

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 16 May 2024

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 “CLR V Observations on ‘Defence additional request for in-court protective measures for Witnesses D-38 and D-39’”, 15 May 2024 (ICC-02/05-01/20-1130-Conf)

Source: The Common Legal Representative of Victims

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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Ms Nazhat Shameem Khan
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Legal Representatives of the Victims

Ms Natalie von Wistinghausen
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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

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Common Legal Representative of Victims (“CLR V”) submits these short observations¹ on the “Defence additional request for in-court protective measures for Witnesses D-38 and D-39”.²
2. The CLR V does not object to the relief sought in the Request – namely, the extension to witnesses D-0038 and D-0039 of the same in-court protective measures that have been granted for other Defence witnesses.³
3. In the CLR V’s view, the prior determinations of the Trial Chamber, prior submissions of the parties, and facts and circumstances – set out at paragraphs 10, 11, 12 (first three sentences), 14 and 16 of the Request – as well as in the confidential annex thereto,⁴ provide an objective basis for the Chamber’s preliminary grant of in-court protective measures, pending the Chamber’s receipt of the Victims and Witness Section’s assessment of D-0038 and D-0039’s security situation prior to their scheduled appearances. The CLR V further notes that all witnesses and participating victims appearing in these proceedings who [REDACTED] – with the exception of V-0002⁵ – have been granted in-court protective measures by the Chamber.
4. In contrast, the CLR V observes that the submissions at paragraphs 12 (sentences 4 to 6) and 15 of the Request are either irrelevant or unfounded, and in the CLR V’s view do not provide a proper basis on which in-court protective measures should be granted. The submissions at sentences 4 to 6 of paragraph 12 are another attempt to apply [REDACTED]⁶ on potential risks [REDACTED], to the particular situation of witnesses [REDACTED] and in respect of a discrete [REDACTED]. Further, the specific risks listed in the Request do not arise from the witnesses’ interaction with the Court.

¹ In accordance with Regulation 23 *bis* (2) of the Regulations of the Court, these observations are classified as confidential.

² Defence additional request for in-court protective measures for Witnesses D-38 and D-39, 15 May 2024, ICC-02/05-01/20-1128-Conf (“Request”).

³ *Id.*, paras 7-9, 18.

⁴ ICC-02/05-01/20-1128-Conf-Anx.

⁵ The CLR V, following consultations with V-0002, did not seek in-court protective measures for this participating victim.

⁶ A copy of which is included in [REDACTED].

5. Similarly, the mooted risk outlined at paragraph 15 of the Request due to [REDACTED] is one the Chamber has expressly rejected as unfounded.⁷

Respectfully submitted,



Natalie v. Wistinghausen
Common Legal Representative of Victims

Dated this 16 May 2024
At Berlin, Germany

⁷ See, e.g., Decision on the Defence's Request for postponement of the presentation of its case, 17 April 2023, ICC-02/05-01/20-916-Conf-Red, para. 35 (public redacted version: [ICC-02/05-01/20-916-Red](#)).