

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 April 2021

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański, Presiding
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze

SITUATION IN DARFUR, SUDAN

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

Public Document

**Request to appear before the Appeals Chamber pursuant to
regulation 81(4)(b) of the Regulations of the Court**

Source: 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

Ms Helen Brady

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**

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. On 18 January 2021 the Single Judge, acting on behalf of Pre-Trial Chamber II, appointed Counsel from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to represent the interests of the victims in the proceedings leading to the confirmation of charges hearing.¹ On 5 February 2021, the Single Judge clarified that said appointment “*is aimed at ensuring the protection of the interests of applicant victims, as well as to provide assistance and support to applicants within the meaning of regulation 81(4) of the Regulations*”.²

2. In light of said appointment and pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), Counsel requests to appear before the Appeals Chamber to convey the views of the victims having communicated with the Court in this case, and to represent the general interest of the victims, in the appeal of the Defence against the 12 April 2021 decision on the review of the detention of Mr Abd-Al-Rahman.

3. Since the continued detention of the suspect has a clear bearing on the interests of victims, Counsel’s appearance will be instrumental to duly take into account the views of victims and in representing their general interest in these appeals proceedings.

4. Counsel clarifies that this request is introduced at this juncture, and prior being privy to the arguments to be developed by the Defence in its appeal brief, in the interest of the expeditiousness and efficiency of the proceedings. Consequently, if authorised to appear, she will file submissions on behalf of the victims having communicated with the Court, subject to the arguments raised in the Defence’s appeal brief.

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, para. 11.

II. PROCEDURAL BACKGROUND

5. On 18 January 2021 the Single Judge, acting on behalf of Pre-Trial Chamber II, issued the decision establishing the principles applicable to victims' participation and representation, appointing, *inter alia*, Counsel from the Office to assist victims in the proceedings leading at the confirmation of charges hearing (the "First Decision").³

6. On 5 February 2021, the Single Judge issued a further decision supplementing the First Decision.⁴

7. On 12 April 2021, the Chamber issued the Decision on the review of detention of Mr Abd-Al-Rahman.⁵

8. On 14 April 2021 the Defence filed its Notice of Appeal.⁶

9. On 16 April 2021, the Appeals Chamber issued the Order on the conduct of the appeal proceedings instructing the Defence to file its appeal brief by 23 April 2021 and the Prosecutor and the participating victims to file their responses by 30 April 2021.⁷

III. SUBMISSIONS

10. In accordance with regulation 81(4) of the Regulations "[t]he tasks of the Office of Public Counsel for victims shall include: [...] (b) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues".⁸ The provision has been amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be triggered either upon request of the Office itself or by

³ 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.

⁴ 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, para. 11.

⁵ See the "Decision on the review of detention" (Pre-Trial Chamber II), [No. ICC-02/05-01/20-338](#), 12 April 2021.

⁶ See the "*Acte d'appel de la décision ICC-02/05-01/20-338*", [No. ICC-02/05-01/20-342](#), 14 April 2021.

⁷ See the "Order on the conduct of the appeal proceedings" (Appeals Chamber), [No. ICC-02/05-01/20-345](#), 16 April 2021.

⁸ See Regulation 81(4) of the Regulations of the Court, [Doc. ICC-BD/01-05-16](#).

instructions of the Chamber. Trial Chamber I confirmed that the opportunity for the OPCV to appear in respect of specific issues can be initiated, *inter alia*, by “the Office, following an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)”.⁹

11. In the past, the Office requested, and was granted, leave to appear on specific issues pertaining to the general interest of the victims.¹⁰ In other instances, the Office appeared at the request of the Chambers of this Court.¹¹ Said practice reflects the obligation binding on the OPCV to provide, where appropriate, assistance to victims by, *inter alia*, appearing before the Chamber in respect of specific issues, in accordance with regulation 81(4) of the Regulations.

12. In this regard, Counsel recalls that the OPCV was established as an independent permanent body within the Court “able to provide expert advice and assistance” on victims’ issues.¹² Since the Office’s inception, the practice of the Court and the responsibilities entrusted with the OPCV by both the Chambers and the victims have greatly contributed to the development of such expertise.

⁹ See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents” (Trial Chamber I), [No. ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

¹⁰ See, *inter alia*, the “Order on the Office of Public Counsel for Victims’ request filed on 21 November 2007 (Trial Chamber I), [No. ICC-01/04-01/06-1046](#), 27 November 2007, para. 2. See also the “Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)” (Trial Chamber II), [No. ICC-01/04-01/07-1205](#), 12 June 2009, which *inter alia* decided on the OPCV’s Request to appear filed on 20 May 2009 (“*Demande du BCPV afin d’être autorisé en vertu de la norme 81-4-b du Règlement de la Cour à comparaître devant la Chambre dans le cadre de questions spécifiques liées aux mesures de protection au bénéfice du témoin W-007*”, [No. ICC-01/04-01/07-1160](#), 20 May 2009). See also the “Decision on the OPCV’s ‘Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims’ application process’” (Pre-Trial Chamber III), [No. ICC-02/11-01/11-57](#), 13 March 2012; and the “Decision on the OPCV’s request to participate in the reparations proceedings” (Trial Chamber I), [No. ICC-01/04-01/06-2858](#), 5 April 2012.

¹¹ See, *inter alia*, the Transcripts of the hearing held on 30 October 2007, [No. ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 4 to 18; and the Transcripts of the hearing held on 4 December 2007, [No. ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 53 to 54.

¹² In this sense see FULFORD (A.), “The role of the Office of Public Counsel for Victims in trial proceedings”, in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

13. In the present case, Counsel has been appointed to represent *“victim applicants who have already communicated with the Court in relation to this case but whose applications have not yet been assessed by the Chamber”*.¹³ In this regard, Pre-Trial Chamber II noted, in particular, that: *“besides legal representation stricto sensu, the OPCV can be, and regularly is, also tasked with the broader responsibility to provide ‘general support and assistance’ to the benefit not only of applicant or admitted victims but also of their legal representatives; the time frame between the submission of the applications and the Chamber’s determination of its merits is one of those stages where those responsibilities can indeed prove critical”*.¹⁴

14. The subject-matter of the present appeal affects the interests of the victims because it involves a review of a decision denying the release of Mr Abd-Al-Rahman, on the basis that (i) there are no changed circumstances warranting his release; and (ii) that his detention is necessary to ensure his appearance at trial.

15. In this regard, the Appeals Chamber has previously held that *“where the underlying issue on appeal was whether the accused would stand trial, this issue affects a victim’s personal interest. This is because if an accused does not appear for trial, the victim will neither have an opportunity to present his or her views and concerns nor present a claim for reparations against the accused, should he or she be convicted”*.¹⁵

16. Counsel further notes that, pursuant to rule 119(3) of the Rules of Procedure and Evidence, the views of the *“victims having communicated with the Court”* have to be sought before imposing or amending any conditions restricting liberty.

¹³ See the “Order setting time limits for submissions in relation to the Defence *Exception d’incompétence*” (Pre-Trial Chamber II), [No. ICC-02/05-01/20-321](#), 25 March 2021, para. 6. See also 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, paras. 18-19.

¹⁴ 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, para. 18.

¹⁵ See “Decision on the Participation of Victims in the Appeal against the ‘Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence’ of Trial Chamber III” (Appeals Chamber), [No. ICC-01/05-01/08-857 OA4](#), 18 August 2010, para. 10.

17. Allowing the OPCV to appear before the Appeals Chamber on the issue of Mr Abd-Al-Rahman's continued detention, will thus also give effect to said provision, enabling Counsel to consult the victim having communicated with the Court on the issue and convey, if necessary, their views and concerns in the present appeals proceedings.

IV. CONCLUSION

18. For the foregoing reasons, Counsel respectfully requests the Appeals Chamber to be allowed to appear, if necessary, on the issues on appeal and to file observations within the deadline as established for the Prosecutor and the participating victims.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath.

Paolina Massidda
Principal Counsel

Dated this 21st day of April 2021

At The Hague, The Netherlands