

Original: **English**No.: ICC-02/05-01/20  
Date: **15 September 2023****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 Annexes 1 and 2***Defence Request to Admit Ms Fiona Marsh as an Expert Witness  
and to Admit her Expert Report and Annexes into Evidence****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:**

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**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

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Victims**

**The Office of Public Counsel for the  
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**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## INTRODUCTION

1. On 11 November 2020, pursuant to Regulation 44(1) of the Regulations of the Court ("RoC"), Ms Fiona Marsh ("Ms Marsh" or "the Expert"), an expert in the scientific examination of documents and handwriting, was admitted to the list of experts before the Court. The Defence for Mr Ali Muhammad Ali Abd-Al-Rahman ("the Defence") wishes to call Ms Marsh as an expert witness and submits that she possesses sufficient qualifications and professional experience in forensic document examination (disputed handwriting, signatures and alterations of documents) to be admitted as a witness.
2. Ms Marsh's expertise will assist the Trial Chamber in adjudicating the issue of the authorship of disputed signatures on two documents submitted at trial.
3. The Defence respectfully requests that the Chamber accept Ms Marsh as an expert witness and allow the introduction of her expert report<sup>1</sup> and her curriculum vitae establishing her qualifications<sup>2</sup>.
4. The present submission is classified as public but its Annexes 1 and 2 are confidential pursuant to RoC Regulation 23bis(1).

## SUBMISSIONS

5. In order to determine whether the testimony of a witness and her report may be admitted as expert evidence, the Chamber will consider whether:
  - (i) the proposed witness is an expert;
  - (ii) the content of the expert report and/or anticipated testimony falls within the area of expertise of the proposed witness; and
  - (iii) the content of the expert report and/or anticipated testimony will be of assistance to the Chamber.<sup>3</sup>

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<sup>1</sup> Annex 1: DAR-D31-00000158 ("Report").

<sup>2</sup> Annex 2: DAR-D31-00000159 ("CV").

<sup>3</sup> *The Prosecutor v. Ruto and Sang*, Decision on Sang Defence Application to exclude Expert Report of Mr Hervé Maupeu, 7 August 2013, [ICC-01/09-01/11-844](#), para. 12 ; *The Prosecutor v. Ntaganda*, Decision on Defence preliminary challenges to Prosecution's expert witnesses, 9 February 2016, [ICC-01/04-02/06-1159](#), para. 8 ; *The Prosecutor v. Bemba and al.*, Decision on Prosecution Request to Exclude Defence Witness D22-0004, 24 February 2016, [ICC-01/05-01/13-1653](#), para. 11.

*The Expert is qualified to provide relevant expert evidence on the scientific examination of handwriting*

6. Ms Marsh has provided her CV, and a statement of her qualifications is also included in the Report.<sup>4</sup>

7. The Expert holds Bachelor of Science and Master of Science degrees, both in chemistry. She joined the Metropolitan Police Forensic Science Laboratory (“MPFSL”) in London in March 1980. She started her training in the Questioned Documents Section of the MPFSL in 1982 where she was trained in all aspects of the scientific examination of documents and handwriting. During her career at the MPFSL, Ms Marsh examined thousands of documents in relation to criminal prosecutions, appeals and internal police investigations. She regularly gave lectures to police officers, Scenes of Crime Officers and magistrates.

8. Since 1988, the Expert has worked as an independent forensic document examiner. She has provided independent expert evidence to claimants, defendants and to prosecutors in thousands of cases, mainly in the United Kingdom but also in other jurisdictions on a variety of topics including disputed handwriting and signatures. Her background demonstrates that she is amply qualified to provide expertise on the scientific examination of handwriting and signatures.

*The content of the Report falls within Ms Marsh’s area of expertise*

9. The Report describes the Expert’s examination of two questioned signatures, her comparison of the two questioned signatures with each other and with known signatures of Mr Abd-Al-Rahman, and provides her conclusions on the examination. It is submitted that the content of the Report falls within Ms Marsh’s area of expertise.

*The Expert’s area of expertise is relevant to the case and will assist the Chamber*

10. The Defence instructed the Expert to examine the signatures on two documents that have been admitted at trial, DAR-OTP-0218-0239 (the last page of a nine-page

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<sup>4</sup> Annex 1: Report, p. 1; Annex 2: CV.

document, DAR-OTP-0218-0231)<sup>5</sup> and DAR-OTP-0220-3921,<sup>6</sup> both purportedly signed by Mr Abd-Al-Rahman, in the following terms:

“1. We would like you to compare (i) what purports to be our client’s signature on the last page of a handwritten document in Arabic [the November 2006 document], with (ii) a number of reference signatures that are not disputed. We do not accept that the purported signature is our client’s. If the signature is a forgery, the assumption is that the forger writes Arabic.

“2. We would like you to compare (i) what purports to be our client’s signature at the foot of another handwritten document in Arabic [the *Laissez Passer* Document], with (ii) the questioned signature discussed at 1. above, and with (iii) the same reference signatures that are not disputed. Again, we do not accept that the purported signature is our client’s. If the signature is a forgery, the assumption is that the forger writes Arabic.”

11. The Defence takes issue with the Prosecution’s case that these two documents were signed by Mr Abd-Al-Rahman. For the purpose of the Report, the Expert compared the two questioned signatures with each other and with several samples of signatures known to be authored by Mr Abd-Al-Rahman,<sup>7</sup> including a set of 36 reference signatures written by Mr Abd-Al-Rahman at the Detention Centre.<sup>8</sup>

12. Ms Marsh’s expertise is of relevance to the Defence case. She concludes that: (i) “there is very little, if any, similarity between the two questioned signatures [and] there is no evidence to indicate that the two questioned signatures were written by the same person”; (ii) (subject to standard caveats) “there is no evidence that the questioned signature on the *Laissez Passer* document was written by Abd-Al-Rahman”; and (iii) “[t]he November 2006 signature...lies outside the range of natural variation [she] found in the limited sample of known signatures examined... [She is] unable to determine with any degree of certainty whether or not Abd-Al-Rahman wrote the signature on the November 2006 document.”

13. The Defence recalls the comment made by the Presiding Judge during the Defence’s cross-examination of P-0922 on the *Laissez Passer* Document on 10 May 2022:

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<sup>5</sup> Annex A of the Report (“November 2006 Document”).

<sup>6</sup> Annex B of the Report (“*Laissez Passer* Document”).

<sup>7</sup> Annexes C, D and E of the Report.

<sup>8</sup> Annex E of the Report.

PRESIDING JUDGE KORNER: [13:06:21] What exactly are you going to be inviting the Court to draw from that? Are you trying to do comparisons between handwriting? Because if you are, then you know, Mr Edwards, you need a proper expert.<sup>9</sup>

14. The Defence submits that Ms Marsh is that proper expert. Her expert evidence will assist the Chamber by providing the necessary material for it to arrive at a reasoned finding on the authorship of the two questioned signatures on the November 2006 and *Laissez Passer* Documents. In respect of the November 2006 Document in particular, the Expert's conclusion provides some additional support for the Defence's contention that the entire document is a forgery.

## CONCLUSION

15. For the foregoing reasons, the Defence respectfully requests that the Chamber grant the application to:

- i) admit Ms Marsh as an expert witness; and
- ii) admit Ms Marsh's Report, its Annexes, and her CV into evidence.

Respectfully submitted,



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

Dated this 15 September 2023

At The Hague, The Netherlands.

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<sup>9</sup> T-039-CONF-ENG ET 10-05-2022, p. 62 (open session).