



Original: **English**

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

Date: **14 March 2022**

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
Defence response to Prosecution’s request for
in-court protective and special measures**

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

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1. The Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Defence”) responds to the Prosecution’s request for in-court protective and special measures (“Request”).¹ The Request for protective concerns 59 witnesses coming within four categories: (i) insider witnesses; (ii) crime base witnesses; (iii) witnesses who have been admitted into the ICC protection program (“ICCP”); and (iv) Prosecution investigators.² The Request also concerns in-court support for eight witnesses.³

2. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this Response is filed as “confidential”, mirroring the classification of the Request. A public redacted version will be filed shortly thereafter.

3. The Defence does not oppose the relief sought in the Request. Indeed, it supports it fully. It is entirely acknowledged that “the political and security situation in Sudan is fluid.”⁴ Indeed, the Prosecution is rather sanguine when it uses the term “fluid”. The Defence submits that the security situation in Sudan, particularly in Darfur, has been catastrophic for many years, and that the factual background set out at paragraphs 17-19 of the Request demonstrates that the situation has only deteriorated. The information detailed in Annex A to the Request evidences that which the Defence has been highlighting ever since Mr Abd-Al-Rahman’s initial appearance before the Court: that those suspected of cooperation with the Court are under scrutiny, and in some cases report [REDACTED].⁵ Moreover, it is clear that the Court is not in a position to adequately discharge its mandate of protecting witnesses in Sudan, thus placing them at risk by virtue of merely continuing in Sudan. The Defence’s submissions on these issues have been rejected by Trial Chamber I once before;⁶ the Defence has applied for reconsideration of that ruling in light of new information confirming the correctness of its concerns.⁷ Its submissions provide support for the granting of the relief set out in the Request.

¹ Prosecution’s request for in-court protective and special measures, ICC-02/05-01/20-609-Conf-Red3, 7 March 2022 (confidential *ex parte* original filed on 25 February 2022) and its public redacted version [ICC-02/05-01/20-609-Red2](#).

² Request and its public redacted version [ICC-02/05-01/20-609-Red2](#), para. 2.

³ Request and its public redacted version [ICC-02/05-01/20-609-Red2](#), para. 6.

⁴ Request and its public redacted version [ICC-02/05-01/20-609-Red2](#), paras 15-20.

⁵ Request and its public redacted version [ICC-02/05-01/20-609-Red2](#), para. 21.

⁶ ICC-02/05-01/20-561.

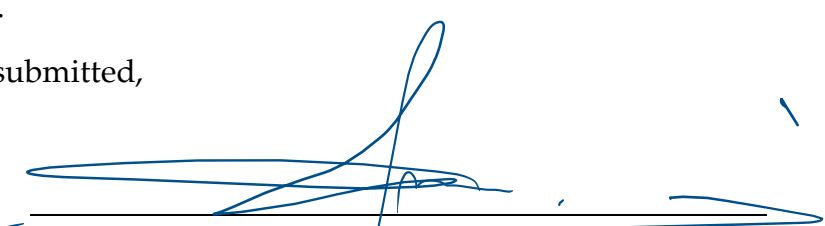
⁷ ICC-02/05-01/20-623-Conf, et sa version publique expurgée [ICC-02/05-01/20-623-Red](#).

4. The high number of witnesses for whom the Prosecution requests in-court protective measures also confirms the correctness of the Defence's concerns. The Defence highlights the experience of the following witnesses as set out in Annex A to the Request: [REDACTED].

5. The Defence notes that much of the detail set out in Annex A to the Request is redacted and therefore unavailable to the Defence. The Trial Chamber has access to unredacted detail of the witnesses' fears.

6. The Defence underscores that its support for the Prosecution's Request should in no way be construed as any kind of admission that any risk bearing on the witnesses can be attributable to Mr Abd-Al-Rahman or his purported supporters, whose existence remains challenged, should such assertions be made in the Request or its Annex A. Nor should it be construed as a blanket acceptance of the admissibility of the evidence which the Prosecution might seek to introduce through the witnesses.

Respectfully submitted,



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

Dated this 14th day of March 2022 at The Hague, The Netherlands.