

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 5 May 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

**Public Redacted Version of “Observations on behalf of Victims on the
‘Prosecution’s application under regulation 35 to extend the disclosure and
associated deadlines concerning newly obtained material of P-1073 and P-1074’”,
20 April 2022**

Source: The Common Legal Representatives of Victims

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

**The Office of Public Counsel for the
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I. Introduction

1. The Common Legal Representatives of Victims (“CLRV”) file these observations on the “Prosecution’s application under regulation 35 to extend the disclosure and associated deadlines concerning newly obtained material of P-1073 and P-1074”.¹
2. The CLRV agree with the Prosecution, for the reasons set out in the Application, that good cause exists to authorise the requested extension of disclosure deadlines in respect of material obtained from P-1073 and P-1074, the addition of this newly obtained material to the Prosecution’s list of evidence, and the inclusion of these proposed witnesses in the Prosecution’s list of witnesses.²
3. The expected evidence of P-1073 and P-1074 primarily relate to critical issues concerning alleged rapes committed in Bindisi and surrounding areas. The CLRV respectfully submit that the Chamber hearing and considering [REDACTED] will assist the Chamber in its determination of the truth,³ is in the interests of justice, and commensurate with the rights and interests of the participating victims in this case. Grant of the Application will not be prejudicial to the Accused’s fair trial rights under Article 67(1) of the Statute.
4. This filing is classified as confidential pursuant to Regulation 23*bis*(2) of the Regulations of the Court (“Regulations”), as it responds to a filing with this classification. The CLRV will submit a public redacted version of these observations.

II. Submissions

- a. The Prosecution has demonstrated good cause for extension of time limits

¹ Prosecution’s application under regulation 35 to extend the disclosure and associated deadlines concerning newly obtained material of P-1073 and P-1074, 8 April 2022, ICC-02/05-01/20-667-Conf (“Application”).

² *Id.* at para. 2.

³ *See* Rome Statute (“Statute”), Article 69(3).

5. In the Application, the Prosecution submits, in line with its first application under Regulation 35 of the Regulations,⁴ that its capacity to identify or conclude interviews of witnesses in Sudan was significantly impacted by events arising from the 25 October 2021 *coup d'état* in Sudan, the continuing political and security instability in the country, and COVID-19 travel-related restrictions.⁵ As a result, the Prosecution advises that notwithstanding its best efforts, P-1073 and P-1074 only became known to the Prosecution as potential witnesses on 10 March 2022, after which the Prosecution was able to undertake screening and full interviews shortly thereafter.⁶
6. The Trial Chamber has previously determined that difficulties arising from the *coup d'état*, the continuing political and security instability in Sudan, and the travel-related impact of COVID-19, in principle, constitute good cause under Regulation 35(2) of the Regulations to vary the applicable disclosure deadlines and permit the addition of evidence and witnesses to the Prosecution's respective lists.⁷
7. The CLRV submit that the Trial Chamber's sound logic and previous findings equally apply to the situation of witnesses P-1073 and P-1074, and that the Prosecution has accordingly demonstrated good cause in respect of the relief requested in the Application.
8. The CLRV additionally note that [REDACTED] likely compounded the already difficult situation facing the Prosecution in identifying and interviewing relevant witnesses located in Sudan due to [REDACTED].⁸
9. For the reasons set out above, the CLRV respectfully submit that the Application has demonstrated that the Prosecution was unable to identify and interview P-1073 and P-1074 prior to the relevant procedural deadlines for sound reasons

⁴ Application, fn. 6, citing Corrected version of "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", 16 December 2021, ICC-02/05-01/20-541-Conf-Exp, paras 13-16.

⁵ Application, para. 8.

⁶ *Id.*, para. 9.

⁷ *See, e.g.*, Decision on the Prosecution's applications to add witnesses and items to its List of Witnesses and List of Evidence and to rely on recently collected evidence, 11 April 2022, ICC-02/05-01/20-668-Conf, para. 26.

⁸ *See, e.g.*, P-1074, [REDACTED]; P-1042, [REDACTED]; P-0903, [REDACTED].

outside of the Prosecution's control, and therefore good cause for the grant of extensions exist under Regulation 35(2).

b. It is in the interests of justice to grant the Application

10. As noted in the Application, P-1073 and P-1074 [REDACTED].⁹ The CLRV agree with the Prosecution that their evidence [REDACTED] is critical, relevant, and will undoubtably assist the Chamber in its search for the truth in these proceedings.¹⁰
11. While the statements of other witnesses on the Prosecution's list of witnesses [REDACTED] rapes committed in Bindisi and surrounding areas, [REDACTED]. The evidence of witnesses like P-1073 and P-1074, [REDACTED], is particularly compelling [REDACTED].¹¹ The disclosed statements of P-1073¹² and P-1074,¹³ as also detailed in the Application,¹⁴ indicate that they will be able to provide this type of highly relevant evidence to the Trial Chamber.
12. The CLRV further advise that their clients include individuals who are the alleged victims of rape, the family members of such individuals, or who are otherwise generally aware of the crime of rape having been perpetrated against members of the Fur community during the events that are the subject of this case. Permitting P-1073 and P-1074 to provide their testimonies in court will be of tangible and empowering value to the participating victims as it will facilitate [REDACTED] the Chamber receiving evidence of the occurrence and impact of this crime on individuals and the larger Fur community during the time-period relevant to this case.

c. Grant of the Application will not prejudice the Accused's fair trial rights

⁹ Application, para. 19.

¹⁰ *Ibid.*

¹¹ See para. 8 *supra*.

¹² P-1073, DAR-OTP-0222-5026 at paras 32, 41.

¹³ P-1074, DAR-OTP-0224-0441 at paras 36, 37, 62, 63.

¹⁴ Application, paras 15, 17.

13. The CLRV agree with the Prosecution that any potential prejudice to the Accused arising from grant of the Application would be mitigated by calling these witnesses at a later stage of the proceedings.¹⁵ The CLRV respectfully submit that the interests of justice, including the interests of the participating victims, as discussed above, weigh heavily in favour of granting the Application.

III. Conclusion

14. For the reasons above, the CLRV respectfully request the Trial Chamber to grant the Prosecution's Application for extension of the relevant time limits and authorise P-1073 and P-1074 to appear as witnesses before the Chamber.

Respectfully submitted,

Natalie v. Wistinghausen

Nasser Mohamed Amin Abdalla

Common Legal Representatives of Victims

Dated this 5th of May 2022

At The Hague, the Netherlands

¹⁵ Application, para. 20.