



**Original: English**

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

**Date of original: 24 December 2021**

**Date: 25 April 2022**

**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 redacted version of the**

**Decision on the Prosecution's request for an extension of time limit to disclose  
and add items to its list of evidence and list of witnesses**

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

**The Office of the Prosecutor**  
Karim A.A. Khan

**Counsel for the Defence**  
Cyril Laucci

**Legal Representatives of Victims**  
Natalie von Wistinghausen  
Nasser Mohamed Amin Abdalla

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

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

**States Representatives**

*Amicus Curiae*

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**REGISTRY**

**Registrar**  
Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**  
Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. On 16 December 2021, the Office of the Prosecutor (the ‘Prosecution’) filed a request seeking an extension of time limit, beyond the 5 January 2022 deadline<sup>1</sup> to disclose and add items to its list of evidence and list of witnesses it intends to rely on at trial (the ‘Request’).<sup>2</sup> The Prosecution request relates in particular to material related to seven witnesses and a report from [REDACTED].

2. On 17 and 22 December 2021, the Defence made observations to the Request.<sup>3</sup> While the Defence does not oppose the extension of time limit for disclosure of [REDACTED] and of Arabic translations of witness statements insofar they are disclosed in a working language of the Court within the time limit,<sup>4</sup> it submits that the remainder of the request must fail as the Prosecution has not properly explained the importance of the evidence in question, as well as the reason why it did not seek to obtain it earlier.<sup>5</sup>

3. Pursuant to Regulation 35(2) of the Regulations of the Court (the ‘Regulations’), the Chamber may extend a time limit if good cause is shown. Where the condition above is not met, and pursuant to its powers under Article 64(2), 64(6)(d) and (f) and 69(3) of the Rome Statute (the ‘Statute’), the Chamber may still authorise the extension of time limit in the interests of justice, where the evidence is deemed necessary for the determination of the truth. In taking this decision, the Chamber must have due regard to the rights of the accused, particularly the right to have adequate time and facilities to prepare his case pursuant to Article 67(1)(b) of the Statute.<sup>6</sup>

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<sup>1</sup> Transcript of the hearing on 8 September 2021, ICC-02/05-01/20-T-013-ENG.

<sup>2</sup> Prosecution’s request for an extension of time to disclose materials of seven witnesses and a report pursuant to regulation 35 of the Regulations of the Court, ICC-02/05-01/20-541-Conf-Exp. A confidential redacted version was filed on that same date, ICC-02/05-01/20-541-Conf-Red. *Corrigenda* were filed on 23 December 2021, see ICC-02/05-01/20-541-Conf-Exp-Corr, ICC-02/05-01/20-541-Conf-Red-Corr. A public redacted version is also available, see ICC-02/05-01/20-541-Red2-Corr.

<sup>3</sup> Transcript of the hearing on 17 December 2021, ICC-02/05-01/20-T-018-ENG; Réponse à la Requête ICC-02/05-01/20-541-Conf-Red, ICC-02/05-01/20-544-Conf (the ‘Response’).

<sup>4</sup> Transcript of the hearing on 17 December 2021, ICC-02/05-01/20-T-018-ENG; Response, paras 5-6.

<sup>5</sup> Response, paras 7-15.

<sup>6</sup> Trial Chamber X, *The Prosecutor v. Al Hassan*, Public redacted version of the Decision on the Prosecution requests pursuant to Regulation 35 regarding P-0660 and P-0661 and to add 12 items to its Final List of Evidence, 21 October 2020, ICC-01/12-01/18-988-Red, para. 6; Trial Chamber VII, *The Prosecutor v. Bemba et al.*, Decision on the Prosecution Request to add 12 Items to its List of Evidence, ICC-01/05-01/13-1191, 27 August 2015, paras 9-10; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public redacted version of Decision on the Prosecution Motion for leave to disclose and add the investigator's report concerning Witness P-268 to the List of Incriminating Evidence, 27 September 2010, ICC-01/04-01/07-2325-Red, para.15.

4. The Prosecution requests the following in respect of material it states relate to core issues of the case:

- 1) Extension of time limit until 31 January 2022 to disclose:
  - (a) the Arabic translation of the witness statement of P-0990, [REDACTED];
  - (b) the transcript of the interview in Arabic and English and related materials of P-0999, [REDACTED];
  - (c) the Arabic original and English translation of P-1018's [REDACTED];
  - (d) the [REDACTED] Report.
- 2) Extension of time limit until 28 February 2022 to disclose the witness statements and related material of P-0916, P-0878, P-0921 and P-1047, [REDACTED].

5. The Chamber notes that in general, the Prosecution justifies its request on the current situation in Sudan after the coup d'état on 25 October 2021 as well as the COVID-19 pandemic and resulting travel restrictions.<sup>7</sup> The Prosecution nevertheless states that it is in a position now to disclose all outstanding materials by 28 February 2022.<sup>8</sup> Although the aforesaid circumstances in principle justify the extension of time limit, the Chamber will evaluate the Request also in light of the evidence for which an extension of time limit is sought, giving due regard to the rights of the accused.

6. As regards item 1(a) above, the Prosecution undertakes it will disclose the original witness statement of P-0990 before the deadline of 5 January 2022 and that the requested extension of time solely applies to the Arabic translation. The Defence does not oppose this specific request. Considering that translations are regarded as accessories of items included in the list of evidence, and that their late addition is ultimately for the benefit of the Defence and those participating in court, the Chamber considers an extension of time limit warranted.

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<sup>7</sup> Request, ICC-02/05-01/20-541-Conf-Red, paras 10-15.

<sup>8</sup> Request, ICC-02/05-01/20-541-Conf-Red, para. 16.

7. As regards item 1(c) above, the Chamber notes that the prior recorded testimony of P-1018, as well as a screening note related to this witness will be disclosed to the Defence by the 5 January 2022 deadline. The item for which extension of time is sought is a [REDACTED] referred to by P-1018 in his interview. The Prosecution will disclose the [REDACTED] as soon as possible, and probably before the deadline, but requests an extension of time limit to translate [REDACTED] into English until 31 January 2022. The Chamber considers that there is no reason why the Prosecution would not be able to disclose the Arabic copy [REDACTED] before the 5 January 2022 deadline. However, considering that translations are to be regarded as accessories of items included in the list of evidence, and that their late addition is ultimately for the benefit of the Defence and those participating in court, extension of time limit is appropriate.

8. As regards items 1(b) and 2 above, and since the [REDACTED] the witnesses concerned (P-0999, P-0916, P-0878, P-0921 and P-1047), it is not in a position to provide the Chamber with all the requisite and complete information regarding the evidence these witnesses are expected to provide. Accordingly, the Chamber considers it premature to consider any request pursuant to Regulation 35 of the Regulations. Once the Prosecution has in its possession the prior recorded testimony of P-0999, P-0916, P-0878, P-0921 and P-1047, as well as any related material it wishes to rely on at trial,<sup>9</sup> it will have to apply for leave of the Chamber to add them to the list of evidence and rely on them at trial.

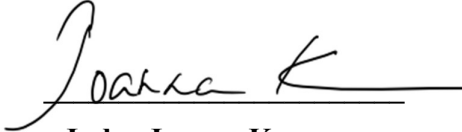
9. Accordingly, the Chamber partially grants the Request and grants an extension of time limit until 31 January 2022, to disclose and add the following items to its list of evidence:

- a) The [REDACTED] Report and the Arabic translation of P-0990's statement (noting that the Defence does not oppose this part of the Request); and
- b) The English translation of P-1018's [REDACTED].

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<sup>9</sup> This determination does not apply to the transcripts of the first interview of the Prosecution with P-0921, the transcripts of which have been disclosed to the Defence. *See* Request ICC-02/05-01/20-541-Conf-Red, para. 36.

10. For the reasons above, the Chamber rejects the remainder of the Request.



**Judge Joanna Korner**

**Presiding Judge**



**Judge Reine Alapini-Gansou**



**Judge Althea Violet Alexis-Windsor**

Dated this 24 December 2021

At The Hague, The Netherlands