial Chamber of her current intentions and would be grateful for an indication from the Trial Chamber if those are accepted.
11. The CLRV proposes a deadline of one month prior to the expected end of the Prosecution case to file any motivated requests¹⁴ to call evidence or present views and concerns, which would include, *inter alia*, an indication of the content of the

¹² See Email from the Legal Officer of Trial Chamber I to the parties and participants, 6 October 2022 at 14h52.

¹³ Directions, para. 21.

¹⁴ See CLRV Notification, para. 12 (submitting that any requests to call evidence and/or present views and concerns would be based on an assessment of, *inter alia*, which victims / witnesses would be: (i) best-placed to assist the Trial Chamber's determination of the truth in this case; (ii) able to present views and concerns or evidence affecting the personal interests of the greatest number of participating victims; and (iii) best-placed to present testimony that will not be significantly cumulative of that already presented during the Prosecution's case) (internal citations omitted).

expected evidence and/or views and concerns, as well the proposed length of testimony and/or presentation of views and concerns.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'N. Wistinghausen', with a long horizontal flourish extending to the right.

Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 26 October 2022

At Berlin, Germany