



Original: **English**

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

Date: **21 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 Annex A and Confidential Annex B

Public Redacted Version of “Urgent motion for request for cooperation to Ireland concerning D-0026’s appearance as a Defence witness”, ICC-02/05-01/20-1090-Conf, 29 February 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
[REDACTED]

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

[REDACTED]

Detention Section

Victims Participation and Reparations
Section

Others

[REDACTED]

INTRODUCTION

1. Pursuant to Articles 64(2), 57(3)(b), 86, 87(1)(a), 93(1)(e) and 99(1) of the Rome Statute (the “Statute”), the Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (the “Defence”) hereby files this motion for urgent delivery of a request for cooperation to Ireland for the purpose of authorising and facilitating the appearance of Colonel (Patrick) Bernard Markey (Retired) (“D-0026”), formerly of the Irish Defence Forces, before the ICC as a Defence witness.

2. Witness D-0026 is an Irish national [REDACTED]. Witness D-0026 retired from the Irish Defence Forces on 3 May 2023. Of most relevance to the instant matter, D-0026 deployed to Darfur, Sudan, in the capacity of a European Union military observer to the African Union’s mission in Sudan in July 2004. His deployment ended in July 2005.¹

3. The Defence submits that the facilitation of the appearance of D-0026, [REDACTED], as a witness is necessary for the Mr Abd-Al-Rahman’s right to a fair trial and to avoid any risk of delay in the appearance of the witness.

CLASSIFICATION

4. Pursuant to Regulation 23bis(1) of the Regulations of the Court (“RoC”), the present motion is classified confidential and *ex parte* – Defence only -, as it is confined to the practical arrangements of an essentially administrative nature, in view of the appearance of a Defence witness at trial.

PROCEDURAL HISTORY

5. On 20 and 21 February 2024, the Defence met with D-0026 in Dublin, Ireland and was able to collect his written statement. Its disclosure is imminent and will be finalised upon receipt of its signed version by the witness.

6. On 27 February 2024, the Defence filed its “Deuxième Rapport Périodique soumis en vertu de la Décision ICC-02/05-01/20-1057-Conf”² where it updated the

¹ P-0082, Witness Statement, DAR-OTP-0109-0111-R01, paras. 8-12.

² Deuxième Rapport Périodique soumis en vertu de la Décision ICC-02/05-01/20-1057-Conf, ICC-02/05-01/20-1057-Conf, 27 February 2024, para. 7.

Trial Chamber on its progress in the preparation of the Defence case and informed the Trial Chamber on D-0026's availability to appear to give its oral testimony in the courtroom the week of 2 April 2024, subject to the availability of the Chamber, the Parties, and the Courtroom. The Defence also informed the Trial Chamber that it had submitted, through the Registry, a letter requesting cooperation and assistance from D-0026's current employer, [REDACTED], to authorise and facilitate D-0026's appearance before the ICC as a witness by granting him leave for the duration of his appearance.

7. On 27 February 2024, the Registry informed the Defence that according to past practice, the Irish authorities in previous occasions have refused to cooperate with Defence requests under the provisions of their relevant domestic legislation if they are not based on Chapter IX of the Rome Statute (Chamber's order under article 57(3)(b) of the Rome Statute). While the Registry could transmit the Defence's letter, there is a possibility that the State might reply in the same sense. The Defence asked whether, in light of the mundane nature of the assistance requested, there could be a possibility of obtaining it without bothering the Trial Chamber. The Registry responded on 28 February 2024 that Ireland was unlikely to provide assistance without a request from the Trial Chamber. The whole exchange is annexed (Annex B).

8. In order to avoid taking the risk of losing time and delay Witness D-0026's appearance, the Defence proceeds with the present application on an expedited basis.

APPLICABLE LAW

9. Article 57(3)(b) confers authority to the Trial Chamber to seek cooperation pursuant to Part 9 as may be necessary to assist the person in the preparation of his or her defence.

10. Article 93(1)(e) provides that State Parties shall assist the Court with, *inter alia*, "facilitating the voluntary appearance of persons as witnesses or experts before the Court."

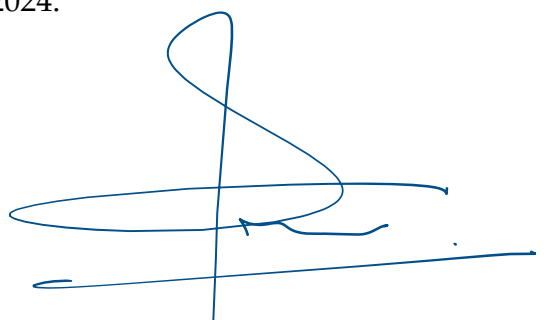
SUBMISSIONS

11. Witness D-0026 was formerly a Prosecution witness ("P-0082") and provided a statement in July and August 2006 but was not called as a Prosecution witness in the present case. After being contacted by the Defence in order to establish whether he might be willing to provide evidence for the Defence, D-0026 met with the Defence on 20 and 21 February 2024 and produced a written statement that will be imminently disclosed. His evidence is directly relevant to the case as Witness D-0026 provides first hand evidence from his deployment as European military observer to the African Union's mission in Sudan from July 2004 to July 2005 and first hand evidence of the reporting of false allegations on Darfur events to the international community during that period.

12. The Defence notes that D-0026's evidence provides no details of Irish military operations, or of any matter that might be considered sensitive to the Irish Defence Forces.

13. The Defence Request for cooperation that the Defence intended to submit to the Government of Ireland is annexed (Annex A).

14. For the foregoing reasons, the Defence respectfully requests the Chamber to issue a request for cooperation to Ireland for D-0026 to appear as a witness for the Defence the week of 2 April 2024.



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

Dated this 21st day of July 2026 at The Hague, The Netherlands