



Original: English

**No. ICC-02/05-01/20
Date: 11 October 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

Order on victims' legal representation

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

The Office of the Prosecutor
Karim A.A. Khan

Counsel for the Defence
Cyril Laucci

Legal Representatives of Victims
Amal Clooney
Nasser Mohamed Amin Abdalla

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims
Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit
Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**
Philipp Ambach

Other
Ms Natalie von Wistinghausen

1. On 21 September 2021, Ms Amal Clooney filed submissions on legal representation of victims (the ‘Ms Clooney Submissions’).¹
2. On 1 October 2021, upon instruction of the Chamber,² the Registry filed a report on common legal representation (the ‘Registry Report’).³
3. On 4 October 2021, the Chamber instructed the legal representatives of victims to provide information as follows:
 - a) Whether all victims (presently participating and future victims) could be represented by Ms Wistinghausen and Mr Nasser acting as one single team.
 - b) Whether Ms Wistinghausen and Mr Nasser wish to continue representing victims participating in this case on a *pro bono* basis.
4. On 5 October 2021, the Defence responded to the Registry Report.⁴
5. On 8 October 2021,⁵ the Office of Public Counsel for Victims (the ‘OPCV’) filed its submissions⁶
6. On that same date, Ms von Wistinghausen submitted observations on behalf of victims who wish her to replace Ms Clooney. The Chamber notes however that since Ms von Wistinghausen has not been appointed as counsel, the Registry did not file her observations in the record of the case.⁷
7. Mr Nasser Mohamed Amin Abdalla did not file any response.⁸
8. The Chamber notes that Ms Clooney stated, *inter alia*, that ‘she does not seek appointment in the team of common legal representatives for victims during trial or in

¹ Submissions on the issue of legal representation of victims, ICC-02/05-01/20-474.

² Email instructions from the Chamber to the Registry, 22 September 2021 at 10:17.

³ Registry Report on Common Legal Representation, ICC-02/05-01/20-477. See Email instructions from the Chamber to the Registry, 22 September 2021 at 10:17.

⁴ *Réponse aux Observations du Greffe* ICC-02/05-01/20-477, ICC-02/05-01/20-479.

⁵ Email instructions from the Chamber to the legal representatives of victims, 04 October 2021 at 14:07.

⁶ Observations on the Registry Report on Common Legal Representation (‘OPCV Observations’), ICC-02/05-01/20-480. The OPCV currently represents 25 victims but states it also represents applicants whose participation status is pending.

⁷ The Registry transmitted a courtesy copy to the Chamber that same date, via e-mail at 17:19. Ms Wistinghausen states she represents 117 victims.

⁸ Mr Nasser Mohamed Amin Abdalla represents 5 victims and 4 others together with Ms Clooney/ Ms von Wistinghausen.

any other phase of the case'.⁹ She also informed the Chamber that victims she represented accept that Ms Clooney should be replaced by Ms Natalie Wistinghausen.¹⁰

9. The Chamber regrets that Ms Clooney simply informed the Chamber as a *fait accompli*, that she had withdrawn from the case and had found a replacement. Irrespective of the reasons for her withdrawal and the professional qualifications of Ms von Wistinghausen, pursuant to Article 16(3)(a) of the Code of Professional Conduct for counsel, permission of the Trial Chamber must be sought in advance.

10. The Chamber further notes that although Ms Clooney in her submission asserts that 'there is no gap in legal representation for victims'¹¹ and that victims have agreed to the replacement of counsel, until such time as Ms von Wistinghausen is appointed as counsel she cannot officially file submissions before the Chamber. The Chamber notes that although Ms Clooney stated that she intended to take up her new duties on 15 October she did not respond to the Chamber's request.

11. The Chamber also deplores the fact that despite its clear instructions,¹² counsel have not answered the specific questions asked by the Chamber. The Chamber emphasises that unless any conflict between victims emerges, in the interests of justice, efficiency and resources only one team will be appointed to represent the interests of victims at trial. The Chamber therefore instructs Ms Massidda, Ms Wistinghausen and Mr Nasser Mohamed Amin Abdalla, to indicate by 14 October 2021, whether they are willing to represent **all victims** (presently participating and future victims) acting as **one single team**, pursuant to Rule 90(2) of the Rules of Procedure and Evidence. If the answer is in the affirmative, then counsel should decide among themselves who will act as lead counsel and inform the Chamber accordingly by the same deadline.

12. For the present, to avoid a further gap in legal representation, and in order to enable her to make submissions on the issue of common legal representation, the Chamber authorises the appointment of Ms von Wistinghausen as legal representative.

⁹ Ms Clooney Submissions, ICC-02/05-01/20-474, para. 6.

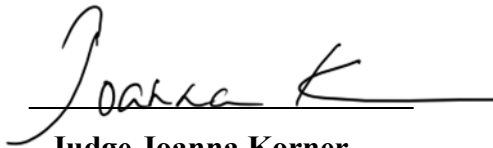
¹⁰ Ms Clooney Submissions, ICC-02/05-01/20-474, para. 7.

¹¹ Ms Clooney Submissions, ICC-02/05-01/20-474, para. 7.

¹² Transcript of hearing, 8 September 2021, ICC-02/05-01/20-T-013-ENG, in particular p. 73, lines 13-17; Email instructions from the Chamber to the Registry, 22 September 2021 at 10:17; Email instructions from the Chamber to the legal representatives of victims, 04 October 2021 at 14:07.

This appointment is without prejudice to the Chamber's ultimate decision on common legal representation.

13. Accordingly, the Registry is instructed to file the submissions of Ms von Wistinghausen on the case record.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 11 October 2021

At The Hague, The Netherlands