

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-02/05-01/20**  
Date: **21 September 2021**

**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**

**Submissions on the issue of legal representation of victims**

**Source:** Legal Representative of the Victims

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

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Mr Julian Nicholls

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Mr Iain Edwards

**Legal Representatives of the Victims**

Ms Amal Clooney

Mr Nasser Mohamed Amin Abdalla

Ms Paolina Massidda

**Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants  
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Ms Sarah Pellet

Ms Ludovica Vetrucchio

**The Office of Public Counsel for the  
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Mr Nigel Verrill

**Detention Section****Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

Ms Natalie von Wistinghausen

1. Counsel is grateful for the invitation to make submissions on the issue of legal representation of victims.<sup>1</sup>

2. At the pre-trial stage of this case, a total of 151 victims were admitted to participate in the proceedings. Ms Clooney was appointed to represent 126 of the victims as a 'joint legal representative' with Mr Nasser Amin.<sup>2</sup> The other 25 were represented by Ms Massidda from the Office of Public Counsel for Victims (OPCV).<sup>3</sup>

3. Although there was no obligation to do so, Ms Clooney and Mr Amin indicated a willingness to represent victims on a *pro bono* basis so that the appointment of external counsel in line with victims' choice of counsel would not affect the Court's budget.<sup>4</sup>

4. The Pre-Trial Chamber made clear that its decision permitting 151 victims to participate related only to 'the confirmation proceedings' at the pre-trial stage.<sup>5</sup> It also made clear that 'it would be premature ... to set in motion the formal selection process for one or more common legal representatives' under rule 90 of the Court's Rules of Procedure and Evidence at that stage.<sup>6</sup> The issue of the admission of victims to participate in the trial and the question of their common legal representation are therefore for this Chamber to determine.<sup>7</sup>

5. The Registry has indicated that the 'arrangement [that this] Chamber may wish to adopt for participation of victims in the Case' may mirror that selected by the Pre-Trial Chamber but 'stresses that, so far, only a relatively small number of victims has

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<sup>1</sup> Email from Cynthia Chamberlain (on behalf of Trial Chamber I) dated 10 September 2021 (16:47). An earlier version of these submissions was communicated to Ms Massidda, Mr Amin and Ms von Wistinghausen in advance and submitted to the Chamber via e-mail. It has been re-filed via the Court's e-Filing system at the direction of the Chamber.

<sup>2</sup> *Abd-Al-Rahman*, PTC II, Decision of 20 May 2021 ([ICC-02/05-01/20-398](#)), page 22; Annex to Decision of 20 May 2021 ([ICC-02/05-01/20-398-Anx-Corr](#)).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Abd-Al-Rahman*, Request of 25 January 2021 ([ICC-02/05-01/20-268](#)), §§17-18.

<sup>5</sup> *Abd-Al-Rahman*, PTC II, Decision of 20 May 2021 ([ICC-02/05-01/20-398](#)), page 22 ('Authorises 151 applicant victims listed in the annex to this decision to participate in the confirmation proceedings').

<sup>6</sup> *Abd-Al-Rahman*, PTC II, Decision of 21 January 2021 ([ICC-02/05-01/20-259](#)), §37.

<sup>7</sup> See *Abd-Al-Rahman*, Observations of the Defence of 1 September 2021 (ICC-02/05-01/20-461), §46. See also Victims' joint submissions of 1 September 2021 ([ICC-02/05-01/20-463](#)), §26.

been ... admitted' and that the Registry will therefore 'collect [the] views' of new applicants and 'report to the Chamber as appropriate'.<sup>8</sup>

6. Ms Clooney wishes to inform the Chamber that she has been appointed to a new role -- also *pro bono* and with the aim of advancing accountability for crimes committed in Darfur -- as Special Adviser to the new ICC Prosecutor, Mr Karim Khan, on Darfur.<sup>9</sup> Given this development, she does not seek appointment in the team of common legal representatives for victims during the trial or any other phase of this case.<sup>10</sup>

7. There is no gap in legal representation for victims as they are currently represented by Mr Amin or Ms Massidda, and counsel notes that the Trial Chamber has ordered that '[Legal Representatives for Victims], together with the OPCV, are instructed' to file submissions 'as a single team'.<sup>11</sup> Victims have also authorised a replacement co-counsel to represent them: Ms Natalie von Wistinghausen, a distinguished international criminal lawyer on the ICC List of Counsel who has indicated her availability to represent victims going forward in this case.<sup>12</sup>

8. The Chamber has asked for an indication of who will be the lead counsel from the group of external counsel representing victims.<sup>13</sup> The Presiding Judge of the Trial Chamber has suggested that a lead counsel for each team should be identified,<sup>14</sup> and this was anticipated by external counsel at the pre-trial stage to facilitate efficient

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<sup>8</sup> *Abd-Al-Rahman*, Annex II to the Registry Submissions of 1 September 2021, ([ICC-02/05-01/20-462-AnxII-Red](#)), §§29-31.

<sup>9</sup> ICC Office of the Prosecutor, [Press release of 17 September 2021](#). Ms Clooney intends to begin her duties on 15 October, after consultations with the victims have been completed.

<sup>10</sup> The appointment of team members at the pre-trial stage is also being terminated in line with their terms of appointment. All counsel however recognise the continuing obligations under the Code of Professional Conduct for Counsel.

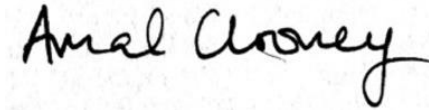
<sup>11</sup> *Abd-Al-Rahman*, TC I, Order dated 15 September 2021 ([ICC-02/05-01/20-471](#)), §2 fn 2.

<sup>12</sup> The consultations with each individual confirm the termination of Ms Clooney's mandate and seek to establish whether the victim would like to be represented by Ms von Wistinghausen. All victims who have been consulted so far have indicated that they would like to appoint Ms von Wistinghausen as replacement counsel. Once confirmations are received, VPRS will be updated and the relevant files will be transferred to Ms von Wistinghausen. Although many victims are currently out in fields and difficult to reach, it is expected that the consultation process will be completed by the end of September, well in advance of the start of trial.

<sup>13</sup> Email from Gabriella dos Santos (on behalf of Trial Chamber I) dated 20 September 2021 (16:42).

<sup>14</sup> *Prosecutor v. Abd-Al-Rahman*, TC I, Transcript of status conference dated 8 September 2021 ([ICC-02/05-01/20-T-013-ENG](#)), page 73, lines 11-17.

working arrangements.<sup>15</sup> Replacement counsel Ms von Wistinghausen has indicated that she would be willing and able to take on this role.<sup>16</sup>



**Amal Clooney**

**Legal Representative of the Victims**

Dated this 21<sup>st</sup> day of September 2021

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<sup>15</sup> See email from Philipp Ambach dated 25 January 2021 (12:18) (indicating 'the joint representation with Ms Amal Clooney as lead counsel'). However, the Single Judge determined that victims should be represented by counsel jointly: *Abd-Al-Rahman*, Decision of 19 March 2021, [\(ICC-02/05-01/20-314\)](#), page 13.

<sup>16</sup> It is suggested that this should begin on 15 October 2021.