

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 8 January 2021

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN DARFUR, SUDAN

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

Confidential

Prosecution's withdrawal of non-disclosure request concerning Witness P-0091

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

Mr James Stewart
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci

Legal Representatives of the Victims**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 Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

Mr Nigel Verrill

Detention Section**Victims Participation and Reparations
Section****Other**

I. INTRODUCTION

1. The Prosecution withdraws its request for authorisation of the non-disclosure of Witness P-0091's identity because it has now been able to establish that such disclosure would not endanger the witness or his family members.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this request is filed as confidential because it contains information pertaining to witness security.

III. PROCEDURAL HISTORY

3. On 7 December 2020, the Prosecution filed its submissions on the evidence demonstrating that Mr Abd-Al-Rahman is also known as Ali Kushayb.¹ To support its submissions, the Prosecution disclosed certain evidence with non-standard redactions applied to witness identities, including Witness P-0091.²

4. On 18 December 2020, the Prosecution requested the Single Judge to authorise the non-disclosure of the identities of eight witnesses, including Witness P-0091, under article 68(1) of the Rome Statute and rule 81(4) of the Rules of Procedure and Evidence, to mitigate security risks to them and their family members resulting from their cooperation with the Court.³

IV. SUBMISSIONS

5. Although the Prosecution disclosed Witness P-0091's statement and annex⁴ with identity redactions on 7 December 2020, it is now in a position to re-disclose his evidence without such redactions. Despite its best efforts, the Prosecution was unable to re-establish contact with this witness in order to allow for disclosure of his identity prior to the 7 December 2020 deadline. On 18 December 2020, the Prosecution

¹ ICC-02/05-01/20-224. See also ICC-02/05-01/20-196, para. 38 and p. 20.

² ICC-02/05-01/20-225+Conf-Anxs.

³ ICC-02/05-01/20-242-Conf-Exp + Conf-Exp-Anxs.

⁴ DAR-OTP-0112-0142; DAR-OTP-0112-0168.

informed the Single Judge that it was still working to establish direct contact with Witness P-0091.⁵

6. The Prosecution is committed to lifting non-standard redactions as soon as practicable after establishing that the circumstances that necessitated the non-disclosure of a witness's identity have ceased to exist. It will thus disclose a lesser redacted version of Witness P-0091's statement and sketch shortly.

V. CONCLUSION

7. The Prosecution withdraws its request for authorisation of the non-disclosure of Witness P-0091's identity.



James Stewart
Deputy Prosecutor

Dated this 8th day of January 2021

At The Hague, the Netherlands

⁵ ICC-02/05-01/20-242-Conf-Exp, para. 27.