

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 June 2022

TRIAL CHAMBER I

Before: Judge Joana 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 "Prosecution's second request for in-court protective measures", ICC-02/05-01/20-697-Conf, 31 May 2022

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. Pursuant to the “Decision on the Prosecution’s applications to add witnesses and items to its List of Witnesses and List of Evidence and to rely on recently collected evidence”¹ and the “Decision on the Prosecution’s fifth application seeking the authorisation to add two witnesses pursuant to Regulation 35”,² Trial Chamber I (the “Chamber”) authorised the inclusion of witnesses P-0916, P-0979, P-0999, P-1040, P-1047, P-1073 and P-1074 (the “New Witnesses”) on to the Prosecution’s List of Witnesses. In accordance with articles 64 and 68 of the Rome Statute and rules 87 and 88 of the Rules of Procedure and Evidence, the Prosecution hereby submits its second request for in-court protective measures (“Second Request”) for the New Witnesses.

2. The Prosecution requests that the following protective measures be applied to these witnesses: (i) the use of a pseudonym *in lieu* of the witness’s name; (ii) voice and face distortion; and (iii) the use of closed or private session for identifying portions of the testimony. In addition, the Prosecution indicates which witnesses would benefit from additional psychological and emotional support, pursuant to rule 88 of the Rules, subject to the Registry’s input on the matter.

3. The New Witnesses reside in Sudan, with five in Darfur.³ The requested measures will protect the physical and psychological well-being as well as the privacy of the witnesses. They will also ensure that witnesses are able to provide testimony and fully participate without concern [REDACTED].

4. The requested measures are also proportionate and are the least restrictive means necessary to fairly balance Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”)’s right to a fair and public trial with the Court’s obligation to protect the interests of victims and witnesses who appear before it.

¹ [ICC-02/05-01/20-668-Conf.](#)

² [ICC-02/05-01/20-681-Conf.](#)

³ [REDACTED].

5. The Prosecution further undertakes to monitor the situation and inform the Chamber should the need for protective measures change for any of its witnesses.

II. CLASSIFICATION

6. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Second Request is filed as confidential, because it contains information that may identify Prosecution witnesses. A public redacted version will be filed as soon as practicable.

7. A confidential, *ex parte*, only available to the Prosecution and the Victims and Witnesses Section (“VWS”), Annex A is appended to this Second Request. Annex A provides the following information for each of the New Witnesses: (i) the witness code; (ii) name; (iii) in-court protective measures requested; (iv) other support suggested; and (v) key facts and security incidents reported by witnesses upon which the Second Request is based. A confidential redacted version of Annex A will be provided to the Defence.

III. SUBMISSIONS

A. The Prosecution requests three types of in-court protective and special measures

8. The Prosecution seeks three general types of in-court protective and special measures for the New Witnesses: 1) measures intended to protect a witness’s identity from the public; 2) closed or private session intended to protect particular portions of a witness’s testimony from public disclosure; and 3) measures intended to support a witness psychologically before, during, and after testimony.

i. Measures intended to protect a witness’s identity from the public

9. The Prosecution requests the use of a pseudonym, as well as face and voice distortion, for the New Witnesses. The sole use of a pseudonym would not be sufficient to minimise the risk of identification, as “unprotected witnesses’ images are

easily accessible to a vast public.”⁴ Likewise, the sole use of private session for these witnesses would also be inadequate to protect the witnesses’ safety, physical and psychological well-being, dignity, and privacy.

ii. Closed or private session intended to protect particular portions of a witness’s testimony from public disclosure

10. Private session in the circumstances anticipated by the Prosecution may be characterised as an in-court protective measure under rule 87 or as a special measure under rule 88.

11. The Prosecution will request closed or private session for limited portions of the testimony of most of its witnesses.⁵ Such requests will be made orally at the time of testimony. They will occur primarily in two circumstances. First, for all witnesses whose identity is withheld from the public through the use of a pseudonym, face and/or voice distortion, the Prosecution will request that questioning which might identify the witness or their family be conducted in closed or private session.

12. Second, regardless of whether a witness’s identity is withheld from the public, the Prosecution may on a case-by-case basis request private or closed session to address specific facts which are particularly private or sensitive, such as the details of sexual violence perpetrated against a witness or instances in which a witness provides evidence about the killing of family members. Such testimony raises a higher than normal risk of subjecting the witness to re-traumatization if broadcast publicly, due to the fear of social stigma which such testimony may trigger, as well as intense emotions that the witness may feel.

⁴ *Ntaganda*, Public Redact version of “Prosecution’s request for in-court protective measures for Witness [REDACTED], 11 October 2016, [ICC-01/04-02/06-1576-Red2](#), para. 31.

⁵ In particular, given P-1047’s profile and unique narrative, as determined in Annex A, larger portions of his testimony may need to be conducted in private session in order to avoid his identification.

iii. Measures intended to provide psychological support to a witness

13. The Prosecution indicates that four of the New Witnesses⁶ may benefit from special measures in the form of the presence of a support person during the witness's testimony and/or the availability of mental health care before, during, and after the witness's testimony. This is because these witnesses were either victims of crimes of sexual violence, eye-witnesses to crimes perpetrated against family members, or witnesses who have displayed a medical need for special measures. The special measures are intended to minimise the impact of testimony by providing psychological and emotional support to the witness.

14. The Prosecution recognises that the Registry is in some ways best positioned to determine when supportive special measures are necessary, and which measures are most appropriate. In this case, the Registry will be the only organ of the Court in contact with witnesses during their travel to The Hague, during breaks in their testimony, and in the immediate aftermath of their testimony. The Prosecution therefore limits itself in this application to identifying witnesses it believes, based on the information currently available to it, may benefit from additional support.

B. Protective and special measures are required because of the political and security situation in Sudan, which creates an objectively justifiable risk to witnesses

15. The Prosecution relies on its previous submissions on the legal framework for the introduction of in-court protective measures, as well as the factual situation in Sudan which indicate there is an objectively justifiable risk for witnesses, as set out at paragraphs 15 to 22 of its first request for in-court protective measures.⁷

⁶ [REDACTED].

⁷ Prosecution's request for in-court protective and special measures, [ICC-02/05-01/20-609-Conf-Red](#) ("First Request"), paras. 15-22.⁸ See e.g. United Nations, Secretary-General Deplores Killings of Civilians in West Darfur, 25 April 2022, SG/SM/21249, available at <https://www.un.org/press/en/2022/sgsm21249.doc.htm>, access

16. In addition, the Prosecution notes that the security situation in Sudan, and particularly in Darfur, continues to deteriorate.⁸

C. Witnesses for whom protective measures are requested

17. The New Witnesses all reside in Sudan, five of them in Darfur, the location of the charged events.

i. Insider witness residing in Sudan

18. The Prosecution requests in-court protective measures for one insider witness, P-1047, who is expected to provide sensitive information about the close coordination between the former Government of Sudan (“GoS”), GoS Forces⁹ and Militia/*Janjaweed*, and may also [REDACTED].¹⁰ [REDACTED].¹¹ He may also be at risk from [REDACTED], as well as associates of Mr Abd-Al-Rahman, [REDACTED], and those opposed to the Court generally.

19. As such, in-court protective measures are required for P-1047 to ensure that he can give evidence freely without fear for his personal safety and without compromising his security. The protective measures sought will also enable the witness to provide a full account of the events at issue and contribute to the truth-seeking mission of the Court.

17.05.2022. UN News, West Darfur: Health workers, children, among 200 killed in ‘senseless and brutal attacks’, 28 April 2022, available at <https://news.un.org/en/story/2022/04/1117212>, access 17.05.2022.

⁸ See e.g. United Nations, Secretary-General Deplores Killings of Civilians in West Darfur, 25 April 2022, SG/SM/21249, available at <https://www.un.org/press/en/2022/sgsm21249.doc.htm>, access 17.05.2022. UN News, West Darfur: Health workers, children, among 200 killed in ‘senseless and brutal attacks’, 28 April 2022, available at <https://news.un.org/en/story/2022/04/1117212>, access 17.05.2022.

⁹ The GoS forces included the Sudanese Armed Forces, also known as the Sudanese People’s Armed Forces, the Popular Defence Forces, the Central Reserve Forces, the Popular Police Forces and the Sudanese Police (“GoS Forces”).

¹⁰ [REDACTED].

¹¹ [REDACTED].

ii. Crime base witnesses residing in Sudan

20. All six witnesses under this category reside in Sudan, five in Darfur,¹² which is the region where the charged incidents occurred and where violence between Arab and non-Arab communities has recently increased.¹³ All six are of the Fur ethnicity.

21. In addition, P-0999 is [REDACTED], which poses additional risks.¹⁴ P-1073 and P-1074 [REDACTED].¹⁵

22. In-court protective measures for witnesses in this category will ensure that they can give evidence freely without fear for their personal safety or social stigma and without compromising the security of themselves and family members. Moreover, withholding their identities from the public will allow them to avoid risk of re-traumatisation due to responses from members of the public, friends, colleagues, or even family members who might be hearing about those experiences for the first time as a result of their testimony.

D. The requested measures are consistent with the rights of the Mr Abd-Al-Rahman

23. Although the Prosecution requests that the identities of the seven witnesses be withheld from the public, the impact on the public nature of the proceedings is mitigated and justified in the circumstances of this case. First, the measures requested are needed to ensure that the witnesses are able to freely provide testimony, and in so doing, assist the Court in establishing the truth. Moreover, the measures will not prejudice Mr Abd-Al-Rahman in any way. The Defence has knowledge of the witnesses and will be able to test the credibility of the witnesses irrespective of any special measures accorded to the witnesses.¹⁶

¹² [REDACTED].

¹³ [First Request](#), paras. 15-21. *See also* footnote 8 above.

¹⁴ [First Request](#), paras. 22-23.

¹⁵ [REDACTED].

¹⁶ *Ntaganda* Decision on Prosecution request for in-court protective measures for Witness [REDACTED], 02 November 2016, [ICC-01/04-02/06-1605-Red](#), para. 10.

24. Second, although the public will not know the identities of the affected witnesses, most of their testimony will be given in public session and the use of closed or private session will be limited, as set out above.

IV. CONCLUSION

25. For the foregoing reasons, the Prosecution respectfully requests the in-court protective measures for P-0916, P-0979, P-0999, P-1040, P-1047, P-1073 and P-1074.



Karim A. A. Khan QC

Prosecutor

Dated this 1st day of June 2022

At The Hague, The Netherlands