



Original: English

No. ICC-02/05-01/20

Date: 16 October 2023

Date of original: 12 October 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 redacted version of the

Decision on Defence request for in-court protective measures

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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**Unrepresented Applicants for
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The Office of Public Counsel for Victims

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Victims and Witnesses Unit

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Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural history

1. On 29 September 2023, the Defence filed its request for in-court protective measures in respect of [REDACTED] witnesses (the ‘Request’).¹
2. On that same date, the Chamber instructed the Victims and Witnesses Unit (the ‘VWU’) to file observations on the Request by 9 October 2023. The Prosecution and the Common Legal Representative for Victims (the ‘CLR V’) were instructed to reply by the same deadline.²
3. On 4 October 2023, the Prosecution and the CLR V informed the Chamber that they do not oppose the Request.³
4. On 9 October 2023, the VWU filed its observations (the ‘VWU Observations’).⁴

II. Submissions and analysis

5. The Chamber recalls the legal framework for the implementation of in-court protective and special measures provided for in its previous decisions.⁵ The Chamber also recalls the overriding principle of publicity of trial proceedings.⁶
6. The Defence seeks the following types of in-court protective measures for the witnesses concerned: (a) use of pseudonym, face and voice distortion; and (b) use of private sessions for identifying portions of their testimony. The Defence requests solely pseudonym for one witness [REDACTED].⁷
7. The Defence refers, in general, to the current security situation in Sudan. It submits that for the same reasons that the security situation in Sudan was a factor considered when the Chamber granted in-court protective measures for Prosecution witness, this should also justify the current Request. In fact, the Defence notes that the security situation has significantly deteriorated.⁸ The Defence further submits there is no dispute between the Prosecution and the

¹ Defence request for in-court protective measures, ICC-02/05-01/20-1020-Conf with confidential annex.

² E-mail from Trial Chamber I Communications at 14:56.

³ E-mail from the Prosecution at 11:29 and E-mail from the CLR V at 11:32.

⁴ Registry’s Observations on the “Defence request for in-court protective measures” (ICC-02/05-01/20-1020-Conf), ICC-02/05-01/20-1030-Conf-Exp. A confidential redacted version was notified on that same date, ICC-02/05-01/20-1030-Conf-Red.

⁵ Public redacted version of the Decision on in-court protective measures, ICC-02/05-01/20-645-Conf-Red2, paras 7-10 (hereinafter ‘First Decision on in-court protective measures’).

⁶ First Decision on in-court protective measures, ICC-02/05-01/20-645-Conf-Red2, para. 11.

⁷ Request, ICC-02/05-01/20-1020-Conf, para. 6 and Annex.

⁸ Request, ICC-02/05-01/20-1020-Conf, para. 11.

Defence that there is a risk for witnesses should their testimony become known, including by the Government of Sudan (the ‘GoS’).⁹

8. The Defence identifies [REDACTED] witnesses [REDACTED] under control of the Rapid Support Forces (the ‘RSF’).¹⁰ These witnesses have expressed their fear and they would withdraw their cooperation if in-court protective measures are not granted.¹¹ Most of these witnesses have expressed they would be at risk [REDACTED].¹² In respect of [REDACTED], the witness expressed fears [REDACTED].¹³

9. The Defence also identifies witnesses who [REDACTED]. These witnesses, which with the exception of [REDACTED] have expressed fear [REDACTED].¹⁴

10. The Defence identifies [REDACTED] witnesses [REDACTED], who [REDACTED]. The Defence refers to the Chamber’s prior decision granting protective measures for Prosecution [REDACTED] witnesses and the Prosecution’s submissions in the context of that decision, and urges that these [REDACTED] are granted protective measures.¹⁵ [REDACTED] expressed fear [REDACTED]. He also expressed fear [REDACTED].¹⁶ [REDACTED] has expressed fears [REDACTED].¹⁷

11. Lastly, the Defence refers to [REDACTED] witnesses who have been admitted in the ICC Protection Programme (the ‘ICCPP’) or their admission is currently pending. The Defence thus submits that in-court protective measures are necessary so as not to compromise the protection they have already been afforded or that they seek under the ICCPP. The Defence further notes that this was a factor the Chamber took into consideration when it granted protective measures in respect of Prosecution witnesses.¹⁸

⁹ Request, ICC-02/05-01/20-1020-Conf, paras 19-20, *referring to* Prosecution submissions during the hearing on 5 July 2023, T-123-Conf, p. 14.

¹⁰ Request, ICC-02/05-01/20-1020-Conf, para. 12 and Annex. [REDACTED].

¹¹ Request, ICC-02/05-01/20-1020-Conf, para. 12.

¹² Request, ICC-02/05-01/20-1020-Anx. [REDACTED].

¹³ Request, ICC-02/05-01/20-1020-Anx.

¹⁴ Request, ICC-02/05-01/20-1020-Conf, para. 13 and Annex. [REDACTED].

¹⁵ Request, ICC-02/05-01/20-1020-Conf, paras 14-15.

¹⁶ Request, ICC-02/05-01/20-1020-Anx.

¹⁷ Request, ICC-02/05-01/20-1020-Anx.

¹⁸ Request, ICC-02/05-01/20-1020-Conf, paras 16-18. [REDACTED] The Defence refers to First Decision on in-court protective measures, ICC-02/05-01/20-645-Conf-Red2, para. 62.

12. In its observations, the VWU states [REDACTED].¹⁹ [REDACTED].²⁰ [REDACTED].²¹ [REDACTED].²²

13. [REDACTED].²³ [REDACTED].²⁴

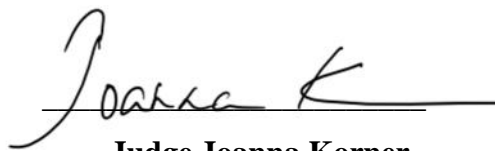
14. The VWU [REDACTED].²⁵ The VWU [REDACTED].²⁶

III. Conclusion

15. Considering the above, and particularly the VWU recommendations [REDACTED],²⁷ the Chamber grants the Request in respect of witnesses [REDACTED].

16. In respect of witnesses [REDACTED], and although the VWU [REDACTED], the Chamber nonetheless notes that [REDACTED] put them at risk. Accordingly, the Chamber grants the Request in respect of these witnesses. However, this decision is a preliminary one, to be confirmed once the VWU meets with the witnesses prior to their testimony.

17. In respect of [REDACTED]. Accordingly, the Chamber rejects the Request in respect of [REDACTED]. If and when [REDACTED] is called to testify, a request may be made for in-court protective measures.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 16 October 2023

At The Hague, The Netherlands

¹⁹ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 3.

²⁰ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 12.

²¹ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, paras 5, 7-11.

²² VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 4.

²³ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 6.

²⁴ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 13.

²⁵ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 15.

²⁶ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 16.

²⁷ VWU Observations, ICC-02/05-01/20-1030-Conf-Exp, para. 14.