



Original: English

No. ICC-02/05-01/20

Date: 10 July 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

**Public redacted version of 'Decision on the Defence's request for in-court
protective measures for witness D-0035', 16 February 2024, ICC-02/05-01/20-
1074-Conf**

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

The Office of the Prosecutor

Karim A.A. Khan
Nazhat Shameem Khan
Julian Nicholls

Counsel for the Defence

Cyril Laucci
Iain Edwards

Legal Representatives of Victims

Natalie von Wistinghausen
Anand Shah

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

Mr Ashraf Atwa, Legal Adviser to D-0035

I. Procedural history

1. On 30 January 2024, the Defence applied for the issuance of assurances pursuant to Rule 74(2) of the Rules of Procedure and Evidence (the ‘Rules’) in respect of witness D-0035.¹
2. On 31 January 2024, the Chamber authorised the appointment of a counsel for D-0035 pursuant to Rule 74 of the Rules and clarified that the extent of any assurances will be discussed in court based on the witness’s statement and the expected examination by counsel.²
3. On 8 February 2024, the Defence filed its request for in-court protective measures for witness D-0035 (the ‘Request’).³
4. On the same date, the Chamber instructed the Prosecution and the Common Legal Representative for Victims (the ‘CLRv’) to file their responses to the Request by 12 February 2024.⁴
5. On the same date, the Prosecution and the CLRv informed the Chamber that they do not oppose the Request.⁵
6. On 9 February 2024, the Chamber instructed the Victims and Witnesses Unit (the ‘VWU’) to file its observations on the Request by 13 February 2024.⁶
7. On 12 February 2024, the Registry notified the appointment of a Legal Adviser for D-0035.⁷
8. On 13 February 2024, the VWU provided its observations by email (the ‘VWU Observations’).⁸

II. Submissions and analysis

9. The Defence seeks the following types of in-court protective measures for D-0035: (a) use of pseudonym, face and voice distortion; and (b) use of private or closed sessions for portions of the testimony which may reveal his identity.⁹

¹ Email from the Defence, at 18:37.

² Email from the Chamber, at 15:13.

³ Defence request for in-court protective measures for Witness D-35, ICC-02/05-01/20-1064-Conf.

⁴ E-mail from the Chamber, at 14:04.

⁵ E-mail from the Prosecution, at 17:52; E-mail from the CLRv, at 17:07.

⁶ Email from the Chamber, at 14:26.

⁷ Notification of the Appointment of Mr Ashraf Atwa as Legal Adviser to Witness D-0035, ICC-02/05-01/20-1072.

⁸ Email from the VWU, at 17:58.

⁹ Request, ICC-02/05-01/20-1064-Conf, para. 7.

10. Additionally, if the Chamber grants assurances under Rule 74(2) of the Rules, the Defence requests that the Chamber order the witness to appear *in camera* pursuant to Rule 74(7)(a) of the Rules.¹⁰

11. The Defence indicates that D-0035 is a [REDACTED] and is expected to provide evidence on policies and practices of the Government of Sudan at times material to the case, as well as the timing and conditions of Mr Abd-Al-Rahman's [REDACTED].¹¹ The Defence further submits that D-0035 has [REDACTED].¹²

12. The Defence further requests that the Chamber grant the same measures to D-0035 as other Defence witnesses [REDACTED].¹³ Lastly, the Defence refers to D-0035's application for inclusion in the Court's Protection Programme (the 'ICCPP'), which is currently pending before the VWU, and requests that the Chamber grant D-0035 the same protective measures as other ICCPP applicants.¹⁴

13. In its observations, the VWU notes that the witness's fear of [REDACTED] is not unique to him. According to the VWU, similar information was received from other witnesses; therefore, there is no indication that [REDACTED] may specifically target the witness due to his interaction with the Defence or with the Court.¹⁵

14. Nonetheless, the VWU avers that the witness may be exposed to risks from [REDACTED] due to his impending appearance before the Court as he may testify on issues related to [REDACTED].¹⁶ Consequently, the VWU supports the Defence's Request.¹⁷

15. The Chamber recalls the legal framework for the implementation of in-court protective and special measures provided for in its previous decisions.¹⁸ The Chamber also recalls the overriding principle of publicity of trial proceedings.¹⁹

16. Considering that the Prosecution and the CLRV do not oppose the Request, and noting particularly the VWU's recommendations that in-court protective measures be ordered, the

¹⁰ Request, ICC-02/05-01/20-1064-Conf, para. 10.

¹¹ Request, ICC-02/05-01/20-1064-Conf, para. 11.

¹² Request, ICC-02/05-01/20-1064-Conf, para. 11.

¹³ Request, ICC-02/05-01/20-1064-Conf, para. 13.

¹⁴ Request, ICC-02/05-01/20-1064-Conf, para. 16.

¹⁵ VWU Observations, paras 4-5.

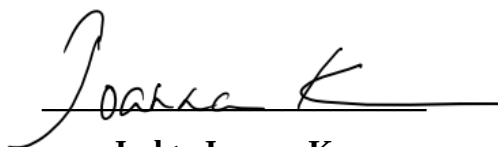
¹⁶ VWU Observations, para. 7.

¹⁷ VWU Observations, para. 8.

¹⁸ Public redacted version of the Decision on in-court protective measures, dated 25 March 2022 and notified on 25 April 2022, ICC-02/05-01/20-645-Red2, paras 7-10 (hereinafter 'First Decision on In-Court Protective Measures').

¹⁹ First Decision on In-Court Protective Measures, ICC-02/05-01/20-645-Red2, para. 11.

Chamber grants the requested in-court protective measures for witness D-0035. The Chamber reiterates that the extent of any Rule 74 assurances will be discussed in court on the basis of the witness's statement and the expected examination by counsel.²⁰



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 10 July 2024

At The Hague, The Netherlands

²⁰ Email from the Chamber, 31 January 2024, at 15:13.