



Original: English

No. ICC-02/05-01/20

Date: 31 May 2024

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 redacted version of the
Decision on the Defence's request for in-court protective measures for Witnesses
D-0038 and D-0039**

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

The Office of the Prosecutor

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural history

1. On 15 May 2024, the Defence filed its request for in-court protective measures in respect of witnesses D-0038 and D-0039 (the ‘Request’).¹
2. On that same date, the Chamber instructed the Victims and Witnesses Unit Unit (the ‘VWU’) to file observations on the Request by 27 May 2024. The Prosecution and the Common Legal Representative for Victims (the ‘CLRV’) were instructed to reply by the same deadline.²
3. On that same date, the CLRV filed her observations (the ‘CLRV Observations’).³
4. On 27 May 2024, the VWU filed its observations (the ‘VWU Observations’).⁴

II. Legal framework

5. The Chamber recalls the legal framework for the implementation of in-court protective and special measures provided for in its previous decisions.⁵ The Chamber also recalls the overriding principle of publicity of trial proceedings.⁶

III. Submissions and analysis

6. The Defence seeks the following types of in-court protective measures for the witnesses concerned: (a) use of pseudonyms, face and voice distortion; and (b) use of private or closed sessions for portions of the testimonies which may reveal their identities.⁷
7. In addition, the Defence requests the Chamber to authorise oral requests for closed or private sessions, as per the Chamber’s practice, whenever questions or answers may reveal the witness’s identity or when discussing topics of a particularly private or sensitive nature.⁸
8. The Defence refers, in general, to the current security situation in Sudan. It submits that, as the Chamber considered the security situation in Sudan to be a factor in favour of granting

¹ Defence additional request for in-court protective measures for Witnesses D-38 and D-39, ICC-02/05-01/20-1128-Conf with a confidential annex. A public redacted version was notified on 16 May 2024, ICC-02/05-01/20-1128-Red.

² E-mail from the Chamber, at 15:30.

³ CLRV Observations on “Defence additional request for in-court protective measures for Witnesses D-38 and D-39”, ICC-02/05-01/20-1130-Conf. A public redacted version was notified the following day, ICC-02/05-01/20-1130-Red.

⁴ E-mail from the VWU at 16:30.

⁵ Decision on in-court protective measures, 25 March 2022, ICC-02/05-01/20-645-Conf-Exp, paras 7-10. A confidential redacted version was notified on the same date, ICC-02/05-01/20-645-Conf-Red. A public redacted version was notified on 25 April 2022, ICC-02/05-01/20-645-Red2 (hereinafter ‘First Decision on in-court protective measures’).

⁶ First Decision on in-court protective measures, ICC-02/05-01/20-645-Red2, para. 11.

⁷ Request, ICC-02/05-01/20-1128-Conf, para. 7.

⁸ Request, ICC-02/05-01/20-1128-Conf, paras 8-9.

in-court protective measures for Prosecution witnesses in March and June 2022, the same should apply to its Request.⁹ The Defence further submits that the security situation has dramatically deteriorated since the outbreak of the current conflict in Sudan since 15 April 2023. [REDACTED].¹⁰

9. The Defence identifies two witnesses who reside [REDACTED].¹¹

10. [REDACTED].¹²

11. Finally, the Defence argues that the requested in-court protective measures are the only protection the Chamber can offer, [REDACTED]¹³

12. In her observations, the CLRV does not object to the extension of the same in-court protective measures, that have been granted to other Defence witnesses to witnesses D-0038 and D-0039.¹⁴ However, the CLRV submits that the Defence's reference to the [REDACTED] is irrelevant and unfounded, as it cannot be applied to the particular situation of the witnesses [REDACTED]. Furthermore, the specific risks listed in the Request do not arise from the witnesses' interaction with the Court.¹⁵

13. In its observations, the VWU notes that D-0038 informed them [REDACTED] after his testimony.¹⁶ D-0039 did not express any concerns to the VWU regarding his impending testimony before the Court.¹⁷

14. Finally, the VWU notes that it does not have any capacity to intervene if the witnesses or their dependents are exposed to risk of harm [REDACTED]. Consequently, the VWU supports granting the requested in-court protective measures for D-0038 and D-0039 to mitigate any unforeseen risks that may emanate from their testimony before the Court.¹⁸

⁹ Request, ICC-02/05-01/20-1128-Conf, paras 10-12.

¹⁰ Request, ICC-02/05-01/20-1128-Conf, para. 12.

¹¹ Request, ICC-02/05-01/20-1128-Conf, para. 14 and Annex.

¹² Request, ICC-02/05-01/20-1128-Conf, para. 15.

¹³ Request, ICC-02/05-01/20-1128-Conf, para. 12.

¹⁴ CLRV Observations, ICC-02/05-01/20-1130-Conf, para. 2.

¹⁵ CLRV Observations, ICC-02/05-01/20-1130-Conf, para. 4.

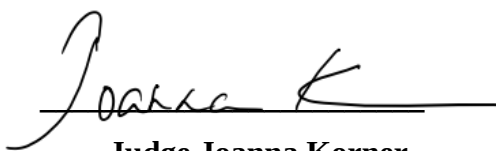
¹⁶ Email from the VWU, 27 May 2024, at 16:30.

¹⁷ Email from the VWU, 27 May 2024, at 16:30.

¹⁸ Email from the VWU, 27 May 2024, at 16:30.

IV. Conclusion

15. Considering the above, and particularly the VWU's recommendations, the Chamber grants the Request in respect of witnesses D-0038 and D-0039.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 30 May 2024

At The Hague, The Netherlands