



**Original: English**

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

**Date: 20 May 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'*)**

**Public**

Supplementary Decision on the Prosecutor's requests for non-disclosure of witness identities

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr Julian Nicholls

**Counsel for the Defence**

Mr Cyril Laucci

**Legal Representatives of Victims**

Ms Amal Clooney  
Mr Nasser Mohamed Amin Abdalla

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**JUDGE ROSARIO SALVATORE AITALA**, acting as Single Judge on behalf of Pre-Trial Chamber II (the ‘Chamber’) of the International Criminal Court (the ‘Court’),<sup>1</sup> in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, pursuant to article 68(1) of the Rome Statute (the ‘Statute’), and rules 76(1), 81(4) of the Rules of Procedure and Evidence (the ‘Rules’), issues this Supplementary Decision on the Prosecutor’s requests for non-disclosure of witness identities.

## **I. PROCEDURAL HISTORY**

1. The Single Judge recalls the procedural history of the case as set out in previous decisions.<sup>2</sup>
2. On 12 May 2021, the Single Judge issued a decision in which the Prosecutor was ordered to provide documents DAR-OTP-0124-0715 and DAR-OTP0118-0768 in order to allow the Chamber to assess the need for their non-disclosure (the ‘Non-disclosure Decision’).<sup>3</sup>
3. On 18 May 2021, the Prosecutor submitted the documents as ordered in the Non-disclosure Decision (the ‘Submission’).<sup>4</sup>

## **II. ANALYSIS**

4. At the outset, the Single Judge emphasises that the Submission is in compliance with the Non-disclosure Decision. Accordingly, there is no reason for the parties or participants to respond, especially given that the procedure for ruling on non-disclosure requests is mostly *ex parte*. Furthermore, the present decision supplements the Non-disclosure Decision.

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<sup>1</sup> [Decision on the designation of a Single Judge](#), 17 March 2021, ICC-02/05-01/20-307.

<sup>2</sup> *See e.g.* [Decision on the Defence Request to provide written reasoning for two oral decisions](#), 18 August 2020, ICC-02/05-01/20-118, paras 1-4.

<sup>3</sup> [Decision on the Prosecutor’s requests for non-disclosure of witness identities](#), ICC-02/05-01/20-386.

<sup>4</sup> [Prosecution’s submission of items in relation to its request for non-disclosure](#), ICC-02/05-01/20-393 (with four annexes).

5. The Single Judge recalls that the Prosecutor requested authorisation for non-disclosure of a video relating to witness P-0581<sup>5</sup> and a letter addressed to P-0087.<sup>6</sup> Having noted that neither item was made available to the Chamber for review at the time, the Single judge ordered the Prosecutor to file the items in question.

6. Having reviewed the two items in line with the Non-disclosure Decision, the Single Judge is of the view that it is indeed not possible to disclose them with redactions. Such disclosure could potentially lead to revealing identifying information related to the witnesses and redactions would not suffice to mitigate this risk.

7. The Single Judge also concludes that non-disclosure of the two items will not cause undue prejudice to the Defence. In relation to the video, the Defence will receive a redacted transcript, which contains the most relevant information. The letter does not contain information that appears to be relevant for the Defence.

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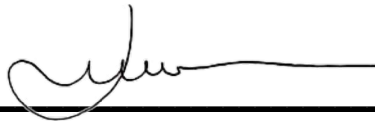
<sup>5</sup> Public Redacted Version of “Prosecution’s second request for the authorisation of non-disclosure of witness identities”, 26 February 2021, ICC-02/05-01/20-287-Conf-Exp (the ‘[Second Non-disclosure Request](#)’), 6 April 2021, ICC-02/05-01/20-287-Red2, para. 11, *referring to* DAR-OTP-0124-0715. *See also* Annex 16 to the Prosecution’s second request for the authorisation of non-disclosure of witness identities, 26 February 2021, ICC-02/05-01/20-287-Conf-Exp-Anx16, pp. 12-13. The Prosecutor indicates that the translation of the transcript of this video (DAR-OTP-0219-2365) would be disclosed to the Defence on 18 May 2021, *see* Submission, para. 4.

<sup>6</sup> [Second Non-disclosure Request](#), para. 11, *referring to* DAR-OTP-0118-0768.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY**

**GRANTS** the Prosecutor's request for non-disclosure of documents DAR-OTP-0124-0715 and DAR-OTP-0118-0768.

Done in both English and French, the English version being authoritative.



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**Judge Rosario Salvatore Aitala**

**Single Judge**

Dated this Thursday, 20 May 2021

At The Hague, The Netherlands