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No.: ICC-02/05-01/20
Date: 13 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
With Confidential Annex 1**

Public Redacted Version of Submission of Provisional List of Defence witnesses

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
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Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

1. The Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Defence”) hereby files its provisional list of witnesses (“the Provisional List”),¹ in compliance with the Trial Chamber’s instruction of 7 July 2023.²
2. Pursuant to Regulation 23bis(1) of the Regulations of the Court (“RoC”), this submission and its annex are classified as confidential because they contain confidential details of defence investigations and personal information about potential defence witnesses for whom protective measures are being sought.
3. The Defence provisionally provides details of [REDACTED] defence witnesses in its Provisional List, including their pseudonyms, names, summaries of anticipated testimony (where available), anticipated modes of testimony, and details of protective measures that are either already in place, or are being applied for, including details of where requests for inclusion in the ICCPP is pending. [REDACTED] witnesses are previously Prosecution witnesses,³ and [REDACTED] are experts.⁴
4. The Defence stresses that, as the title of this filing indicates, this list is merely provisional. It is subject to change, whether by inclusion or removal of names. Many potential witnesses have [REDACTED]. A full update on the status of the Defence investigation and anticipated progress in September 2023 will be submitted to the Chamber in the Defence’s Fourth Periodic Report on 1st September 2023. In spite of the extraordinary challenges faced by the Defence in its investigations, about which the Chamber was kept fully aware over the Summer period, investigations continue. Some potential witnesses with whom the Defence has lost contact as a consequence of the ongoing armed conflict in Sudan have not been included in the Provisional List, [REDACTED]. They will be included in the final list [REDACTED]. [REDACTED].
5. Similarly, there is a serious risk that the Defence may lose contact with witnesses who have already been substantively interviewed [REDACTED]. To mitigate that risk, the Defence has, rather unusually, reduced those witnesses’

¹ Confidential Annex 1

² Decision on the Second Defence Application for Postponement of its case and the Notice of an Alibi Defence, ICC-02/05-01/20-990-Conf, 7 July 2023, para. 15. A public redacted version was filed the same day: [ICC-02/05-01/20-990-Red](#).

³ [REDACTED].

⁴ [REDACTED].

evidence into formal written statements, appropriately witnessed, using Court interpreters, and containing the standard declaration of truth. Consequently, to assist the Chamber, the Defence is able to provide, now, a summary of the anticipated testimony of [REDACTED] witnesses on its provisional list even though it has not been instructed to do so. These summaries are inserted in the Provisional List.

6. Although it is anticipated that the vast majority of Defence witnesses will be called to testify *viva voce*, in the event contact with witnesses is lost, the Defence is in a position to make an application to the Chamber under Rule 68(2)(c) of the Rules of Procedure and Evidence (“RPE”), or even pursuant to a flexible application of Rule 68(2)(b) of the RPE.

7. Finally, the Defence takes this opportunity to advise the Trial Chamber that it continues to work night and day in furthering its investigations in the most difficult and perilous of conditions.



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

Dated this 13th day of October 2023 at The Hague, The Netherlands