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

Date: 22 April 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

Public redacted version of “Prosecution’s request for variation of time limits for the newly collected materials of Witnesses P-0926 and P-0935”, 22 April 2021

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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I. INTRODUCTION

1. The Prosecution requests the Single Judge to authorise the addition of materials relating to Witnesses P-0926 and P-0935, which were collected after the disclosure deadline of 29 March 2021, to its confirmation list of evidence under regulation 35 of the Regulations of the Court. The Prosecution will disclose their newly registered materials in English and Arabic with standard redactions in the coming days.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this request and annexes are filed as confidential because they contain sensitive information pertaining to ongoing investigation and witness security. The Prosecution is simultaneously filing a public redacted version of this request.

III. PROCEDURAL HISTORY

3. On 18 December 2020, the Pre-Trial Chamber II (“Chamber”) partially granted the Prosecution’s request for an extension of time,¹ ordering the Prosecution to disclose all the evidence it intends to rely upon for the confirmation hearing and to provide Arabic translations of witness statements that the Prosecution expects to rely on at the confirmation hearing by 29 March 2021, and to submit the list of evidence intended to be presented at the confirmation hearing by 16 April 2021 at the latest.²

IV. SUBMISSIONS

Regulation 35 permits the variation of time limits

4. Pursuant to regulation 35 of the Regulations of the Court, applications to extend any time limit ordered by the Chamber should set out the grounds on which the variation is sought. The Chamber may extend a time limit if good cause is shown. After the lapse of a time limit, an extension of time may only be granted if the participants

¹ ICC-02/05-01/20-218-Red, paras. 7, 16-20. *See also* ICC-02/05-01/20-228, paras. 4-5, 9.

² ICC-02/05-01/20-238, p. 15.

seeking the extension can demonstrate that they were unable to file the application within the time limit for reasons outside their control.

There is a good cause to vary the time limits for Witnesses P-0926 and P-0935

5. The Prosecution intends to rely on the evidence of Witnesses P-0926 and P-0935 for the confirmation of charges against Mr Abd-Al-Rahman. The witnesses provide important corroboration of Mr Abd-Al-Rahman's alleged role in the arrest and killing of community leaders from Wadi Salih in March 2004, as described in Counts 27-28 of the Document Containing the Charges.³ However, the Prosecution was unable to review and disclose the materials in question because they did not exist prior to the 29 March 2021 deadline. Due to logistical and resource limitations, the Prosecution was unable to interview Witnesses P-0926 and P-0935 earlier.

6. Witness P-0926 gave a statement to the Prosecution [REDACTED], which was registered in Ringtail [REDACTED]. It is 28 pages long, including cover and closing pages. Witness P-0926 described Mr Abd-Al-Rahman's role in the arrest and detention of several community leaders in Garsila in early 2004.

7. Having interviewed Witness P-0935 [REDACTED], the Prosecution registered his statement in Ringtail [REDACTED]. It is 20 pages long, including cover and closing pages. Similarly, Witness P-0935 described the arrest and detention of several community leaders in Garsila in early 2004, and the role of Mr Abd-Al-Rahman in this incident. The witness also shared his knowledge of joint operations of the Sudanese Armed Forces and Militia/*Janjaweed* in Wadi Salih in early 2004.

8. The evidence of these two witnesses may be relevant to the Chamber in its decision on whether to confirm the charges in this case. In addition, there will be minimal to no prejudice to Mr Abd-Al-Rahman as the materials will be disclosed well in advance of the confirmation hearing.

³ ICC-02/05-01/20-325-Conf-Anx1, para. 131.

9. Both witnesses were interviewed during a recent investigative mission [REDACTED]. The Prosecution prepared and deployed the mission as soon as it was practically possible, after the respective investigators finished their previous mission and completed the mandatory quarantine.

10. Due to logistical and resource limitations, balanced against other high priorities, the Prosecution was unable to interview Witnesses P-0926 and P-0935 sooner. Witness P-0926 was screened [REDACTED], while Witness P-0935 was screened [REDACTED], soon after coming to the Prosecution's attention. Although the Prosecution planned to interview Witness P-0926 in February or March 2021, the plans had to be adjusted because the available investigators were on mission to various countries in Africa or had to first complete the mandatory quarantine.

11. As described in previous submissions, planning and conducting investigative activities and deploying missions around the world during the COVID-19 pandemic is more challenging, time-consuming, and resource-intensive.⁴ This factor, coupled with other practical challenges, has significantly hampered the Prosecution's activities in the case. In addition to other restrictions, staff and witnesses remain subject to quarantine in the countries where investigative interviews take place, as well as upon their return to the Netherlands. Although the Prosecution has taken steps to mitigate these challenges as much as possible, delays have proven to be unavoidable, in particular with respect to Witnesses P-0926 and P-0935.

The Prosecution was unable to file the request prior to the 29 March 2021 deadline

12. The Prosecution disclosed the evidence it intends to rely upon for the confirmation hearing by 29 March 2021, save for the items collected after the deadline or otherwise subject to regulation 35 requests. With respect to Witnesses P-0926 and P-0935, the Prosecution was unable to file the request within the prescribed time limit because it had not completed their interviews and assessed their statements for inclusion in the confirmation list of evidence. Witnesses P-0926 and P-0935, who were

⁴ ICC-02/05-01/20-218-Conf, paras. 6, 40-47; ICC-02/05-01/20-324-Conf, para. 10.

interviewed in April, are new additions to the Prosecution's confirmation list of witnesses and their security situation is still being evaluated.

13. The Prosecution is preparing to disclose the newly registered materials of Witnesses P-0926 and P-0935 in English and Arabic with standard redactions in the coming days.

V. CONCLUSION

14. For the above reasons, the Prosecution respectfully requests the Single Judge to vary the time limits for the newly collected materials of Witnesses P-0926 and P-0935 and to authorise their addition to the confirmation list of evidence.



Fatou Bensouda
Prosecutor

Dated this 22nd day of April 2021

At The Hague, the Netherlands