



Original: English

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

Date: 23 April 2021

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFUR, SUDAN

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

Public

**Joint Observations on behalf of Victims on the conduct of the
confirmation of charges hearing**

**Source: Legal Representatives of the Victims
Office of Public Counsel for Victims**

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 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
Ms Sarah Pellet
Ms Ludovica Vetrucchio

The Office of Public Counsel for the Defence

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. PROCEDURAL HISTORY

1. On 18 January 2021, the Single Judge, acting on behalf of Pre-Trial Chamber II (the “Chamber”) issued the “Decision establishing the principles applicable to victims’ participation and representation during the Confirmation Hearing” (the “First Decision”),¹ *inter alia*, instructing the Registry and the parties on the modalities for victims’ admission and participation process in the case and appointing Counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to represent applicant victims in the context of the confirmation proceedings.

2. On 5 February 2021, the Single Judge issued the “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance” (the “Second Decision”),² clarifying certain aspects of the First Decision.

3. On 19 March 2021, the Single Judge issued the “Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position” (the “19 March Decision”),³ appointing Mr Nasser Mohamed Amin Abdalla and Ms Amal Clooney as the joint legal representatives of victims admitted to participate in the proceedings and providing further guidance on the modalities of victims’ participation, including at the confirmation hearing.

4. On 19 April 2021, by e-mail, the Chamber instructed the parties, the participants and the OPCV to submit their observations on the organisation of the confirmation of charges hearing by 23 April 2021.⁴ On 20 April 2021, by e-mail, the Chamber clarified

¹ See the “Decision establishing the principles applicable to victims’ and representation during the Confirmation Hearing” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-259](#), 18 January 2021.

² See the “Decision supplementing the Chamber’s first decision on victims’ participation and representation and providing additional guidance” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-277](#), 5 February 2021.

³ See the “Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/05-01/20-314](#), 22 March 2021 (dated 19 March 2021).

⁴ See the email of Pre-Trial Chamber II on 19 April 2021, at 16:50 hours

that two teams of lawyers representing victims will be authorised at the confirmation hearing.⁵

II. JOINT SUBMISSIONS ON THE CONDUCT OF THE CONFIRMATION OF CHARGES HEARING

5. The Legal Representatives of the Victims and Counsel from the OPCV (jointly “Counsel”) hereby file the following joint submissions on the organisation of the confirmation of charges hearing.

6. In accordance with paragraph 36 of the 19 March 2021 Decision⁶ – authorising, *inter alia*, the Legal Representatives to make opening and closing statements at the confirmation hearing in accordance with rule 89(1) of the Rules of Procedure and Evidence (the “Rules”) – Counsel request two hours *per* team to cover both the opening and the closing statements.

7. Pursuant to paragraph 37 of the 19 March 2021 Decision⁷ – granting the Legal Representatives the possibility to make submissions on the admissibility and/or relevance of any item of evidence – Counsel reserve their right to intervene on this issue, if necessary, to protect the interests of the victims, and subject to the Prosecution’s and Defence’s evidentiary submissions.

8. Lastly, following the consistent practice of the Court,⁸ and pursuant to paragraph 36 of the 19 March 2021 Decision,⁹ Counsel request 30 minutes *per* team to

⁵ See the email of Pre-Trial Chamber II on 20 April 2021, at 17:55 hours.

⁶ See the “Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position”, *supra* note 3, para. 36.

⁷ *Idem*, para. 37.

⁸ See *e.g.*, the “Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-02/11-83](#), 11 June 2014, paras. 28-31; the “Corrigendum to the Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-01/11-384](#), 6 February 2013, paras. 49-52. See also the “Decision on Victims’ Participation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/09-01/11-249](#), 5 August 2011, paras. 86-89; and the “Decision on the 138 applications for victims’ participation in the proceedings” (Pre-Trial Chamber I, Single Judge), [No. ICC-01/04-01/10-351](#), 11 August 2011, paras. 41-43.

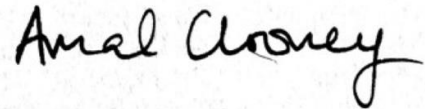
⁹ See the “Decision regarding the Registry’s First Assessment Report, legal representation, and the victims’ procedural position”, *supra* note 3, para. 37.

present oral requests, responses and submissions on any preliminary or other matters that arise at the hearing that may affect the interests of victims.

Respectfully submitted.



Paolina Massidda



Amal Clooney

Dated this 23rd Day of April 2021

At The Hague, The Netherlands and London, United Kingdom