

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 16 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 “Observations on behalf of Victims on the  
‘Confidential Redacted Version of ‘Prosecution’s request for in-court protective  
and special measures’ 25 February 2022””, 16 March 2022**

**Source:** The Common Legal Representatives of Victims

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan  
Mr James Stewart  
Mr Julian Nicholls

**Counsel for the Defence**

Mr Cyril Laucci  
Mr Iain Edwards

**Legal Representatives of the Victims**

Ms Natalie von Wistinghausen  
Mr Nasser Amin Mohamed Abdalla

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

1. The Common Legal Representatives of Victims (“CLRV”) file these observations on the “Confidential Redacted Version of ‘Prosecution’s request for in-court protective and special measures’ 25 February 2022”.<sup>1</sup> In the Request, the Prosecution submits that in-court protective measures are necessary and justified for 59 of its witnesses, falling into four categories,<sup>2</sup> and additionally suggests that seven of these 59 witnesses may benefit from psychological support in connection with their testimony.<sup>3</sup> In respect of another witness, the Prosecution has suggested only psychological support.<sup>4</sup>
2. [REDACTED] dual status witnesses are included in the Request,<sup>5</sup> and the CLRV make particular observations below in respect of these individuals.
3. Pursuant to Regulation 23bis(2) of the Regulations of the Court, these observations are classified as “confidential” in line with the classification of the Request. The CLRV will also file a public redacted version of its observations.
4. The CLRV do not oppose any of the relief sought by the Prosecution. The CLRV underline, as set out in the Request,<sup>6</sup> that any protective measures granted by the Chamber should be proportionate and the least restrictive available to properly and fairly balance the Court’s obligation to protect the interests of victims and witnesses, against the fair trial rights of the accused and the principle of the publicity of the proceedings. The CLRV highlight, in this respect, that the victims in these proceedings have a strong general interest in the trial proceedings taking place in public, to the greatest extent possible.
5. In the CLRV’s view, and based on the information provided in the Request, as well the CLRV’s consultations with their clients and their own investigations, the

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<sup>1</sup> Confidential Redacted Version of “Prosecution’s request for in-court protective and special measures” 25 February 2022, 25 February 2022, ICC-02/05-01/20-609-Conf-Red (“Request”) with Confidential Annex A (“Annex A”). A public redacted version of the Request was filed on 1 March 2022 ([ICC-02/05-01/20-609-Red2](#)).

<sup>2</sup> These are: (i) insider witnesses; (ii) crime base witnesses; (iii) witnesses who have been admitted into the ICC protection program (“ICCPP”); and (iv) Prosecution investigators.

<sup>3</sup> See Request, fn. 5.

<sup>4</sup> [REDACTED] (see Request, fn. 5). [REDACTED].

<sup>5</sup> Namely, [REDACTED]. The CLRV also respectfully advise the Trial Chamber, and place on the record, that notification of dual status witnesses to the Victims and Witnesses Section and Victims Participation and Reparations Section was provided on 14 March 2022 (see Section 1(b) of the Dual Status Witness Protocol ([ICC-02/05-01/20-618-Anx](#))).

<sup>6</sup> Request, para. 4.

requested in-court protective measures are justified by the factors outlined in the Request and its confidential annex – namely: (i) the “fluid” nature of the political and security situation in Sudan;<sup>7</sup> and (ii) objectively justifiable risks identified in respect of specific witnesses, or persons related to these witnesses, arising from the witness’s involvement in ICC proceedings.<sup>8</sup>

6. In respect of the [REDACTED] dual status witnesses included in the Request,<sup>9</sup> the CLRV fully support the requested in-court protective measures.<sup>10</sup> The CLRV, based on relevant client consultations and other information available to them, confirm the Prosecution’s assessment that the requested in-court protective measures for these dual status individuals are necessary, justified, and comport with the accused’s right to fair proceedings. The CLRV’s assessment includes dual status witness [REDACTED], who falls into the category of witnesses [REDACTED].<sup>11</sup>
7. The CLRV also fully support the Prosecution’s assessment and suggestion that dual status witness [REDACTED] would benefit from special measures in the form of a support person during the witness’s testimony as well as the availability of mental healthcare before, during and after the witness’s testimony.<sup>12</sup>
8. In respect of the [REDACTED] dual status individuals covered by the Request, as well as the [REDACTED] dual status individuals for whom the Prosecution has not sought in-court protective measures or suggested psychological support,<sup>13</sup> the CLRV will, in line with its mandate,<sup>14</sup> continue monitoring the circumstances of these individuals and consult with the Prosecution or engage the Trial Chamber, as needed.

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<sup>7</sup> Request, paras 15-20.

<sup>8</sup> Request, paras 21-35 and Annex A.

<sup>9</sup> [REDACTED].

<sup>10</sup> Annex A, Rows 22, 26, 31, 33, 35, 57.

<sup>11</sup> Request, [REDACTED].

<sup>12</sup> Request, para. 13 and fn. 5.

<sup>13</sup> Namely, [REDACTED].

<sup>14</sup> *See, e.g.*, Rules 87(1) and 88(1) of the Rules of Procedure and Evidence.

Respectfully submitted,



Natalie v. Wistinghausen



Nasser Mohamed Amin Abdalla

Common Legal Representatives of Victims

Dated this 16<sup>th</sup> of March 2022

At The Hague, the Netherlands