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

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PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

**Prosecution’s response to “Requête en vertu des Articles 2, 67-1-b et 87-6 du Statut
et de la Norme 24bis-1 du Règlement de la Cour”**

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 hereby responds to the Defence's *Requête en vertu des Articles 2, 67-1-b et 87-6 du Statut et de la Norme 24bis-1 du Règlement de la Cour* ("Request").¹ In the Request, the Defence refers to the Registry's efforts to support the Defence's planned investigative mission to Sudan.² This task has been complicated by the United Nations Security Council's recent decision to terminate the mandate of the United Nations – African Union Hybrid Operation in Darfur ("UNAMID").³ The Prosecution fully supports the Registry's efforts to support the Defence's planned mission.

2. The Prosecution opposes the Defence's request that the Chamber order the Prosecution to make observations on the consequences of UNAMID's withdrawal from Sudan on the activities of the Court.⁴ This part of the Request has no legal basis and should be rejected.

II. SUBMISSIONS

3. As a preliminary matter, the Prosecution notes that the Defence makes no mention of having attempted to obtain information directly from the Registry about the likely consequences of UNAMID's withdrawal, prior to making the Request.⁵ In the absence of such an attempt, the Defence's decision to involve the Pre-Trial Chamber is premature and could be rejected on that basis alone.

4. In any case, as the Defence notes, in the face of UNAMID's drawdown, the Registry has indicated that it is actively seeking alternative solutions to provide appropriate logistical and security support for the Defence's planned mission to Sudan.⁶ The Prosecution fully supports the Registry's efforts to make the necessary arrangements to facilitate a Defence mission in Sudan.

¹ ICC-02/05-01/20-269.

² Request, para. 4.

³ U.N. Security Council Resolution 2559 (terminating UNAMID's mandate on 31 December 2020).

⁴ Request, para. 18.

⁵ See Request, paras. 1-4.

⁶ Request, para. 4.

5. The Prosecution rejects, however, the Defence's contention that the Regulations of the Court provide a legal basis for requiring the Prosecution to provide the Defence with its observations on the future prospects for logistical or security support of ICC-related investigative missions in Sudan.⁷ Regulation 24(1) of the Regulations of the Court is the only regulation cited by the Defence that relates to the Prosecution, and far from requiring the Prosecution to provide reports to the Defence in relation to cooperation-related matters, it states merely that the Prosecution "*may* file a response to any document filed by any participant in the case [...]."⁸ The Defence's request fails to cite any other relevant legal ground for requiring the Prosecution to make observations on this topic, and no such ground exists.

III. CONCLUSION

6. For the foregoing reasons, the Prosecution supports the Registry's efforts to support the Defence's planned mission to Sudan but opposes the Defence's request that the Prosecution be ordered to make observations on the future prospects for logistical and security support for ICC-related investigative missions in Sudan.



James Stewart
Deputy Prosecutor

Dated this 5th day of February 2021

At The Hague, The Netherlands

⁷ Request, p. 9 (referring to Regulation 24(1) and 24*bis*(1) as the basis for requiring observations from the Prosecution and Registry).

⁸ Regulation 24(1) of the Regulations of the Court (emphasis added).