



Original: English

No. ICC-02/05-01/20

Date: 29 March 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

Decision extending the time limit for disclosure and translation

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

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 of the International Criminal Court,¹ having regard to article 67 of the Rome Statute (the ‘Statute’), rule 121(1) of the Rules of Procedure and Evidence (the ‘Rules’), and regulation 35 of the Regulations of the Court, issues this Decision extending the time limit for disclosure and translation.

I. PROCEDURAL HISTORY

1. The Single Judge recalls the procedural history of the *Abd-Al-Rahman* case, as set out in previous decisions.²
2. On 17 August 2020, the Single Judge issued an order on disclosure and related matters (the ‘11 September 2020 Deadline’).³
3. On 9 September 2020, the Prosecutor requested that the Chamber vacate the 11 September 2020 Deadline (the ‘Request for Extension’).⁴
4. On 10 September 2020, the Chamber indicated that it would decide on the Request for Extension in due course.⁵
5. On 16 September 2020, the Prosecutor submitted a request to postpone the confirmation hearing (the ‘First Postponement Request’).⁶
6. On 2 October 2020, the Chamber issued an order related to, *inter alia*, the Prosecutor’s disclosure obligations (the ‘Order on Disclosure’).⁷

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

² See e.g. [Order on disclosure and related matters](#), 17 August 2020, ICC-02/05-01/20-116, paras 1-5.

³ [Order on disclosure and related matters](#), ICC-02/05-01/20-116.

⁴ [Prosecution urgent request for an extension of time](#), ICC-02/05-01/20-149-Conf-Exp. Confidential redacted and public redacted versions were notified on 10 September 2020, see ICC-02/05-01/20-149-Conf-Red and ICC-02/05-01/20-149-Red2.

⁵ [Order in relation to the ‘Prosecution’s urgent request for an extension of time’](#), ICC-02/05-01/20-151.

⁶ [Corrected Version of “Prosecution’s request to postpone the confirmation hearing”, 16 September 2020, ICC-02/05-01/20-157-Conf-Exp](#), ICC-02/05-01/20-157-Conf-Exp-Corr. The corrected version of the filing was submitted on 17 September 2020. A confidential redacted version, ICC-02/05-01/20-157-Conf-Red-Corr, and a public redacted version, ICC-02/05-01/20-157-Corr-Red, were notified on the same date.

⁷ [Second Order on disclosure and related matters](#), ICC-02/05-01/20-169.

7. On 2 November 2020, the Chamber issued a decision on the First Postponement Request, in which it ordered, *inter alia*, the Prosecutor to immediately and fully comply with all orders included in its Order on Disclosure.⁸

8. On 3 December 2020, the Prosecutor submitted a second request to postpone the confirmation hearing and related deadlines (the ‘Second Postponement Request’).⁹

9. On 18 December 2020, the Chamber issued a decision on the Second Postponement Request, in which the Chamber set, *inter alia*, a revised time limit of 29 March 2021 for the Prosecutor, *inter alia*, to disclose all the evidence it intends to rely upon for the confirmation hearing and provide Arabic translations of the witness statements for witnesses that the Prosecutor expects to rely on at the confirmation hearing.¹⁰

10. On 26 March 2021 the Prosecutor submitted a request for extension of 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 to 1 April 2021 (the ‘Request’).¹¹ On 29 March 2021, the Defence indicated that it ‘has no objection to the extension of time limit requested [...] and will not file a response’.¹²

II. ANALYSIS

11. At the outset, the Single Judge recalls the Chamber’s duty to ensure that the confirmation proceedings are conducted in a fair and impartial manner and with full respect for the rights of the suspect.

12. The Single Judge notes the Prosecutor’s arguments that the requested extension of a few days is justified because (i) new investigative opportunities emerged ‘very recently’ as a result of renewed cooperation with the Government of Sudan; (ii)

⁸ [Decision on the Prosecutor’s Request for Postponement of the Confirmation Hearing and related deadlines](#), ICC-02/05-01/20-196.

⁹ [Prosecution’s second request to postpone the confirmation hearing and related deadlines](#), ICC-02/05-01/20-218-Conf. A public, redacted version is also available, notified on 4 December 2020, *see* ICC-02/05-01/20-218-Red.

¹⁰ [Decision on the Prosecutor’s Second Request to Postpone the Confirmation Hearing and Requests for Variation of Disclosure Related Time Limits](#), ICC-02/05-01/20-238, p. 15.

¹¹ Prosecution’s urgent request for variation of disclosure related time limit, ICC-02/05-01/20-324-Conf.

¹² Email from the Defence sent on 29 March 2021 at 09:20.

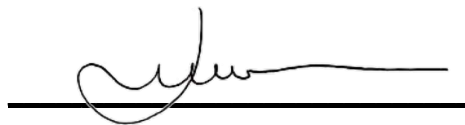
‘additional conditions for interviews conducted pursuant to article 55(2) of the Rome Statute’ applied; (iii) ‘unavoidable delays [were] faced in the implementation of necessary witness protection measures’.¹³

13. The Single Judge also notes that the Defence does not object to the requested extension.

14. The Single Judge further observes that a limited delay in disclosing a single witness statement does not prejudice the rights of the Defence nor does it harm the orderly conduct of the proceedings. The same is true for a limited delay in providing the Arabic translations of two witness statements. Granting a short extension would thus not be detrimental to the interests the Chamber safeguarded by setting the applicable time limit.

**FOR THESE REASONS, THE SINGLE JUDGE HEREBY
GRANTS the Request.**

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

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid black horizontal line.

Judge Rosario Salvatore Aitala

Single Judge

Dated this Monday, 29 March 2021

At The Hague, The Netherlands

¹³ Request, para. 2.