



Original: **English**

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

Date: **16 July 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**

**With Confidential *Ex parte* – Defence, Registry only – Annexes 1, 2, 3 and 4**

**Public Redacted Version of Request for Protection of Defence Witnesses, 28 March  
2024, ICC-02/05-01/20-1107-Conf-Exp**

**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:**

|                                                 |                                                                                                                               |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>The Office of the Prosecutor</b>             | <b>Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman</b><br>Dr. Cyril Laucci, Lead Counsel<br>Mr. Iain Edwards, Associate Counsel |
| <b>Legal Representatives of Victims</b>         | <b>Legal Representatives of the Applicants</b>                                                                                |
| <b>Unrepresented Victims</b>                    | <b>Unrepresented Applicants<br/>(Participation/Reparation</b>                                                                 |
| <b>The Office of Public Counsel for Victims</b> | <b>The Office of Public Counsel for the Defence</b><br>[REDACTED]                                                             |
| <b>States' Representatives</b>                  | <b>Amicus Curiae</b>                                                                                                          |

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#### **REGISTRY**

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|------------------------------------------------------|----------------------------------------------|
| <b>Registrar</b><br>Mr. Osvaldo Zavala Giler         | <b>Counsel Support Section</b><br>[REDACTED] |
| <b>Victims and Witnesses Unit</b><br>[REDACTED]      | <b>Detention Section</b>                     |
| <b>Victims Participation and Reparations Section</b> | <b>Others</b><br>[REDACTED]                  |

## I. INTRODUCTION

1. This is a request (“the Request”) by the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Defence”) to seek the intervention of the Honourable Trial Chamber I (“the Chamber”) pursuant to Article 64(6)(e) of the Rome Statute (“the Statute”) and [REDACTED] of the Prosecution-Registry Joint Protocol on the Mandate, Standards and Procedure for Protection of 21 March 2011 (“the Protocol”, Annex 1) with respect to the denied admission within the International Criminal Court Protection Programme (“ICCPP”) of Defence Witnesses [REDACTED] (together “the Defence Witnesses”).

2. Concretely, the Defence is seeking a review by the Chamber of the implied decision rejecting the Defence application submitted on 23 February 2024 (“the Application for Reconsideration”, Annex 3) to the Registrar for his reconsideration of the decision denying admission of the Defence Witnesses within the ICCPP issued by the Chief of the Victims and Witnesses Unit (“VWU”) on [REDACTED] and notified to the Defence on [REDACTED] (“the Decision, Annex 2”).

## II. CLASSIFICATION

3. Pursuant to regulation 23bis(1) of the Regulations of the Court (“the RoC”), this request is filed as confidential *ex parte* – Defence, Registry only – as it relates to the protection of Defence witnesses by the VWU, which is, by its very nature, a confidential and *ex parte* process, for which the Prosecution and the Distinguished Legal Representatives of Victims (“the LRVs”) have no standing. The Defence proposes to file a public redacted version of the Request, once determined by the Chamber, for the information of the Prosecution, LRVs and public interest at large.

4. Annexes 1, 2, 3 and 4 are registered under the same classification. The Defence proposes to reclassify Annexes 1 and 4, which are general documents, as “Public” when it will file the public redacted version of the present Request.

## III. TIMING OF THE REQUEST

5. The Defence has applied the default time-limit of thirty (30) days for issuance of administrative decisions, prior to concluding that its Application for Reconsideration had been implicitly denied. [REDACTED], without further specifying

a time limit. Similarly, [REDACTED]. The thirty-day default time limit for administrative decisions thus appears a reasonable time to conclude that the duty to reconsider decisions [REDACTED] has not been complied with and that the Application for Reconsideration is implicitly denied. This thirty-day default time limit is also consistent with the urgency of determining on pending applications for admission within the ICCPP, considered from the perspective of the protection and well-being of witnesses. The Defence thus prays the Chamber to find that, by failing to reconsider the Decision within thirty days, the Registrar has implicitly denied the Application for Reconsideration, and/or that its intervention under [REDACTED] is appropriate at this stage.

#### IV. PROCEDURAL BACKGROUND

6. On [REDACTED], the Defence submitted an application for the inclusion in the ICCPP for witness [REDACTED].<sup>1</sup> On [REDACTED], the Defence did the same for witness [REDACTED].<sup>2</sup> [REDACTED] application was submitted on [REDACTED].<sup>3</sup>

7. On [REDACTED], the VWU informed the Defence that the Chief of VWU had decided to deny the applications for admission within the ICCPP of the [REDACTED] Defence Witnesses.<sup>4</sup> The Defence notes that the Decisions were taken by the Chief of VWU on [REDACTED], but notified to the Defence five days later.<sup>5</sup>

8. On [REDACTED], the Defence informed VWU that it intended to contest the Decision and inquired about the appropriate avenues to do so.<sup>6</sup> VWU subsequently stated that the Defence could submit a request for reconsideration to the Director of the Division of External Operation instead of the Chief of VWU [REDACTED].<sup>7</sup> Following a Defence request for clarification, the legal basis for the [REDACTED] deadline was said to be [REDACTED] of a document entitled “Service Delivery Document” (“the SDD”, Annex 4).<sup>8</sup>

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<sup>1</sup> [REDACTED].

<sup>2</sup> [REDACTED].

<sup>3</sup> [REDACTED].

<sup>4</sup> [REDACTED].

<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED].

<sup>8</sup> [REDACTED].

9. On the same day, the Defence made a further request to VWU for supporting documents for its Decisions, namely the [REDACTED].<sup>9</sup> The Defence added that, in the event VWU relied on other assessments, they should also be disclosed in order that the Defence might properly understand the reasoning behind the Decisions.<sup>10</sup> VWU did not provide the [REDACTED], baldly stating that these were internal work product under [REDACTED] of the SDD, and indicated that they had referred the Defence's request for access to the [REDACTED] to the "[REDACTED]" for consideration as it may be shared with referring parties under [REDACTED] of the SDD.<sup>11</sup>

10. A reminder sent to VWU on [REDACTED] for the purpose of the present Request was responded by an email providing that "[REDACTED]" for the Decisions ("supplementary information")<sup>12</sup> and stating the following: "[REDACTED]."<sup>13</sup> On the same day, VWU indicated that the [REDACTED] deadline for a reconsideration request would commence upon the reception of the [REDACTED] excerpts.<sup>14</sup>

11. On [REDACTED], VWU provided the Defence with - in accordance with Regulation 96 (7) of the Regulations of the Registry ("RoR") and [REDACTED] of the SDD - a [REDACTED].<sup>15</sup>

## **V. APPLICABLE LAW**

12. The Defence refers to Articles 43(6) and 64(6)(e) of the Statute and Regulations 95 and 96 of the RoR.

13. The Defence further refers to the following provisions of the Protocol:

- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].

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<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> See submissions for content of the supplementary information.

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED].

<sup>15</sup> [REDACTED].

- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].

## VI. SUBMISSIONS

14. As a preliminary matter, the Defence notes that in its correspondence, VWU mentions [REDACTED]<sup>16</sup>. At the outset, the Defence submits that the SDD is no more than an informative pamphlet and is devoid of any legal authority. It was designed simply to [REDACTED].<sup>17</sup> The mandate, functions and rules governing the activities of a section of the Registry cannot be unilaterally decided by that section, even less so when, like VWU, these functions play a key role in ICC proceedings. The SDD does not fall within any category of the sources of applicable law under Article 21 of the Statute. The SDD is not signed, it was not adopted in consultation with any of the Parties, and it directly refers to [REDACTED].<sup>18</sup>

15. On the other hand, the Protocol is applicable *mutatis mutandis* to the Defence pursuant to [REDACTED] and in the absence of any other agreement with the Defence. [REDACTED].<sup>19</sup> The Registry clarified the legal nature and value of the Protocol in the past.<sup>20</sup> The Protocol was described as “*a written agreement putting in place a consultation mechanism and dividing tasks between the two organs of the Court in their shared mandates for the protection of victims and witnesses*”.<sup>21</sup> Its legal basis was identified as being Articles 43(6) and 68(1) and (4) of the Rome Statute.<sup>22</sup> The Protocol thus remains the document of reference governing [REDACTED]. References to the SDD in the below do not imply any admission regarding a purported legal value of this document, it has none, but

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<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> [REDACTED].

<sup>19</sup> [REDACTED].

<sup>20</sup> [ICC-01/09-01/11-1097-Red](#), par. 18.

<sup>21</sup> [ICC-01/09-01/11-1097-Red](#), par. 21.

<sup>22</sup> [ICC-01/09-01/11-1097-Red](#), par. 20.

only aim at illustrating that what is provided in the Protocol is referred to as well in the SDD.

16. Considering the specific page limit applicable to submissions before the Chamber, the Defence cannot reiterate its entire reasoning on the basis of which the reconsideration of the Decision was sought from the Registrar. The full Application for Reconsideration is provided in Annex 3. But the Defence summarizes here the essential reasons why it now seeks review of the Decision by the Chamber, pursuant to to Article 64(6)(e) of the Statute and [REDACTED]. The Defence submits that the Decision should be quashed because it: 1.) was not made by the appropriate authority; 2.) is not or is not sufficiently reasoned, and where it is reasoned, it is done erroneously; and 3.) creates an unacceptable and prejudicial situation for the Defence *vis-à-vis* its own witnesses.

#### ***1 - The Decision is ultra vires***

17. As underlined above, VWU informed the Defence of the Decisions on [REDACTED] stating that “[REDACTED]”<sup>23</sup> (emphasis added). No reference was made to any delegation of authority from the Registrar to the Chief of VWU for the purposes of ICCPP decisions in the email notifying the Defence of the Decisions. Regulation 96(4) of the RoR and [REDACTED] of the Protocol explicitly designate the [REDACTED]. Consequently, the Decision is unlawful in that it was rendered *ultra vires* and should be reversed accordingly.

#### ***2 - The Decision is not, or not adequately, reasoned***

18. A simple reading of the Decision shows that no reason was provided to explain the Decision. The Decision thus fails to comply with [REDACTED] of the Protocol: “[REDACTED]”. The Decision also fails to comply with the requirements under Regulation 96(3) and (4) of the RoR. It is thus fatally flawed. The paucity of detail in the Decision initially sent is extraordinary given VWU has had 5½ months to consider the applications.

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<sup>23</sup> [REDACTED].

19. That initial absence of reasons of the Decision is now aggravated by the implicit rejection of the Application for Reconsideration by the Registrar. By avoiding to issue a written decision on the Application for Reconsideration and denying it implicitly instead, the Registrar avoids having to provide justifications for the Decision where there is none.

20. No reference is made in either the Decision, or in the supplementary information later provided,<sup>24</sup> to the Witnesses' individual personal fears or individual circumstances. No mention is made of the risks [REDACTED].<sup>25</sup> No attempt is made to assess whether the Witnesses' fears are well-founded. No attempt is made to apply the Witnesses' individual fears and personal circumstances to the objective risks [REDACTED]. The Decisions do not refer in any way to [REDACTED].

21. In the case of Witness [REDACTED], the Chief of VWU makes [REDACTED]. This directly contravenes [REDACTED]. [REDACTED] formal statement was collected by the Defence on [REDACTED].<sup>26</sup> The first condition was thus fully met, without need for meeting the second, alternative, condition. The mere provision of a formal statement to the Defence, coupled with the fact that he, like [REDACTED].

22. [REDACTED],<sup>27</sup> [REDACTED].<sup>28</sup> [REDACTED]. VWU has failed to provide the Defence with sufficient reasoning behind the Decision and has violated the [REDACTED].

23. [REDACTED];<sup>29</sup> [REDACTED]. This necessarily implies that the information relied upon by VWU is outdated; finally, VWU erred in failing to adequately support its conclusions that [REDACTED].

24. [REDACTED]. The Decisions do not comply with the requirements of an assisted move under these provisions. No mention was made of the Witnesses' families, who should be also included in the proposed assisted move in accordance with Regulation 95(2) of the RoR and [REDACTED]. In addition, such measures

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<sup>24</sup> See submissions below regarding the content of the supplementary information.

<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> [REDACTED].

<sup>29</sup> [REDACTED].

should be taken in consultation with the Witnesses themselves. No part of the Decisions indicate that such consultation has taken place. The Decision further violates the Protocol by providing insufficient reasoning and disregarding the procedure associated with assisted moves.

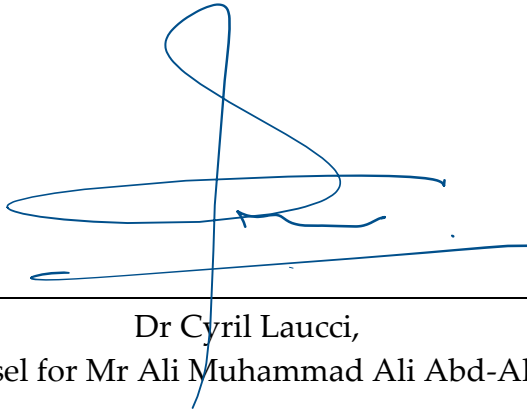
### ***3 - The Decision violates the principle of equality of arms***

25. [REDACTED]. Whilst the Defence recognises that ICCPP assessments are, by nature, dependent on individual circumstances, the contrast between the number of admitted Prosecution and Defence witnesses is striking.

26. The Defence is now faced with a reduced capacity to reassure individuals willing to provide defence evidence in the *Abd-Al-Rahman* trial who have reasonable security concerns linked to their potential testimony. Whilst the Defence will still inform witnesses about the existence of the ICCPP, very limited track record exists to reassure witnesses of the chances of a successful application, and no track record exists relating to witnesses still living in Sudan. To the contrary, the Defence's only experience is of close-to-zero applications resulting in inclusion into the ICCPP. Furthermore, due to the lack of VWU's transparency regarding the relevant criteria used to assess ICCPP applications, the Defence will not be able to inform witnesses about the *prima facie* value of their potential applications.

27. As a result of the above, not only is the Defence placed in a prejudicial position when compared with the Prosecution, but it is also restricted in its capacity to obtain witnesses to testify in an environment where the fears for their and their families' security have been mitigated. The time taken by VWU to issue its Decision, its incapacity to provide any or any sufficient reasons and the systematic, but one exception, refusal of inclusion of its Witnesses into the ICCPP forces the Defence to require potential witnesses to take significant risks in testifying for the Defence. This imbalance and its impact on the ongoing Defence investigations require the urgent intervention of the Trial Chamber to restore the fairness of the proceedings under Article 64(2) of the Statute.

**THE DEFENCE CONSEQUENTLY PRAYS THE CHAMBER TO REVERSE** the Registrar's Decision and **ORDER** the admission of Witnesses [REDACTED], together with their families, within the ICCPP pursuant to Regulation 96 of the RoR.



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Dr Cyril Laucci,  
Lead Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 16 July 2026,

At The Hague, The Netherlands.