

ANNEX A

Public

**Cour
Pénale
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**International
Criminal
Court**

Original: English

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

Date: 8 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

Submissions on legal representation of victims

Source: Natalie von Wistinghausen

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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Other
Ms Natalie von Wistinghausen
Ms Amal Clooney

Introduction

1. These submissions are made in response to the Trial Chamber's request for clarification on the issue of legal representation of victims.

Procedural background

2. Pre-Trial Chamber II admitted 151 victims to participate in 'the confirmation proceedings' at the pre-trial stage.¹ At that stage, Ms Clooney was appointed to represent 126 of the victims as a 'joint legal representative' with Mr Nasser Amin.² The other 25 were represented by Ms Massidda from the Office of Public Counsel for Victims (OPCV).³ The Pre-Trial Chamber determined 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.⁴

3. On 21 September 2021, Ms Clooney informed the Trial Chamber that she had been appointed Special Adviser to the Prosecutor and did not seek appointment as legal representative of victims 'during the trial or any other phase of this case'.⁵ She also stated that '[all] victims who have been consulted so far have indicated that they would like to appoint Ms von Wistinghausen as replacement counsel'.⁶

4. On 1 October 2021, the Registry issued a report on the legal representation of victims.⁷ In it, the Registry recommended as a 'potential way forward' for common legal representation an arrangement of counsel 'akin to the situation at pre-trial', with a 'team of external legal representatives with one lead counsel', now including Ms von Wistinghausen instead of Ms Clooney, operating alongside Ms Massidda of the OPCV or alternatively for these counsel to 'act as a team of common legal representatives' with one lead counsel.⁸

5. The Registry also noted that of the 117 victims who had selected Ms Clooney as legal representative at the pre-trial stage, 116 had terminated her mandate and confirmed me as their choice of counsel going forward.⁹

¹ *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](#)).

² *Ibid.*

³ *Ibid.*

⁴ *Abd-Al-Rahman*, PTC II, Decision of 21 January 2021 ([ICC-02-05-01/20-259](#)), §37.

⁵ *Abd-Al-Rahman*, Submissions on the issue of legal representation of victims, 21 September 2021 ([ICC-02/-05-01/20-474](#)), §6.

⁶ *Ibid.*, fn 12.

⁷ *Abd-Al-Rahman*, Registry Report on Common Legal Representation of 1 October 2021 ([ICC-02/05-01/20-477](#)) ('Registry Report').

⁸ *Ibid.*, §§35-36.

⁹ *Ibid.*, §15.

6. I have been informed that on 4 October 2021, Trial Chamber I requested submissions addressing (a) whether all victims could be represented by myself and Mr Amin acting as one single team and (b) whether counsel would represent victims on a *pro bono* basis, noting that it appeared from the Registry report that the bulk of victims who participated in the proceedings wish to be represented by myself, replacing Ms Clooney.

7. On 5 October 2021, the Defence filed a response to the Registry report setting out various observations which it asked the Chamber to take into consideration.¹⁰

Submissions

Standing

8. I respectfully seek recognition by the Chamber as a legal representative of victims previously represented by Ms Clooney in these proceedings and make these submissions to the Chamber on this basis.

9. I can confirm that since the Registry's report, at which point 116 of 117 victims previously represented by Ms Clooney had terminated her mandate and selected me as replacement counsel, the final victim has now also consented to the transfer of representation.¹¹ This means that all victims who previously selected Ms Clooney as their sole counsel are now represented by me. I also note that the Chamber's questions communicated on 4 October concern my potential working arrangements. I therefore respectfully seek to respond to these questions through these submissions as a legal representative of 117 victims who were admitted to participate in this case at the pre-trial stage.

Funding

10. It is unfortunately not possible for me to act on a *pro bono* basis and funding for legal representation of victims would therefore be sought from the Court's legal aid scheme, in line with the Registry's guidance for common legal representation¹² and the Court's previous practice.¹³

¹⁰ *Abd-Al-Rahman*, Defence, Response to the observations of the Registry dated 5 October [\(ICC-02/05-01/20-479\)](#).

¹¹ I can confirm that I have received documentation evidencing confirmation of clients' selection of me as their counsel from Ms Clooney. Other information – such as clients' application forms submitted at the pre-trial stage – will be sought from Ms Clooney if I am appointed by this Chamber to represent victims at trial in line with that mandate and Ms Clooney's obligation to transfer the 'case file' to replacement counsel under article 18(5) of the Code of Professional Conduct for Counsel. Cf. *Abd-Al-Rahman*, Defence, Response to the observations of the Registry dated 5 October [\(ICC-02/05-01/20-479\)](#) §§9-11 (raising confidentiality concerns that are misplaced).

¹² Registry Report, §§20-22.

¹³ For instance, in *Yekatom & Ngaïssona*, a team of external counsel operating separately to the OPCV team was funded by the Court; in *Kenyatta*, a team of external counsel with OPCV staff embedded was funded by the Court; in *Al Hassan*, a team of external counsel was funded by the Court. See *Yekatom and Ngaïssona*, Annex I

11. In response to the clarification sought by the Defence in its submissions,¹⁴ I can confirm that the funding from the Court's legal aid scheme would be the only funding I would be seeking and that I would not be receiving funding from any other source.

Team structure

12. I can confirm that I am prepared to represent victims jointly with other external counsel if I am acting in the role of lead counsel. I note that the Presiding Judge of the Trial Chamber has suggested that a lead counsel should be identified,¹⁵ and I believe that such an allocation of roles is necessary to allow for final decision-making and efficient representation of clients. I note that I represent the vast majority of victims who were admitted at the pre-trial stage, and that the previous joint representation with Mr Amin was undertaken on the basis that Mr Amin would neither be seeking compensation 'at any stage of the proceedings'¹⁶ nor acting as lead counsel in the LRV team.¹⁷ It is requested that this structure be adopted by the Trial Chamber.

Status conference during the week of 25-29 October 2021

13. I have been informed that the Chamber has requested an indication of counsel's availability for a status conference during the week of 25-29 October 2021 in the event that the status conference of 12 November 2021 should need to be rescheduled. I confirm that, with the exception of 25 October 2021 when I am expected in court in Germany for the handing down of a judgment in a case in which I represent a Yazidi victim, I am available on all these dates.



Natalie von Wistinghausen

Dated this 8th day of October 2021

to Registry's Report of 16 April 2019 ([ICC-01/14-01/18-178-AnxI-Red](#)), §§86, 107, 110; PTC II, Decision of 23 May 2019 ([ICC-01/14-01/18-205](#)), §§8, 13-14; PTC II, Decision of 21 June 2019 ([ICC-01/14-01/18-227-Red](#)), §§34-36; TC V, *Muthaura and Kenyatta*, Decision of 3 October 2012 ([ICC-01/09-02/11-498](#)), §40; Registry, Recommendation dated 5 November 2012 ([ICC-01/09-02/11-517](#)), §18; PTC I, *Al Hassan*, Decision of 20 March 2019 ([ICC-01/12-01/18-289-RedtENG-Corr](#)), §§30-36.

¹⁴ *Abd-Al-Rahman*, Defence, Response to the observations of the Registry dated 5 October ([ICC-02/05-01/20-479](#)) §8.

¹⁵ *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.

¹⁶ *Abd-al-Rahman*, PTC II, Decision of 19 March 2021, ([ICC-02/05-01/20-314](#)), §25 (noting his indication that he 'will not seek funding from the Court at any stage of the case').

¹⁷ *Abd-Al-Rahman*, Submissions on the issue of legal representation of victims, 21 September 2021 ([ICC-02/-05-01/20-474](#)), §8, fn 15 (referring to an email from Philipp Ambach dated 25 January 2021 indicating 'notification ... of... the joint representation with Ms Amal Clooney as lead counsel').