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

Date: **17 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 Public Redacted Version of Annexes 1 to 5**

**Public Redacted Version of “Motion for Judicial Review of Legal Aid Decision
under Regulation 83(4) of the Regulations of the Court”, ICC-02/05-01/20-1135-
Conf-Exp, 20 May 2024**

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 Mr Ali Muhammad Ali
Abd-Al-Rahman**

Dr Cyril Laucci, Lead Counsel

Mr Iain Edwards, Associate Counsel

Legal Representatives of Victims
[REDACTED]

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**
[REDACTED]

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

[REDACTED]

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

I. INTRODUCTION

1. Pursuant to Regulation 83(4) of the Regulations of the Court (“RoC”), the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”, “Defence”) is hereby seeking judicial review by the Honourable Trial Chamber (“Chamber”) of the Registrar’s Decision of 6 May 2024 (Annex 5: “the Impugned Decision”) denying reconsideration of the Registry Decision on Review of Preliminary Assessment of Complexity Level under the New Legal Aid Policy and its consequences on two positions within the Defence team (Annex 3: “the Legal Aid Decision”).

II. CLASSIFICATION

2. Pursuant to regulation 23bis(1) of the RoC, this request and its annexes are filed under the classification “Confidential *Ex Parte* – Registry, Victims Defence only –”, as the Office of the Prosecutor should have no standing on issues relating to the administration of legal aid. Although the determination of the complexity level for Defence and Victims in a same case may differ pursuant to section 44 of the new Legal Aid Policy (“the [New Legal Aid Policy](#)”),¹ the application of some factors common to both under paragraphs 50-54 of the [New Legal Aid Policy](#) means that Victims Representatives in the Abd-Al-Rahman Case also have an interest and may have relevant observations to make on issues on Legal Aid and the way the [New Legal Aid Policy](#) is implemented by the Registry. A public redacted version will be registered after final determination of the matter by the Chamber.

III. SUMMARY OF PROCEDURE

3. On 15 December 2023, the Court initiated the implementation of the [New Legal Aid Policy](#) adopted by the Assembly of States Parties on 13 December 2023, by informing the Defence of the assignment of provisional complexity level 2 at trial stage for Case ICC-02/05-01/20 (Annex 1: “the Initial Decision”).

¹ [ICC-ASP/22/9: Draft Legal Aid Policy of the International Criminal Court](#), 22 November 2023.

4. On 31st January 2024, the Defence submitted a Request for Review of the Preliminary Assessment of Complexity Level under the New Legal Aid Policy (Annex 2: “the Request”).
5. On 23 February 2024, the Counsel Support Section issued the Legal Aid Decision denying the Request (Annex 3).
6. On 7 March 2024, the Defence applied for reconsideration of the Legal Aid Decision (Annex 4: “the Request for Reconsideration”).
7. On 6 May 2024, the Registrar issued the Impugned Decision denying the Request for Reconsideration (Annex 5). The Impugned Decision was notified to the Defence on 7 May 2024.
8. Within the time limit provided under Regulation 135(2) of the Regulations of the Registry (“the RoR”), the Defence now seeks judicial review by the Chamber of the Impugned Decision.

IV. APPLICABLE LAW

9. Regulation 83 of the RoC governs the general scope of legal assistance paid by the Court. Its paragraph 4 provides that “*Decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving assistance.*” In the present case, the person receiving assistance, Mr Abd-Al-Rahman, is represented by his Defence team.
10. Pursuant to paragraph 89 of its [Resolution ICC-ASP/22/Res.3](#) of 13 December 2023, the [New Legal Aid Policy](#) entered into force as of 1st January 2024.
11. Further, paragraph 14 of the [New Legal Aid Policy](#) provides that it shall enter into force on 1st January 2024 and supersedes the document governing the earlier Legal Aid scheme.
12. Paragraph 15 of the [New Legal Aid Policy](#) governs the transition period between the earlier Legal Aid Scheme and the new system for Defence teams operating in ongoing cases before the Court, like the Abd-Al-Rahman Case. In relevant part, it provides that: “*transitional measures may be taken at the discretion of the Registrar to ensure*

stability of operating teams and to prevent any negative impact of the transition to the new legal aid system on ongoing judicial proceedings.”²

13. These transitional measures shall apply until the beginning of the next phase of the proceedings, prior to which the Registrar shall, under paragraph 43 of the [New Legal Aid Policy](#), reassess the complexity level for the Case as level 1, 2 or 3, in accordance with paragraph 47 of the [New Legal Aid Policy](#) and pursuant to the parameters provided at paragraphs 50-52 of [New Legal Aid Policy](#) for Defence and paragraphs 53-54 for Victims.

14. Pursuant to paragraphs 29 and 32 of the of the [New Legal Aid Policy](#), the Abd-Al-Rahman Case is currently, for the Defence, in the trial stage of the proceedings and will remain so until the closing arguments. It is then and then only that the Registry shall make a new assessment of the complexity of the Case pursuant to paragraph 47 of the of the [New Legal Aid Policy](#), which will apply for any appeals stage.

15. At paragraph 60 of the [New Legal Aid Policy](#), Table 1 describes the various compositions of Defence teams depending on the various stages of the proceedings and complexity levels. At trial stage, Complexity Level 2 entitles the Defence team to rely on a maximum of nine positions, i.e. 1 Lead Counsel; 1 Associate Counsel; 1 Assistant to Counsel; 3 Legal Assistants; 2.5 Case Managers and 0.5 Language Assistant. By contrast, at the same trial stage, Complexity Level 3 entitles the Defence team to rely on a maximum of eleven and a half positions, i.e. 1 Lead Counsel; 2 Associate Counsels; 1 Assistant to Counsel; 4 Legal Assistants; 3 Case Managers and 0.5 Language Assistant. As indicated in the Initial Decision, the additional 0.5 position of IT Assistant provided under Table 1 was suspended for 2024 and thus does not apply.

16. Pursuant to paragraph 103 of the [New Legal Aid Policy](#), *“The standard of judicial review of the Registrar’s decisions concerns the propriety of the outcome of the decision and of the procedure by which it was reached. Without prejudice to the decision making of the Chamber, the judicial review procedure shall take into account the scope of the resources*

² [New Legal Aid Policy](#), par. 15.

*allocated under the Court's Legal Aid Policy. The review involves an assessment of (a) whether the Registrar has acted without jurisdiction; (b) whether the Registrar's decision is affected by **a material error of law** or fact; (c) whether the Registrar abused his or her discretion, for example, by failing to act with procedural fairness, acting in a disproportionate manner, making a decision based on irrelevant factors or failing to take into account relevant factors; or (d) whether the Registrar's decision is manifestly unreasonable by reaching a conclusion which no reasonable person who has properly applied the legal basis and circumstances of the case to the issue could have reached" (emphasis added).*

V. THE IMPUGNED DECISION

17. The Impugned Decision (a) confirms the initial assessment of the Abd-Al-Rahman Case under the transitional measures pursuant to paragraph 15 of the [New Legal Aid Policy](#) as Complexity level 2 ("the First Aspect");³ (b) amends the Legal Aid Decision by granting the addition of a 100% Legal Assistant position in the team until the end of the presentation of the Defence evidence ("the Second Aspect");⁴ and (c) amends the Legal Aid Decision by granting the extension of the Language Assistant position from 50% to 100% from April 2024 until the end of the Defence case ("the Third Aspect").⁵ The Defence hereby applies for judicial review on all three aspects of the Impugned Decision, as flawed by errors of law.

VI. FIRST ERROR OF LAW: FAILURE TO COMPLY WITH THE MAXIMAL STAFFING FIGURES PROVIDED UNDER TABLE 1 OF THE [NEW LEGAL AID POLICY](#) (FIRST ASPECT)

18. The issue submitted for judicial review is limited to the implementation of the transitional measures under paragraph 15 of the [New Legal Aid Policy](#) in the Impugned Decision. It is not about any new assessment of the complexity level of the Abd-Al-Rahman Case under paragraph 47 of the [New Legal Aid Policy](#). Pursuant to paragraph 43 of the [New Legal Aid Policy](#), that new assessment shall take place prior to the beginning of the next stage of the proceedings, i.e. the appeals stage, if any. The

³ Annex 5: Impugned Decision, par. 13-16, 29.

⁴ Annex 5: Impugned Decision, par. 17-24, 29.

⁵ Annex 5: Impugned Decision, par. 25-29.

transitional measures thus shall apply until the completion of the current trial stage, i.e. until the closing arguments pursuant to section 32 of the of the [New Legal Aid Policy](#).

19. Pursuant to paragraph 15 of the of the [New Legal Aid Policy](#), the transitional measures imply a provisional assessment of the complexity level of the Case which shall aim *“to ensure stability of operating teams and to prevent any negative impact of the transition to the new legal aid system on ongoing judicial proceedings”*. Under the transitional measures, the complexity of the Case shall be assessed at a level corresponding to the current resources and staffing of the Defence team, in order to avoid the reduction of any position that may negatively impact its work in the middle of the ongoing stage of the proceedings.

20. The Legal Aid Decision had initially erred in fact by considering that in December 2023, i.e. at the time of the implementation of the provisional measures, the Defence team had nine positions.⁶ As requested by the Defence in its Request for Reconsideration,⁷ this error of fact was corrected in the Impugned Decision by confirming that a tenth position, filled by [REDACTED], had been forgotten and left aside in the assessment of the Registry.⁸ The Impugned Decision thus confirms that the total number of positions within the Defence team at the time of the implementation of the transitional measures was ten, not nine.

21. The initial error of fact made in the Legal Aid Decision meant that the total number of positions within the Defence team called for the implementation of transitional measures at Complexity level 2, which allowed for a maximum of nine positions under Table 1 of the [New Legal Aid Policy](#).⁹

22. But once the initial error of fact in the staffing of the Defence team had been corrected from nine to ten in the Impugned Decision,¹⁰ the only reasonable conclusion could have been that the implementation of provisional measures under paragraph 15

⁶ Annex 3: Legal Aid Decision, par. 12.

⁷ Annex 4: Request for Reconsideration, under (i), p. 2-4.

⁸ Annex 5: Impugned Decision, par. 20.

⁹ Annex 3: Legal Aid Decision, par. 13.

¹⁰ Annex 5: Impugned Decision, par. 16.

of the [New Legal Aid Policy](#) called for a provisional assessment at Complexity level 3, allowing a maximum of eleven and a half positions, instead of nine. This was the only way of ensuring stability of the Defence team and preventing any negative impact of the transition to the new legal aid system on ongoing judicial proceedings.

23. The Impugned Decision errs in law by concluding, at paragraph 16, that the tenth position additional to what is envisaged under Complexity level 2 does not reach the level of eleven or more position under Complexity level 3 under Table 1 of the [New Legal Aid Policy](#). Table 1 figures necessarily reflect the *maximum* staffing at the corresponding complexity levels, not the *minimal* staffing, as Table 1's purpose is precisely to circumscribe the envelope provided under the [New Legal Aid Policy](#), depending on the various stages of proceedings and complexity levels. Under Table 1, the *maximal* staffing for a Defence team at trial stage under Complexity level 2 is nine positions, not ten. A Defence team with ten positions or more thus must fall under Complexity Level 3 under Table 1 of the [New Legal Aid Policy](#). By concluding that, unless they had a staffing of eleven positions or more, Defence teams fall under Complexity Level 2, the Impugned Decision errs in law by construing Table 1 figures as reflecting *minimal* number of positions, instead of *maximal* numbers. That interpretation is necessarily erroneous, otherwise a Defence team at complexity level 3 could claim an infinite number of positions above eleven, by far exceeding the envelope allocated under the [New Legal Aid Policy](#).

24. The Impugned Decision thus erred in law when it concluded, based on the number of ten positions within the Defence team at the time of transition to the [New Legal Aid Policy](#), the provisional measures shall be implemented at Complexity level 2, instead of level 3. This error of law had a negative impact on the work of the Defence team since 1st January 2024: its two members concerned by the Second and Third Aspects had to perform their functions without receiving the full salary owed to them under [New Legal Aid Policy](#), and in the case of [REDACTED], owed to her in the context of the position on the team to which she was entitled. They thus had to bear alone the onus of compensating for the missing resources. This situation was also a cause of uncertainty with respect to the current and future resources the Defence

team was allowed to rely on for its activities. The Defence prays the Chamber to judicially review the Impugned Decision, by finding that the only reasonable and rational conclusion under Table 1 of the [New Legal Aid Policy](#) was that its ten positions at the time of the transition called for the implementation of the provisional measures at Complexity level 3, instead of level 2.

25. It is important to note that the decision sought by the Defence will have no impact on the finances of the Court, as the Defence team has repeatedly indicated that it had no intention of adding a second Associate Counsel to its current composition at the current late stage of trial proceedings.¹¹

VII. SECOND ERROR OF LAW: FAILURE TO IMPLEMENT THE [NEW LEGAL AID POLICY](#) RETROACTIVELY FROM THE 1ST JANUARY 2024 (SECOND AND THIRD ASPECTS)

26. Pursuant to its paragraph 14, the [New Legal Aid Policy](#) shall enter into force on 1st January 2024.

27. In accordance with that provision, the Defence had specifically requested the granting of an additional Legal Assistant position and additional 50% Language Assistant position from the 1st January 2024.¹² This necessary implied retroactive effect of the Registrar's decision to 1st January 2024 on its Second and Third Aspects. Instead, the Impugned Decision does not specify its retroactive effect on the Second Aspect and specifically denies it on the Third Aspect. The Impugned Decision provides no reason in the Analysis¹³ for the denial of that legitimate and specific request made in the Request for Reconsideration, which is announced in its Conclusion.¹⁴ On the Second and Third Aspects, it errs in law by fail to comply with paragraph 14 of the [New Legal Aid Policy](#).

28. As a result of this error of law, the clearly stated objective of transitioning to the [New Legal Aid Policy](#) while preventing any negative impact fails. The incumbent Legal Assistant granted by the Impugned Decision had to perform her functions as a

¹¹ Annex 2: Request, p. 2; Annex 4 : Request for Reconsideration, p. 5.

¹² Annex 4 : Request for Reconsideration, p. 5-6.

¹³ Annex 5: Impugned Decision, par. 12-28.

¹⁴ Annex 5: Impugned Decision, par. 29.

Case Manager on a 50% part-time basis, instead of as a Legal Assistant on a 50% part-time basis from 1st January until 31st March 2024 as a result of the unreasonable and unjustified decision not to correct the error with retroactive effect. This negatively impacted her by resulting in a loss of earning, with no explanation other than the time taken to correct the initial error of fact with respect to her position.

29. Similarly, the incumbent Language Assistant had to perform his functions at 100% from 1st January until 31st March 2024 without full remuneration as a result of the unreasonable and unjustified decision not to correct the error with retroactive effect. The Impugned Decision negatively impacts on him, by resulting in a loss of earning, with no explanation other than the time taken to grant the Defence request to employ him at 100%. The Language Assistant plays a key role in the functioning in the Defence team, its communication with Mr Abd-Al-Rahman, with the Defence Resource Person, with the Defence intermediary in [REDACTED], and with witnesses and potential witnesses in [REDACTED]. Had the Defence limited the Language Assistant's functions to 50% pending resolution of its challenge, this would have had a considerable impact on, *inter alia*, the advancement of its investigations and appearance of its witnesses. Witnesses D-7 and D-35 may not have appeared and the progresses made in the preparation of the appearance of the witnesses from [REDACTED] may have been severely delayed. The Defence team thus requested its Language Assistant to carry on his functions at 100% with 50% salary pending resolution of the matter. He did so, as reflected in the monthly Service Overview Sheets submitted to the Counsel Support Section for the months of January, February and March 2024. He should now be compensated retroactively, instead of being unfairly penalised for his dedication to the advancement of the court proceedings.

VIII. THIRD ERROR OF LAW: FAILURE TO IMPLEMENT THE PROVISIONAL MEASURES UNTIL THE END OF THE CURRENT STAGE OF PROCEEDINGS (SECOND AND THIRD ASPECTS)

30. Pursuant to its paragraph 47 of the [New Legal Aid Policy](#), the provisional measures shall apply until the end of the current stage of the proceedings. Pursuant to its paragraphs 29 and 32, the Abd-Al-Rahman Case is currently in the trial stage of the

proceedings and will remain so until the end of closing arguments. The provisional measures thus apply until that point, and no earlier. Under its paragraph 14, the [New Legal Aid Policy](#) supersedes the earlier document which governed the Legal Aid Scheme until 31st December 2023.

31. At paragraph 24 of the Impugned Decision, the addition of a 100% Legal Assistant position is unreasonably and unjustifiably granted until the end of the presentation of Defence evidence only.¹⁵ At paragraph 28 of the Impugned Decision, the extension of the Language Assistant position to 100% is similarly unreasonably and unjustifiably granted until the end of the Defence case only.¹⁶ In both cases, the extension of these two positions to the end of the presentation of the Defence case falls short of the proper extension period, as provided for and required by paragraphs 29, 32 and 47 of the [New Legal Aid Policy, which is](#) until the end of closing arguments. The Impugned Decision thus errs in law by applying a different time limit than the one set out under the [New Legal Aid Policy](#) for the reconsideration and potential discontinuation of these two positions.

32. If confirmed, this unjustifiable limitation will have a significant impact on the functioning of the Defence to prepare its Final Brief and the presentation of its Closing Arguments, as it would be deprived of two important team positions from the end of the presentation of its case, i.e., according to the current schedule, by the end of June 2024.¹⁷ By this other error of law, the provisional measures thus wholly fail to comply with their intended purpose of ensuring stability of the Defence team and preventing any negative impact of the transition on ongoing judicial proceedings, in accordance with paragraph 15 of the [New Legal Aid Policy](#). Nowhere in the transitional provisions is the Registry given the power to arbitrarily cut short any properly engaged team member's employment at a point prior to the end of the applicable stage of the proceedings.

¹⁵ Annex 5: Impugned Decision, par. 24.

¹⁶ Annex 5: Impugned Decision, par. 28.

¹⁷ [ICC-02/05-01/20-1046](#), par. 8; ICC-02/05-01/20-1129-Conf, par. 25.

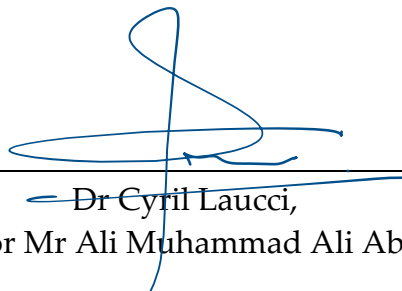
33. In the case of the Legal Assistant position, the fact that it had been granted under the previous Legal Aid Scheme until the end of the Defence Case¹⁸ can have no bearing on the duration for which it should remain within the staffing of the Defence team under the [New Legal Aid Policy](#), which, as highlighted above, supersedes the earlier Legal Aid Scheme pursuant to its paragraph 14. No such limitation to the end of the Defence Case had ever been stipulated for the Language Assistant position, which is essential to the functioning of the Defence at all stages of the proceedings, as relevantly found in the present case by the Appeals Chamber: *“the fact that a suspect and his counsel do not speak the same language and cannot communicate without assistance clearly has the potential to impact on the rights enshrined in Article 67(1)(b) and (d) of the Statute. Therefore, a solution must be found that allows communication to take place.”*¹⁹

34. The Defence therefore prays the Chamber to revise the Impugned Decision by extending its Second and Third Aspects until the closing arguments.

IX. CONCLUSION AND RELIEF

35. For the foregoing reasons, the Defence respectfully requests the Chamber:

- **TO REVERSE** the Impugned Decision on the First Aspect by finding that the provisional measures under paragraph 15 of the [New Legal Aid Policy](#) should be implemented by using Complexity Level 3 as reference for the determination of the Defence staffing under Table 1; and
- **TO REVISE** the Impugned Decision on the Second and Third Aspects by finding that the 100% Legal Assistant and 100% Language Assistant positions should be granted retroactively from 1st January 2024 until the completion of the closing arguments.



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

Dated this 17 July 2026, at The Hague, The Netherlands.

¹⁸ Email from Counsel Support Section, 3 July 2023, 14.27 (appended to Annex 4).

¹⁹ [ICC-02/05-01/20-199 OA](#), par. 32.