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

Date: 31 March 2021

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFUR, SUDAN

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

Public

Public Redacted Version of “Prosecution’s urgent request for variation of disclosure related time limit”, 26 March 2021, ICC-02/05-01/20-324-Conf

Source: Office of the Prosecutor

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

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**Victims Participation and Reparations
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I. INTRODUCTION

1. The Prosecution respectfully requests that Pre-Trial Chamber II (“Chamber”) extend the time limit for the disclosure of the witness statement and the Arabic translation of the witness statement for Witness P-0921, and the Arabic translation of the witness statement for Witness P-0878 from 29 March 2021¹ to 1 April 2021. This request is made under regulation 35 of the Regulations of the Court (“Regulations”).

2. The Prosecution submits that there is good cause within the meaning of regulation 35(2) to extend the deadline for the disclosure of these witness related materials, including very recently emerged investigative opportunities as a result of [REDACTED], additional conditions for interviews conducted pursuant to article 55(2) of the Rome Statute, and unavoidable delays faced in the implementation of necessary witness protection measures. The Prosecution asserts that an extension of the disclosure deadline to 1 April 2021 is reasonable and justified given the unique circumstances with respect to these two witnesses.

3. The Prosecution makes this request on an urgent basis due to the impending deadline of 29 March 2021 for the disclosure of evidence on which it intends to rely for the confirmation hearing.

II. CLASSIFICATION

4. Pursuant to regulation 23*bis*(1) of the Regulations, this filing is classified as confidential since it contains confidential information related to the Prosecution’s ongoing investigation and witness security considerations. The Annex is classified as secret, *ex parte*, since it contains information related to a witness that is not yet cleared for disclosure to the Defence. The Prosecution will file a public redacted version of this request as soon as practicable.

¹ ICC-02/05-01/20-238, p. 15.

III. SUBMISSIONS

5. Under regulation 35 of the Regulations, the Prosecution requests that the Chamber extend the time limit for the disclosure of the witness statement and the Arabic translation of the witness statement for Witness P-0921, and the Arabic translation of the witness statement for Witness P-0878, from 29 March 2021 to 1 April 2021.

6. 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 these witness related materials.

7. Under regulation 35(2) of the Regulations, the Chamber may extend or reduce a time limit if good cause is shown. There is sufficient good cause justifying an extension of the deadline for the disclosure of materials related to Witnesses P-0921 and P-0878 because of [REDACTED], additional conditions for interviews conducted pursuant to article 55(2) of the Statute, and unavoidable delays in the implementation of necessary witness protection measures. The Prosecution submits that an extension of the disclosure deadline to 1 April 2021 is reasonable and justified within these unique and limited circumstances.

8. The Prosecution informs the Chamber that due to logistical and operational challenges, it did not have an earlier opportunity to interview Witness P-0921 prior to 25 March 2021, despite its best efforts. [REDACTED] options were not considered feasible due to security concerns [REDACTED].² Accordingly, a brief amount of time is required to prepare [REDACTED] the interview and make any necessary redactions.

² [REDACTED].

9. The Prosecution has faced further challenges that have rendered it impossible to meet the disclosure deadline for the witness statement and the Arabic translation of the witness statement for Witness P-0921. [REDACTED], but an extension of the existing disclosure deadline is required to ensure that witness safety is not compromised.

10. With respect to Witness P-0878, [REDACTED] options were also not considered feasible given security concerns [REDACTED]. Additional delays were caused by challenges in the Prosecution securing travel documentation for investigators and owing to the limited availability of the witness. The [REDACTED] interview of this witness began on 21 March 2021, but due to the witness' availability [REDACTED], could only continue on 24 March 2021, then 26 March 2021 when it is scheduled to conclude.

11. However, the OTP Language Services Unit will not be able to complete an Arabic translation of the witness statement for P-0878 by 29 March 2021. The Prosecution respectfully requests that it be granted an extension of the deadline to file this translation until 1 April 2021 so that it may comply with its obligations under article 67 of the Statute and rule 76 of the Rules.

IV. CONCLUSION

12. For the aforementioned reasons demonstrating good cause under regulation 35(2) of the Regulations, the Prosecution respectfully submits this urgent request for the extension of the deadline for the disclosure of the witness statement and the Arabic translation of the witness statement for Witness P-0921, and the Arabic translation of the witness statement for Witness P-0878, to 1 April 2021.



James Stewart
Deputy Prosecutor

Dated this 31st day of March 2021

At The Hague, The Netherlands