

1 International Criminal Court

2 Trial Chamber IV - Courtroom 1

3 Situation: Darfur, Sudan

4 In the case of The Prosecutor v. Abdallah Banda Abakaer Nourain - ICC-02/05-03/09

5 Presiding Judge Joyce Aluoch, Judge Silvia Fernández de Gurmendi

6 and Judge Chile Eboe-Osuji

7 Status Conference

8 (The hearing starts in open session at 9.34 a.m.)

9 THE COURT USHER: All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE ALUOCH: Good morning, parties, participants, representatives
13 from the Registry, interpreters and court reporters.

14 Court officer, for the record please call the case.

15 THE COURT OFFICER: Thank you, Madam President. Situation in Darfur, Sudan,
16 in the case of The Prosecutor versus Abdallah Banda Abakaer Nourain,
17 ICC-02/05-03/09. And we're in open session, your Honours.

18 PRESIDING JUDGE ALUOCH: Thank you.

19 I see new faces in the Prosecution team. Please would you introduce yourselves.

20 MR NICHOLLS: Good morning, your Honours. My name's Julian Nicholls. I am
21 the new senior trial lawyer on this case and I am joined today with trial lawyers
22 Manoj Sachdeva and Sam Lowery and with legal assistants Ekaterine Kikalishvili and
23 Mariana Tiholaz, as well as my case manager, Biljana Popova. Thank you.

24 PRESIDING JUDGE ALUOCH: Thank you.

25 Yes, I also see new faces in the Defence team. Mr Karim Khan, would you introduce

1 your team, please.

2 MR KHAN: Madam President, your Honours, good morning. Firstly I'd like to
3 welcome Mr Julian Nicholls to having conduct of the case.

4 Mr Banda is represented by Ms Leigh Lawrie and Mr Anand Shah, legal assistants,
5 and also for the first time in court in this case our new case manager,

6 Mr Joshua Bishay. That's B-I-S-H-A-Y. Your Honours, my name is Karim Khan.

7 PRESIDING JUDGE ALUOCH: Thank you, Mr Karim Khan.

8 Legal representative, will you introduce your team.

9 MS CISSÉ: (Interpretation) Good morning, your Honours. My team is made up
10 of the following people: Mr Jens Dieckmann, associate counsel; Evelyne Ombeni,
11 case manager; Mr Daw Salih Yahia and myself Héléne Cissé, senior counsel, legal
12 representative of victims. Thank you.

13 PRESIDING JUDGE ALUOCH: Thank you.

14 Representatives of the Registry, please, introduce your team, Mr Dubuisson.

15 MR DUBUISSON: (Interpretation) Thank you, your Honour. Here representing
16 the Registry today is Natacha Schauder, legal officer and responsible -- the person
17 responsible for operations within the VWU, Vera Wang and myself, Marc Dubuisson,
18 director of Court Management Services representing the Registrar, Herman von
19 Hebel.

20 PRESIDING JUDGE ALUOCH: Thank you very much. This status conference is
21 scheduled to last a maximum of two hours only. I would therefore like to request
22 the parties, the participants and the representatives of the Registry to be as focused
23 and as concise as possible in order for the Chamber to have sufficient time to address
24 all points in the agenda which was distributed on 4 April, that's Friday, the
25 scheduling order.

1 The main purpose of this status conference is to receive relevant submissions to
2 enable the Chamber to prepare the trial which is scheduled to start on 5 May this year,
3 a date which was set more than a year ago by decision 455 of 6 March 2013.

4 Now, due to the specific circumstances of the Banda case, the Chamber will need to
5 hold part of this status conference confidentially. However, the first part will be
6 held in public and will not take more than 30 minutes.

7 Now, you have point 1 of the agenda: Court schedule and translation issues. As to
8 the interpretation arrangements, the Chamber would like to hear the Registry's
9 update on the status of arrangement for ensuring the simultaneous interpretation into
10 Zaghawa, Fur and Arabic languages.

11 Yes, Registry, you have the floor.

12 MR DUBUISSON: (Interpretation) Thank you, your Honour. As you are aware,
13 since we have often discussed these matters here in this courtroom, Zaghawa will be
14 the language used. And for Zaghawa we can provide simultaneous interpretation
15 from the booths and we require, as we said earlier, four weeks. We require four
16 weeks to ensure the availability of the people in question. We also will have
17 interpretation into Arabic, which will be the relay language, and we will require four
18 to six weeks to find the necessary interpreters.

19 There are rarer languages, such as the Fur language and Sudanese Arabic, as well as
20 Mandinka, also a rare language. So these are languages that we cannot provide
21 simultaneous interpretation for. We will have to use the consecutive method of
22 interpretation.

23 So there you have it. And we will need at least four weeks to find the appropriate
24 interpreters.

25 PRESIDING JUDGE ALUOCH: Mr Dubuisson, you mean four weeks from today,

1 just to be clear?

2 MR DUBUISSON: (Interpretation) Four weeks from the day on which we are
3 informed of a date.

4 PRESIDING JUDGE ALUOCH: Mr Dubuisson, a date was given last year. The
5 date is 5 May.

6 MR DUBUISSON: (Interpretation) Yes, certainly. Regarding 5 May, four weeks,
7 so we are very close. It is very close. We are ready.

8 PRESIDING JUDGE ALUOCH: Yes, Judge Eboe-Osuji has a point to make.

9 JUDGE EBOE-OSUJI: Mr Dubuisson, so we understand what you're saying is that
10 the last time you spoke on this thing you said you required four weeks and that was a
11 while ago. Now you are ready. Is that what you're saying, if we are starting on
12 May 4th -- or sorry, the 5th?

13 MR DUBUISSON: (Interpretation) Since we are four weeks away from the date in
14 question, indeed we can provide the staff for the date set. Of course, this will also
15 depend on the first witness that the Prosecution may choose to summon and the
16 language of that first witness. If that language were to be Mandinka, it would not be
17 in simultaneous mode, it would be in consecutive mode. And four weeks is the
18 absolute strict minimum. And it is possible that we may have some troubles finding
19 the interpreters in question because four weeks is the absolute bare minimum.

20 PRESIDING JUDGE ALUOCH: Yes, I was just going to come on to Prosecution
21 actually and I was going to ask the Prosecution are you ready to have your first
22 witness testify as soon as the -- soon after the opening statements on 5 May? And
23 now I will add a further question: In what language are you able to say that today?

24 MR NICHOLLS: Yes, your Honour. I can put Mr Dubuisson's mind at rest. The
25 first witness will testify in English -- the first four witnesses will be testifying in

1 English and probably more of them. We have at least four witnesses who can testify
2 immediately following the open statement. I think there will be more -- Witness 5
3 that we plan -- has a slight scheduling issue. Witness 6 at the moment speaks
4 Mandinka. So we originally had this witness listed as one of the first witnesses, after
5 our meeting recently with VWU and Registry we moved him down to number 6. So
6 we are ready to go.

7 PRESIDING JUDGE ALUOCH: Prosecution, do you consider requesting testimonies
8 by video link? At -- are you able to say that at this time?

9 MR NICHOLLS: I'm sorry, your Honour, I saw that was on the agenda. No, our
10 first witnesses will all be viva voce, live in the courtroom, and at this stage I am not
11 aware of any witnesses who would need to testify via video link. I can't say that
12 won't happen in the future, but at the moment we are planning on calling everybody
13 to this courtroom.

14 PRESIDING JUDGE ALUOCH: Thank you.

15 Prosecution, do you anticipate adding at this late stage of the proceedings adding any
16 more witnesses to your list which was filed on 5 August 2011?

17 MR NICHOLLS: Yes, your Honour. We intend to file a motion pursuant to
18 Regulation 35(2) to add witnesses. We expect to file it very shortly, I believe this
19 week. It will -- it will -- we will seek leave to add five new witnesses to our list. On
20 3 April I met with my friend, Mr Khan, and discussed briefly with him that we would
21 be seeking to add some statements.

22 So at the moment it is five witnesses that we seek to add and I can give you further
23 details if necessary, but we will be filing the motion very soon.

24 PRESIDING JUDGE ALUOCH: Thank you.

25 I'll turn to the Defence now. Defence, you will recall your submissions in this -- in

1 the filing of document 422 redacted of 19 November. Yes, I see you are already on
2 your feet, Mr Karim Khan. Yes?

3 MR KHAN: Madam President, we do recall it. And in that filing we said, because
4 of the unique difficulties that this case presents to all parties, to the Prosecution, to the
5 Registry and most notably, most critically to the Defence, we -- it is our humble
6 submission that a -- there would not be a viable commencement date before October
7 of this year. Your Honours, the only comments I'll say at this stage is I haven't seen
8 the statements, the five new statements that the Prosecution allude to that they have
9 produced, or that they wish to produce, it appears, barely four weeks or five weeks
10 before the commencement of the trial. But whether or not leave is given by the
11 Chamber to add those witnesses to the list, we have of course a right to review them
12 and to make a determination whether or not they are relevant, or whether or not
13 further investigations are necessitated by dint of information contained in those
14 statements and that's irrespective of whether or not those witnesses are -- Prosecution
15 are given leave to call those witnesses.

16 Your Honour, in fact I am corrected. We have seen one statement which is a Rule 77
17 statement, but that's it. So, your Honour, this is a notable addition to the landscape
18 that the Defence apparently has to confront, and of course it may well have
19 implications and obviously has implications, indeed, to the viability of the May
20 commencement date. I can't say more until the Defence have given the
21 disclosure -- the Prosecution have given the disclosure of these new witnesses to the
22 Defence.

23 PRESIDING JUDGE ALUOCH: Mr Karim, you referred to -- you mentioned
24 October. I think I can see it on the transcript. By talking of October, are you
25 thinking of -- are you asking for an adjournment? I didn't quite get that clearly,

1 please.

2 MR KHAN: Well, your Honour, that is a matter that, with the Court's leave, we may
3 address a little bit later, but our submission will be late -- at the end of these
4 proceedings, but I can give an intimation now.

5 As the evidence stood at the time we made our submissions, we submitted that viable
6 commencement date would be not before October of this year. Of course since that
7 time the Prosecution have given an indication that they're going to seek to add new
8 witnesses to the list. That of course will necessitate further investigations.

9 In addition, just a few days ago, maybe a couple of weeks ago, the Prosecution
10 announced for the first time after many years that it was going to -- it had -- it filed an
11 application to seek under Regulation 55. Again, that's a matter irrespective of if it
12 has to be litigated, submissions have to be heard, the Chamber has to -- the Chamber
13 has to determine the matter.

14 And even if the Bench is against our submissions and the Prosecution application is
15 agreed to, it will have implications as to Defence investigations that may be
16 necessitated depending upon the recharacterisation or the notice of recharacterisation.

17 Your Honour, in addition, there's another peculiar fact of this case. The Prosecution
18 have re-interviewed in addition to these five, they've re-interviewed two witnesses
19 just recently. After all these years, re-interviews of two witnesses.

20 Now, what's a matter that I won't belabour the point today, we asked the Prosecution
21 before these re-interviews, before these re-interviews, before even we were given
22 notice of these re-interviews, because we were not given notice, we told the
23 Prosecution we wanted to speak to these two witnesses. And, your Honour, what
24 the Prosecution did, and we gave notice of that in 2012. In 2012. Prosecution, we
25 say, sat on their hands, did nothing and tried to steal the ball from us because then

1 they unilaterally conducted a re-interview which has deprived the Defence from
2 speaking to those witnesses at a time when further questions, at a time when the
3 evidence was as it was at the time of confirmation.

4 Now, your Honour, the implications of that can be discussed later on, but it may well
5 have consequences to the reliability of these -- that evidence and also it may give rise
6 to, if not an abuse of process, certain questions about the policy adopted by the
7 Prosecution in these circumstances. One is not denying that the Prosecution can
8 conduct further investigations, but after so many years on the eve of trial when they
9 are seized of an application by the Defence to interview certain witnesses, not to
10 facilitate those interviews, but rather to run to those witnesses and get further
11 questions in first raises, we say, certain questions. But, your Honour, that's a matter
12 that can be litigated at a later point perhaps.

13 PRESIDING JUDGE ALUOCH: Thank you.

14 Judge Fernández? Sorry, Judge Eboe-Osuji has a point.

15 JUDGE EBOE-OSUJI: Mr Khan, you spoke about the Prosecution, using your
16 expression, stole the ball from you upon receiving your request or application to -- for
17 the Defence to interview those witnesses. Are you saying that the subject matter of
18 the re-interview that the Prosecution conducted is the same as you had indicated in
19 your request to interview the witnesses?

20 MR KHAN: Your Honour, we hadn't indicated, we hadn't alerted the Prosecution as
21 to why we wanted to re-interview those witnesses, but good reason of course existed.
22 But we say the Prosecution conduct was unfortunate. It was unfortunate. It would
23 have been better, particularly given where we are in these proceedings to let the
24 Defence - there is no property in a witness - pass on the request of the Defence to the
25 witness, allow us to speak to the witness. The Prosecution could have been present.

1 But it was not right we say, it was unfair --

2 PRESIDING JUDGE ALUOCH: Thank you, Mr Khan.

3 MR KHAN: -- to interview them unilaterally.

4 PRESIDING JUDGE ALUOCH: Thank you.

5 MR KHAN: Your Honour, the last point, with your leave, in addition to the new
6 witnesses and the other matters, the Prosecution, after quite some time in December
7 of last year, disclosed new documentary evidence to us that had been requested for a
8 considerable amount of time. These are reports, AU Reports and other reports.
9 Your Honour, we also don't have an explanation as to why some of these had been
10 withheld for so long. So, your Honour, those are the matters that perhaps are
11 relevant to this issue.

12 PRESIDING JUDGE ALUOCH: Prosecution, you have a brief response? We have
13 about ten minutes only.

14 MR NICHOLLS: It will be very brief, your Honours. First of all, I should say for
15 Mr Khan that one of the witnesses, one of the five that we're seeking to add, is
16 somebody who was previously on the witness list, so we are seeking to reactivate that
17 person. So Mr Khan will be familiar with that evidence and it will not cause him
18 difficulties.

19 The three -- we don't need to litigate this now, but the three new witnesses we will
20 disclose those as soon as possible this week and I think when Mr Khan reads those
21 statements he will see that much new investigation is not necessary because these
22 three new witnesses their evidence is narrowly tailored to the issues in dispute. It is
23 similar, but adds to the evidence already in the record, but adds significantly to it.
24 I don't know what Mr Khan means by "stealing the ball." We re-interviewed these
25 two witnesses because when I came here, read through their statements and looked at

1 them, there were clear inconsistencies that were diametrically opposed, there were
2 areas that were not clear and that's why they were re-interviewed to clear those up.
3 And I -- sorry, your Honour.

4 PRESIDING JUDGE ALUOCH: I was just going to say that we may not go fully into
5 that issue now.

6 MR NICHOLLS: Okay. Thank you. But I would just like to say for the record
7 that we told the Defence when we were going to meet with those witnesses and that
8 we would pass on the request to be -- that the Defence interview them. Both of those
9 witnesses have agreed to be interviewed by the Defence and the Defence has now
10 declined to interview both of them.

11 Finally, to correct one point. The new documents disclosed were not withheld for a
12 long period of time that Mr Khan referred to. Those were documents that the
13 Defence had been asking for, we didn't have them yet. When we received them, we
14 disclosed them right away.

15 MR KHAN: Your Honour, can I say the Defence received no information from the
16 Prosecution. I want to be clear, no information to the Prosecution, contrary to
17 submission of my learned friend that they were going to seek to re-interview
18 witnesses. If they had, I would have made an application to the
19 Court effectively of prohibition. I would have made an application to stop that
20 pending our request. We had not been told.

21 Your Honour, the other matter relating to one witness whose evidence may have been
22 disclosed, the Defence naturally does not need to investigate evidence that the
23 Prosecution does not seek to rely upon. The reason for your Honours' order that the
24 Prosecution by May of last year was supposed to give its witness list is that that was
25 the target that the Defence needed to address. So the fact that we had information is

1 irrelevant to the determination as to Defence investigations.

2 The final matter is, apart from these new witnesses, whatever they may or may not
3 add, the Defence again has a right to request to meet them and interview them. All
4 of this of course has an implication as to the viability of the commencement date
5 based upon basic principles of fairness.

6 PRESIDING JUDGE ALUOCH: Prosecution, you hear the Defence that your five
7 additional witnesses might have an impact on the start of the trial.

8 MR NICHOLLS: I can understand that, your Honours, and I would prefer that all
9 this had been disclosed earlier, but these are the facts that I'm dealing with. I do not
10 accept at this point, I think we are kind of jumping the gun to say that these
11 additional witnesses -- remember, two of whom the Defense has had the --

12 PRESIDING JUDGE ALUOCH: Thank you. Thank you.

13 MR NICHOLLS: We could call them at the end our case.

14 PRESIDING JUDGE ALUOCH: On the issue of additional referrals of witnesses for
15 protection, I will ask very preliminary questions. I hope I can do so in this public
16 session. Do the parties intend to refer additional witnesses for protection? Please
17 let the Chamber know whether answers could be given in this open session or later in
18 the private session.

19 Prosecution, you have the floor, very briefly, please, very, very briefly.

20 MR NICHOLLS: Thank you, your Honour. If you give me one moment, we I can
21 say in open session without problem have referred one individual. We will likely
22 refer at least one more to VWU for protection. And I can't say that those were the
23 only ones, but at the moment I am aware of two.

24 PRESIDING JUDGE ALUOCH: Thank you.

25 Defence, are you able to say that in this open session? Can you answer that

1 question?

2 MR KHAN: Your Honour, briefly, the answer is we may be referring more. We
3 don't know at the moment. The difficulty is that those that have been referred have
4 been unresolved. We have out of four referrals, one is dead, one of our witnesses is
5 dead. And we haven't had decisions from the Registry in relation to the others, and
6 this relates to requests submitted on 2 January 2013. No decision from the Registry.
7 One referred 17 April 2013. We have been told that there will be a risk assessment
8 by mid-April 2014, never mind a decision.

9 We don't know when the Registrar will deem to act upon the recommendation, any
10 recommendation that will be given by the VWU. And, your Honour, there is
11 another one that was referred last month. So, your Honours, there's four. Out of
12 the four, three, no decisions, and one, very sadly, has been killed.

13 PRESIDING JUDGE ALUOCH: Registry, do you have any comments on this,
14 please?

15 MR DUBUISSON: (Interpretation) Your Honour, it is difficult for myself to explain
16 why such time was needed. It is difficult to give explanations in open session.

17 PRESIDING JUDGE ALUOCH: All right, we'll hear about it later. And at last, the
18 Legal Representative now, Ms Cissé, do you have any observations, any comments on
19 the submissions made so far? And I do recognise that you made a filing this
20 morning. Very briefly, Ms Cissé.

21 MS CISSÉ: (Interpretation) Yes, your Honour. We were notified on the Friday,
22 14 April -- 4 April about that, and that's the reason why we didn't have any other
23 choice, having taken note of the different points of the agenda, to submit a filing this
24 morning very early. And what we would wish is that -- well, we have two essential
25 requests, and we have to make one here, and that is to be authorised in accordance

1 with what was mentioned in Article -- paragraph 41 of your decision on participation
2 of victims in the proceedings to be authorised to participate in the nonpublic session
3 or the ex parte session. And if you would authorise me to do so, to divulge the
4 essential reasons which affect the victims' interests, and they are particularly related
5 to two points on the agenda. This is something that I could do. And we also have
6 asked for an extension of the time frame. It was the deadline set for 17 April in order
7 to submit the list of persons who we would like to invite -- we would like to invite the
8 Chamber to exercise its discretionary power to decide whether to call them as a
9 witness or not.

10 The first request that we would make, your Honour, with regards to the planning of
11 the trial, while there are developments that might occur with regards to witnesses,
12 and while those may affect the direct interest of victims, the date of 5 May was set
13 since March 2013. Victims have been waiting for over seven years.

14 We have -- we represent 103 victims. And Article 15 of the Code of Conduct for
15 counsel makes it an obligation on the Legal Representatives of Victims to inform
16 victims. The victims have on various occasions expressed their despair with regards
17 to -- disappointment with regards to this delay. And if we are now going to hear in
18 a concrete way the reasons why the Defence thinks that it is not possible to start with
19 the trial before 5 October, could we have that, because we can't go back to victims
20 having --

21 PRESIDING JUDGE ALUOCH: I think you've made this point before, and we
22 appreciate --

23 MS CISSÉ: Yes.

24 PRESIDING JUDGE ALUOCH: Yes. So just be very brief. These points, you have
25 made them before, and they are on record.

1 Your request as filed this morning, I would want to put it very briefly to the parties to
2 hear what their views are, put it to the Defence, put it to the Prosecution. Essentially
3 you would want to be present during the second session. That is your point.

4 MS CISSÉ: (Interpretation) That is correct.

5 PRESIDING JUDGE ALUOCH: Yes. Can we deal with that, please?

6 MS CISSÉ: (Interpretation) Indeed, madam.

7 PRESIDING JUDGE ALUOCH: All right.

8 MS CISSÉ: Well, we have also asked for an extension of the 17 April deadline in
9 order to submit the list to you, because we still haven't received anything yet. And
10 the last page of the order of the Chamber mentioned 11 April for the transmission to
11 the Registry by the parties' documentation, and it is obvious that we won't receive it
12 before 11 or 12 April. So it is not possible in three days to be able to assess whether
13 these people who we could envisage inviting and calling are relevant witnesses and
14 whether they are not repetitive or not.

15 PRESIDING JUDGE ALUOCH: Thank you very much. Your points are noted.

16 May I ask that, Mr Karim Khan, Ms Cissé has made a filing this morning. She would
17 want to be present during the private session. What are your comments?

18 MR KHAN: Madam President, I am grateful for the opportunity to respond. I
19 haven't seen the filing. I have heard what my learned friend has said. There may
20 be portions of the private part of the hearing where I may not have objections to my
21 learned friend being in attendance. There may be portions where I would have
22 objections.

23 And one of the areas that needs to be clarified, I am not sure if the victims that had
24 previously been represented by previous legal representative Mr Dixon and Mr Nice
25 are still witness -- victims that are represented by Ms Cissé. If they are, it's my view

1 that at the very least there is a suspicion that some of these are Trojan horses for the
2 Government of Sudan. We would have concerns about making submissions on
3 sensitive issues that could affect the Defence interests in front of my learned friend.
4 It is not a personal matter, but it's because of her duty of candour to her clients.

5 PRESIDING JUDGE ALUOCH: Okay.

6 MR KHAN: Your Honour, that is one point. The other point is with the greatest
7 respect, it seems a rather anomalous position that my learned friend Ms Cissé laments
8 or raises the interests of victims to an expeditious determination of the matter, no
9 mention of fairness, but let's talk about expeditiousness, and yet she seeks an
10 extension for witnesses to (indiscernible) the deadline --

11 PRESIDING JUDGE ALUOCH: Mr Karim Khan, I am sorry to interrupt you. I
12 would like to deal with that first point and find out from Ms Cissé the witnesses you
13 say you are --

14 MR KHAN: I'm grateful. I'm grateful.

15 PRESIDING JUDGE ALUOCH: Yes. Ms Cissé, you heard Mr Karim Khan.
16 Would you like to give a brief response, please? You have heard his concern.

17 Mr Karim Khan, would you like to repeat the concern so that Ms Cissé can give a
18 response, please.

19 MR KHAN: I had said, Madam President, that there may be some aspects of the
20 confidential part of the hearing where the Defence would not have objection to my
21 learned friend sitting in the courtroom and participating. There may be other
22 aspects that we would have concerns, we would have objections, and we would ask
23 that that be Prosecution, Defence and Registry only. And that's predicated upon two
24 concerns. The first is there will be issues raised that are sensitive and the fewer
25 people that know the better. There is no reason, the Bench will be familiar with the

1 areas that would be canvassed, there is no reason for that, those areas, those
2 modalities or those issues to be discussed in the presence of my learned friend.
3 The second is, there was a question posed by me as to whether or not those victim
4 applicants that had previously been represented by my learned friends Mr Dixon and
5 Mr Nice were still being represented by Ms Cissé. If they are, we would have
6 significant concerns because it is my position that there is at the very least a
7 reasonable basis to assume and to suspect that some of these victim applicants may
8 have been pushed forward by the Government of Sudan to push a different narrative,
9 and the word I used was a Trojan horse for the Government of Sudan, and that is why
10 I would have concerns to raise this inter partes with the Legal Representative of the
11 Victims being present, no objection at all to my learned friends for the Prosecution
12 being present and responding. And, your Honour, it's important to note that the
13 Prosecution, of course, can also as they always say, can look after to some extent the
14 interests of victims.

15 PRESIDING JUDGE ALUOCH: Mr Karim Khan, this -- how many were these
16 victims? How many were they? Are they known?

17 JUDGE EBOE-OSUJI: The ones you are concerned about.

18 PRESIDING JUDGE ALUOCH: Yes.

19 MR KHAN: Yes, I think, I think it was about four, but I'm not sure 100 percent. My
20 learned friend, Ms Cissé, would be in a better position to advise. There were a
21 number of applications since the pre-trial stage. Many were rejected. But finally
22 the Government of Sudan/Mr Dixon, Mr Nice managed to put forward an application
23 that was accepted.

24 PRESIDING JUDGE ALUOCH: Thank you.

25 MR KHAN: I think it was about four.

1 PRESIDING JUDGE ALUOCH: Thank you, Mr Karim Khan.

2 Yes, Ms Cissé, I believe you are now clear.

3 MS CISSÉ: Yes, your Honour. We represent four victims, four Sudanese victims
4 under common legal representation, now two victims who were previously
5 represented by Mr Nice and Mr Dixon and two victims that you authorised to
6 participate in the proceedings.

7 I just wanted to recall that the Defence arguments have been made since 2009
8 practically. And the Pre-Trial Chamber and this Chamber in view of the assessment
9 of all the different arguments of the parties and participants decided to admit them as
10 victims. And our duty is to represent these people at the same level as all of them
11 under common legal representation.

12 And I would also like to recall that we are counsel at the same level as the Defence
13 counsel. We are -- we have to respect confidentiality. You recalled that in your
14 decision on the participation modalities and --

15 PRESIDING JUDGE ALUOCH: Thank you. Thank you, Ms Cissé. Thank you.
16 I think you've made your point.

17 Prosecution, do you have anything to say on this particular -- I think I'll narrow it
18 down specifically to these four victims and Ms Cissé's presence during the private
19 session?

20 MR NICHOLLS: Your Honours, I'm afraid I'm not familiar enough with that issue
21 to get back to you right at this point. I take -- I hear about the issue. I'll discuss it
22 with my team. I don't think we are going to have an objection, but I would like to
23 get back to you on this point.

24 MR KHAN: Madam President, can I just say, because it may help my learned friend
25 new to the case. The Prosecution have previously supported the Defence, in fact

1 there was a joint motion, taking issue with the representation of Mr Dixon and
2 Mr Nice and their own putative victim applications. So we were on common
3 ground at that stage earlier in these proceedings.

4 PRESIDING JUDGE ALUOCH: May I say that for practical purposes we are going
5 to have to adjourn because the technical team -- if Ms Cissé is going to stay or not,
6 there is going to have an implication on what the technical team have to do. So I
7 need to know. I have heard your views, and when you say she can be in part and
8 not part, it's -- yes?

9 MR KHAN: Well, your Honour, I wasn't having regard to the time, to be quite frank
10 with your Honours.

11 PRESIDING JUDGE ALUOCH: Sorry?

12 MR KHAN: I hadn't had regard to the time. I understand there's this issue of
13 half-an-hour tape change and all the rest of it. Your Honour, there are certain issues
14 which are on the -- that may come up on the agenda that may be raised which the
15 Bench will be familiar with. And it's -- the other ground is, even apart from the issue
16 of Mr Dixon and Mr Nice, there are certain matters of modalities which can implicate
17 security concerns in which prudence would dictate that the fewer people that know,
18 the better.

19 The Prosecution are the party in proceedings. Legal -- the legal representative of the
20 victims is not a party. They have party-like rights. And the Prosecution would be
21 here to ensure fair play, and of course the Bench has an overriding duty to have
22 regard to all the interests to ensure fairness.

23 So, your Honour, if bearing in mind we have to finish by 11 o'clock, your Honour, I'd
24 ask that perhaps we proceed in the absence of the legal representative of the victims.
25 That may be simpler.

1 And, your Honour, later on if there are matters that the Bench think can be safely put
2 before the victims, your Honours can unredact certain portions and give it to legal
3 representatives at a later stage.

4 PRESIDING JUDGE ALUOCH: Thank you very much.

5 And Prosecution, you --

6 MR NICHOLLS: I have no objection to the legal representative being present, but
7 if -- I also don't have any objection to Mr Khan's suggestion.

8 PRESIDING JUDGE ALUOCH: Sorry, before we conclude this first part of the
9 session, Judge Eboe-Osuji has a question for the Prosecution.

10 JUDGE EBOE-OSUJI: Mr Nicholls, going back to the very first point you made, you
11 said that there are four witnesses who will be testifying in English. You will be
12 starting with those after the open statements. Does the Defence know who those
13 four are?

14 MR NICHOLLS: We haven't given the list to the Defence yet and I can discuss with
15 my friend, but they are long-standing witnesses who have been on the list a long time.
16 There's nothing new or surprising with those.

17 JUDGE EBOE-OSUJI: It's not about new or surprising. Perhaps you should
18 communicate that rapidly to the Defence so we can find out from Mr Khan whether
19 he would have specific issues in relation to those witnesses whom you intend to call
20 first for purposes of determining, as he said, the viability of the commencement date.

21 MR NICHOLLS: Yes. I can -- I can do that either after the hearing or right away at
22 the moment, your Honour.

23 JUDGE EBOE-OSUJI: Why don't you do it right away so that I save some time.

24 MR NICHOLLS: Thank you.

25 JUDGE EBOE-OSUJI: Quickly, please.

1 MR NICHOLLS: The first four would be 486, Witness 486, then 355, then Witness
2 445 and then Witness 485. Thank you.

3 JUDGE EBOE-OSUJI: Madam President, one second, please.

4 Mr Khan, are you able to react immediately, or would you speak to it in the course of
5 the status conference as to whether you have specific issues with those, noting that
6 those are the first witnesses that the Prosecution intends to call?

7 MR KHAN: Mr President, perhaps we can deal with that in the course of the status
8 conference.

9 PRESIDING JUDGE ALUOCH: Thank you very much.

10 We are running late and I think we have to --

11 (Trial Chamber confers)

12 PRESIDING JUDGE ALUOCH: The Chamber has come to a decision that, in view of
13 the issues which will be discussed during the private session, we will respectfully
14 exclude you, Ms Cissé, and whatever is discussed you will get a redacted version of it
15 in due course.

16 So we will adjourn to enable the technical team to change the tapes. When we come
17 back, it will be a private session. Thank you.

18 THE COURT USHER: All rise.

19 (The hearing ends in open session at 10.17 a.m.)