

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **30 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”)**

Confidential

With Confidential, *EX PARTE*, Prosecution only, Annex 1

Prosecution’s withdrawal of non-disclosure requests concerning Witnesses P-0129 and P-0877, and provision of updates concerning Witnesses P-0188 and P-0065

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 withdraws its request for authorisation of the non-disclosure of the identities of Witnesses P-0129 and P-0877, and the non-disclosure of two entire items of evidence relating to Witness P-0877.¹ The Prosecution has established that such disclosure would not endanger these witnesses or their family members.

2. In addition, the Prosecution informs the Single Judge that it has disclosed a lesser redacted version of the statement of Witness P-0188, and has disclosed the statement and annexes of Witness P-0065.

II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this request is filed as confidential because it contains information pertaining to witness security. Annex 1 is filed as confidential, *ex parte*, Prosecution only, as it contains the statement of Witness P-0188 with see-through highlights on the redacted portions.

III. PROCEDURAL HISTORY

4. Under article 68(1) of the Rome Statute and rule 81(4) of the Rules of Procedure and Evidence, the Prosecution requested the Single Judge to authorise the non-disclosure of the identities of Witnesses P-0129, P-0188 and P-0877, and the non-disclosure of two entire items of evidence relating to Witness P-0877, to mitigate security risks to them and their family members resulting from their cooperation with the Court, on 18 December 2020² and 26 February 2021.³

5. On 26 February 2021, the Prosecution informed the Single Judge that Witness P-0065's statement and three annexes were still subject to restrictions under article 54(3)(e) of the Statute, and that his security situation did not allow for disclosure of his identity at that time.⁴

¹ Video, DAR-OTP-0215-4260; Video, DAR-OTP-0217-0278.

² Witness P-0129: ICC-02/05-01/20-242-Conf-Exp+Conf-Exp-Anxs.

³ Witness P-0188 and P-0877: ICC-02/05-01/20-287-Conf-Exp+Conf-Exp-Anxs.

⁴ ICC-02/05-01/20-287-Conf-Exp, paras. 50-51.

IV. SUBMISSIONS

Witnesses P-0129 and P-0877

6. The Prosecution disclosed the statements and annexes of Witnesses P-0129 and P-0877 with redactions applied to their identities on 7 December 2020⁵ and 24 February 2021,⁶ respectively. The security situations of Witnesses P-0129 and P-0877 have since changed, and the Prosecution has now re-disclosed their evidence without such redactions.⁷ The Prosecution has also disclosed the two entire items of evidence relating to Witness P-0877.⁸

Witness P-0188

7. The Prosecution disclosed the statement of Witness P-0188 on 29 January 2021, with redactions applied to his identity.⁹ The Prosecution has re-assessed its redactions in light of newly obtained evidence relevant to the events described in the statement and, while retaining those directly critical to protecting the identity of Witness P-0188, has lifted several redactions. A lesser redacted version of the statement and its Arabic translation were disclosed on 29 March 2021.¹⁰

8. For ease of reference, the Prosecution has attached the statement of Witness P-0188 with see-through coloured highlights as Annex 1. In addition to the standard redactions, for which specific authorisation is not required, Annex 1 shows the non-standard redactions in pink applied to identifying information under category F. The corresponding statement with redactions is available in eCourt.

⁵ Witness P-0129: ICC-02/05-01/20-225+Conf-Anxs. Items DAR-OTP-0128-0128; DAR-OTP-0128-0163; DAR-OTP-0128-0164.

⁶ Witness P-0877: ICC-02/05-01/20-286+Conf-Anxs. Items DAR-OTP-0217-0211; DAR-OTP-0217-0244; DAR-OTP-0217-0248; DAR-OTP-0217-0251; DAR-OTP-0217-0254; DAR-OTP-0217-0256; DAR-OTP-0217-0258; DAR-OTP-0217-0260; DAR-OTP-0217-0262; DAR-OTP-0217-0264; DAR-OTP-0217-0272; DAR-OTP-0216-0495.

⁷ ICC-02/05-01/20-327+Conf-Anxs. The Prosecution also re-disclosed the Arabic translation of the statement of Witness P-0129 in lesser redacted form (item DAR-OTP-0215-9604).

⁸ ICC-02/05-01/20-327+Conf-Anxs.

⁹ ICC-02/05-01/20-273+Conf-Anxs. Item DAR-OTP-0216-0060.

¹⁰ ICC-02/05-01/20-327+Conf-Anxs.

Witness P-0065

9. Finally, the Prosecution informs the Single Judge that, following detailed enquiries into the circumstances in which Witness P-0065 provided his statement to the Prosecution, it has been determined that his statement and three annexes were not, as initially assessed, subject to restrictions under article 54(3)(e) of the Statute. Furthermore, with regard to his security situation, Witness P-0065 has subsequently been cleared for the disclosure of his identity, and as such the relevant items of evidence have now been disclosed.¹¹

V. CONCLUSION

10. The Prosecution withdraws its request for authorisation of the non-disclosure of the identities of Witnesses P-0129 and P-0877, and the non-disclosure of two entire items of evidence relating to Witness P-0877.



James Stewart
Deputy Prosecutor

Dated this 30th day of March 2021

At The Hague, the Netherlands

¹¹ ICC-02/05-01/20-327+Conf-Anxs. Items DAR-OTP-0100-0024, DAR-OTP-0100-0055, DAR-OTP-0100-0056 and DAR-OTP-0100-0057, and relevant translations.