

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **21 March 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**

**Common Legal Representatives of Victims Notification on opening statement and  
procedural matters for trial**

**Source:** The Common Legal Representatives 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  
Mr James Stewart  
Mr Julian Nicholls

**Counsel for the Defence**

Mr Cyril Laucci  
Mr Iain Edwards

**Legal Representatives of the Victims**

Ms Natalie von Wistinghausen  
Mr Nasser Amin Mohamed Abdalla

**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**

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**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**

1. In advance of the 5 April 2022 scheduled commencement of trial, the Common Legal Representatives of Victims (“CLR V”) in the *Abd-Al-Rahman* case respectfully provide this notification to the Trial Chamber on the CLR V’s opening statement, trial brief, the expected questioning of *viva voce* and Rule 68(3) witnesses, and the possibility of presentation of views and concerns by victims and/or the calling of witnesses at the request of the CLR V.

**(a) CLR V opening statement and trial brief**

2. Further to the Trial Chamber’s “Directions on the conduct of proceedings”,<sup>1</sup> the CLR V advise that they have elected to present the CLR V opening statement on behalf of participating victims, prior to the presentation of the CLR V case.
3. At the opening of trial, the CLR V respectfully request leave to make short introductory comments of no more than ten minutes, during which the CLR V will set out, for the benefit of their clients, the wider Darfuri and Sudanese communities, civil society, as well as the general public, basic information on the CLR V’s role and mandate, and address the CLR V’s decision to present their opening statement prior to any CLR V case.
4. The opening of trial in these proceedings will likely garner significant media coverage, and recordings of and publications on the opening will be widely distributed, including through the Court’s Public Information and Outreach Section (“PIOS”). The CLR V understand that PIOS will produce Sudanese Arabic and Fur recordings of the trial opening.
5. The CLR V submit that it is in the interests of justice, and will not prejudice the rights of the parties, to permit the CLR V the requested short introductory comments. Such intervention will better ensure that the CLR V’s clients and all relevant stakeholders understand that the interests, and views and concerns, of participating victims in this case will be represented in the courtroom throughout the proceedings, and the basic parameters of that representation. The CLR V

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<sup>1</sup> Directions on the Conduct of Proceedings, 4 October 2021, [ICC-02/05-01/20-478](#) (“Directions on the Proceedings”), paras 15-16.

emphasise that should leave be granted, the indicated introductory comments will be procedural and explanatory in nature, and will not enter into the facts of the case.

6. Further to the Trial Chamber's oral decision,<sup>2</sup> the CLRV similarly advise that, should they decide it is effective to do so and in the interests of their clients, the CLRV will submit a 'trial brief' in advance of their opening statement, and subject to any further directions of the Trial Chamber.

**(b) CLRV questioning of witnesses**

7. The Directions on the Proceedings establish the general principle governing the appropriate scope of questioning by the CLRV of witnesses called by the parties,<sup>3</sup> and specified that "[t]he necessity or propriety of questions asked will be addressed on a case-by-case basis" by the Trial Chamber.<sup>4</sup>
8. The Trial Chamber also determined that the CLRV "is not required to provide an advance written note of the specific questions they intend to ask – a general advance notification that they intend to pose questions suffices".<sup>5</sup> Additionally, the Trial Chamber directed that the non-calling party and the CLRV must provide by email a list of any materials they intend to use in questioning a witness a minimum of one day prior to said questioning.<sup>6</sup>
9. Further to the above noted directions, the CLRV propose that, as a general practice, the CLRV provide advance notification by email of its intention to question a witness a minimum of one day prior to the CLRV's expected questioning of a witness. As previously submitted, notwithstanding the CLRV's notification of intention to question, the final determination on the necessity and

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<sup>2</sup> Transcript of Hearing of 8 February 2022, ICC-02/05-01/20-T-022-CONF-ENG, p. 45, lines 3-6.

<sup>3</sup> Directions on the Proceedings, para. 36 ("*[T]he Chamber stresses that the LRV's role is different from the Prosecution's, which must be reflected in the types of questions asked. It is the Prosecution who exclusively carries the burden of proof to establish the alleged crimes. Consequently, and irrespective of whether the Prosecution has elicited information on a certain point relevant to the alleged crimes, the LRV's questioning is limited to matters relevant to the personal interests of the victims. This may, for instance, include questions about harms which the witness personally suffered or harms of other victims which the witness observed. Such questions may also relate to any future reparations proceedings which may occur.*") (internal citation omitted).

<sup>4</sup> *Id.*, para. 35.

<sup>5</sup> *Ibid.* (internal citation omitted).

<sup>6</sup> *Id.*, para. 44.

extent of such questioning can only be made after the conclusion of the calling party's examination of a witness, and may have to be done "on the spot", orally, and even after the end of the Prosecutor's examination.<sup>7</sup> The CLRV therefore additionally request the Trial Chamber to exercise its discretion to permit the CLRV to question a witness in respect of whom no advance notification was provided where the testimony elicited by the calling party significantly departs from the witness's expected testimony and is relevant to the personal interests of the victims (*e.g.*, the harm suffered by victims, the general extent of victimisation, with the ultimate aim of assisting the Chamber in its determination of the truth).

10. To assist the Trial Chamber in its trial management function, the CLRV advise that they are highly likely to submit notification of intention of questioning in respect of their clients (dual status witnesses), other crime base witnesses, and expert witnesses. In respect of other categories of witnesses, such as 'insider' witnesses (particularly those alleged to have been present during the commission of the charged crimes), the CLRV may also seek leave to question these witnesses where the content of their expected testimony touches upon the personal interests of the victims. Such determination by the CLRV, as with all *viva voce* or Rule 68(3) witnesses, will be made after careful review of the witness statements, interview transcripts and other materials related to a witness that have been disclosed to the non-calling party and CLRV, and in view of the personal interests of the CLRV's clients following from client consultations and the CLRV's assessment of the case. As previously submitted,<sup>8</sup> the CLRV will be judicious both in seeking leave to question a witness, and in the questions put to a witness if leave is granted.
11. As a general guidepost, the CLRV suggest that they would reasonably require between 30 to 45 minutes to question most witnesses.

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<sup>7</sup> Transcript of Hearing of 8 February 2022, ICC-02/05-01/20-T-022-CONF-ENG, p. 8, line 16 to p. 9, line 19.

<sup>8</sup> Transcript of Hearing of 8 February 2022, ICC-02/05-01/20-T-022-CONF-ENG, p. 9, lines 14 to 16.

**(c) Presentation of views and concerns and calling of witnesses at request of CLRV**

12. The CLRV take good note of the Trial Chamber's indication that it may issue further directions at a later stage of the proceedings in relation to the presentation of views and concerns by victims and/or the presentation of evidence by the CLRV, should leave be granted.<sup>9</sup> The CLRV advise that any request they 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 and be based upon an assessment of, *inter alia*, which victims 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.<sup>10</sup>
13. The CLRV stand ready to provide any additional information or submissions that may assist the Trial Chamber in its trial management function.

Respectfully submitted,



Natalie v. Wistinghausen

Nasser Mohamed Amin Abdalla

Common Legal Representatives of Victims

Dated this 21st of March 2022

At The Hague, the Netherlands

<sup>9</sup> Directions on the Proceedings, para. 21.

<sup>10</sup> See *Prosecutor v. Bemba*, Second order regarding the applications of the legal representatives of victims to present evidence and the views and concerns of victims, 21 December 2011, [ICC-01/05-01/08-2027](#), para. 12.