



Original: **English**

No.: ICC-02/05-01/20
Date: 4 December 2020

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

Prosecution’s urgent request for variation of disclosure related time limit

Source: Office of the Prosecutor

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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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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Mr Peter Lewis

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**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Prosecution respectfully requests that Pre-Trial Chamber II (“Chamber”) vary the time limit for the disclosure of the totality of the witnesses’ statements intended to be relied upon at the confirmation hearing from 7 December 2020¹ to 30 April 2021 under regulation 35 of the Regulations of the Court (“Regulations”).
2. The Prosecution requests this variation on the basis that it has demonstrated sufficient good cause within the meaning of Regulation 35(2) for the reasons set out in its second request for the postponement of the confirmation hearing on 3 December 2020 (“Second Postponement Request”).²
3. The Prosecution makes this request on an urgent basis due to the impending deadlines set out by the Chamber in its Postponement Decision.

II. SUBMISSIONS

4. Under regulation 35 of the Regulations, the Prosecution respectfully requests that the Chamber vary the time limit for the disclosure of the totality of the witnesses’ statements intended to be relied upon at the confirmation hearing³ from 7 December 2020 to 30 April 2021.
5. Under regulation 35(1) of the Regulations, applications to extend or reduce a time limit as ordered by the Chamber shall be made in writing or orally to the Chamber setting out the grounds on which the variation is sought. The Prosecution hereby submits an application under regulation 35(1) setting out the grounds for which it seeks a variation of the time limit for the disclosure of witnesses’ statements intended to be relied upon at the confirmation hearing.
6. Under regulation 35(2) of the Regulations, the Chamber may extend or reduce a time limit if good cause is shown. As the Prosecution observed in its second request for the postponement of the confirmation hearing on 3 December 2020 (“Second

¹ ICC-02/05-01/20-196 (“Postponement Decision”), para. 34 and p. 20.

² ICC-02/05-01/20-218-Conf (“Second Postponement Request”). *See also* ICC-02/05-01/20-218-Red.

³ Postponement Decision, para. 34 and p. 20.

Postponement Request”), unresolved witness security concerns, recent material developments with respect to its investigative activities, disclosure challenges and the ongoing COVID-19 pandemic have inevitably delayed the Prosecution’s progress with respect to the disclosure deadlines set out by the Chamber in its Postponement Decision.⁴

7. In its Second Postponement Request, the Prosecution set forth unavoidable difficulties that provide sufficient good cause justifying this request. In particular, the Prosecution observed that, due to factors outside of its control, it has not yet been able to conduct necessary witness risk assessment and implement the appropriate protective measures for witnesses despite its tireless efforts.⁵ Likewise, the Prosecution has not been able to accelerate its review of witness statements for the reasons detailed in the Second Postponement Request.⁶ The Prosecution further indicated good cause for the variation of the time limit due to the need for diligence in its review and disclosure of the remaining witness statements upon which it intends to rely at the confirmation hearing in the Second Postponement Request.⁷

8. The Prosecution notes that it will submit further requests for variation of time limits related to the deadlines set out by the Chamber in its Postponement Decision in due course.

III. CONCLUSION

9. The Prosecution submits that it has demonstrated sufficient good cause under the meaning of regulation 35(2) of the Regulations justifying the variation of its disclosure deadline on 7 December 2020 due to witness security concerns, investigative opportunities, disclosure challenges and obstacles related to the ongoing COVID-19 pandemic, in particular, as set out in the Second Postponement Request.⁸

⁴ Second Postponement Request, para. 6.

⁵ Second Postponement Request, para. 16.

⁶ Second Postponement Request, paras. 16-19.

⁷ Second Postponement Requests, paras. 34-35, 39.

⁸ Second Postponement Request.

10. For the aforementioned reasons demonstrating good cause, the Prosecution respectfully requests that the Chamber extend the time limit for the disclosure of the totality of the witnesses' statements intended to be relied upon at the confirmation hearing from 7 December 2020⁹ to 30 April 2021 within its discretion under regulation 35 of the Regulations.



James Stewart
Deputy Prosecutor

Dated this 4th day of December 2020

At The Hague, The Netherlands

⁹ Postponement Decision, para. 34 and p. 20.