

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: **10 July 2026**

Date of original: **5 June 2026**

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
Request under Regulation 23bis(3) of the Regulations of the Court
(ICC-02/05-01/20-1347-Conf, 5 June 2026)

Source: Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for
Victims

☒ The Office of Public Counsel for the
Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☒ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☐ Other

1. Pursuant to Regulation 23bis(3) of the Regulations of the Court, the Defence of Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”, “Defence”) applies for the reclassification of the [REDACTED], ICC-02/05-01/20-1328-US-EXP (“Report”) [REDACTED] as “Confidential”.
2. Pursuant to Regulation 23bis(2) of the RoC, the present application is classified confidential which is the classification of the version of the Report notified to the Defence.
3. The Defence was notified on 4 June 2026 of a Confidential Redacted version of the Report. It contains numerous redactions,¹ which deprive the document of any usefulness. Virtually, the only information contained therein are those provided by the Defence.²
4. The Report and its Annexes were classified under seal *ex parte*, only available to the Office of the Prosecutor (“OTP”) and the Registry pursuant to Regulation 23bis(2) of the RoC. The only justification for that exceptional classification is [REDACTED].³ These cannot be valid justifications.
5. The level of classification “Under Seal” is governed and defined by Regulation 14 of the Regulations of the Registry (“RoR”). This level of classification is reserve for “*judicial records and material*”.⁴ The classification of judicial records is either determined when the record is created, pursuant to Regulation 23bis(1) of the RoC and requires, in that case, a full statement of “*the factual and legal basis for the chosen classification*”;⁵ or it is determined by the classification of the documents, decisions or orders to which it refers, pursuant to Regulation 23bis(2) of the RoC.
6. The Report is a judicial record. Its classification “Under Seal, only available to the OTP and the Registry” pursuant to Regulation 23bis(2) of the RoC shall be based on the reference to a document with the same classification in the Report. Yet, none of the judicial records mentioned in the Report is classified “Under Seal, only available to the OTP and the Registry”. The justification provided for the classification “Under Seal, only available to the OTP and the Registry” of the Report is thus manifestly erroneous and shall be amended to mirror the classification of the document with the highest classification referred to in the document. Based on the information provided in the redacted version received by the Defence, the highest classification is “Confidential”. The Report should thus be reclassified accordingly.

¹ ICC-02/05-01/20-1328-Conf-Red, paras. 4 and 11-22.

² ICC-02/05-01/20-1328-Conf-Red, paras. 6-8.

³ ICC-02/05-01/20-1328-Conf-Red, para. 2.

⁴ RoR 14 – Levels of Confidentiality, *chapeau*.

⁵ Roc 23bis(1).

7. In case a portion refers to another judicial record classified “Under Seal, only available to the OTP and the Registry”, only that portion can be redacted. The Defence invites the Trial Chamber to exercise the highest level of caution in its assessment of whether the basis for this high level of classification still exists, pursuant to Regulation 23*bis*(3) of the RoC.

8. [REDACTED].⁶ The document provided in Annex I may have been classified by the OTP under the classification “Under Seal, only available to the OTP and the Registry”. If that is so, the Defence hereby applies for its reclassification as Confidential pursuant to Regulation 23*bis*(3) of the RoC. Now that the content of this document has been disclosed at paragraph 5 of the Report, there can be no further basis to keep it “Under seal”. Pursuant to Regulation 23*bis*(3) of the RoC, it must be reclassified “Confidential”

9. [REDACTED].⁷ When issued or received by the Court, these were not judicial records. They have been transformed into a judicial record as a result of being annexed to the Report. But this process amounts to the initial classification of the relevant documents as judicial records falling under Regulation 23*bis*(1) of the RoC, not Regulation 23*bis*(2). When classifying [REDACTED] “Under Seal, only available to the OTP and the Registry”, the Registry shall provide a full statement of the factual and legal basis for the chosen classification. The Registry cannot, as it does at paragraph 2 of the Report, rely on Regulation 23*bis*(2) of the RoC and refer to the classification of other judicial records: there is none.

10. As non-judicial records, [REDACTED] may be classified. But that classification is not governed by Regulation 14 of the RoR, which is limited to judicial records. It is governed instead by the “ICC Information Protection Policy”⁸ or the “ICC Information Protection Policy for Protectively Marked Information Provided by Governmental and Intergovernmental Organizations”.⁹ These two policies have in common that they do not define a level of classification “Under Seal”.¹⁰ [REDACTED] thus cannot be classified “Under Seal, only available to the OTP and the Registry”, as this classification does not apply to them. Classification of [REDACTED] under Regulation 23*bis*(2) of the RoC is thus manifestly erroneous. They must be reclassified “Confidential” and notified to the Defence.

⁶ ICC-02/05-01/20-1328-Conf-Red, para. 5, footnote 7.

⁷ ICC-02/05-01/20-1328-Conf-Red, para. 18, footnotes 22-23.

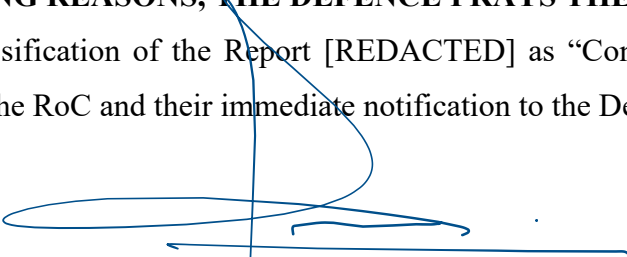
⁸ [Administrative Instruction ICC/AI/2007/001](#): Information Protection Policy, 19 June 2007.

⁹ [Administrative Instruction ICC/AI/2006/002](#): ICC Information Protection Policy for Protectively Marked Information Provided by Governmental and Intergovernmental Organizations, 20 December 2006.

¹⁰ [Administrative Instruction ICC/AI/2007/001](#), sect. 3.3 (a) “Unclassified”, (b) “[ICC] Restricted”, (c) “[ICC] Confidential” and (d) “[ICC] Secret”; [Administrative Instruction ICC/AI/2006/002](#): sect. 3.5 (a) “IPASS Top Secret”; (b) “IPASS Secret”; (c) “IPASS Confidential”; and (d) “IPASS Restricted”.

11. At the precise time when the reparations proceedings are running, the Defence has a legitimate interest in receiving the full, unredacted, version of the Report [REDACTED]. The Defence cannot properly defend the interests of Mr Abd-Al-Rahman in reparation proceedings without getting full access to the information contained therein. Even in case there were good reasons to keep [REDACTED] classified, the Defence submits that these shall received notification thereof of a need-to-know basis, pursuant to Section 16.1(b) of the “ICC Information Protection Policy”¹¹ and/or section 12.1(c) of the “ICC Information Protection Policy for Protectively Marked Information Provided by Governmental and Intergovernmental Organizations”.¹²

FOR THE FOREGOING REASONS, THE DEFENCE PRAYS THE TRIAL CHAMBER TO ORDER the reclassification of the Report [REDACTED] as “Confidential” pursuant to Regulation 23*bis*(3) of the RoC and their immediate notification to the Defence.



Mr Cyril Laucci
Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 10 July 2026

At The Hague, The Netherlands.

¹¹ [Administrative Instruction ICC/AI/2007/001](#), sect. 16.1(b).

¹² [Administrative Instruction ICC/AI/2006/002](#), sect. 12.1(c).