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Date: **28 July 2020**

PRE-TRIAL CHAMBER II

Before: 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 observations pursuant to the ‘Order seeking observations on disclosure and related matters’ (ICC-02/05-01/20-14)”, 23 July 2020, ICC-02/05-01/20-103-Conf

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

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Other

I. Introduction

1. The Prosecution hereby responds to the “Order seeking observations on disclosure and related matters” (“Order”).¹

II. Classification

2. Pursuant to regulation 23bis(1) of the Regulations of the Court, the Prosecution files this response as confidential due to fact that it contains confidential information relating to the Prosecution’s evidence collection, investigations and cooperation issues.

III. General observations

3. The Prosecution sets out below general observations on cross-cutting issues that relate to a number of the questions posed by the Single Judge, acting for Pre-Trial Chamber II (“Chamber”).

The extent of the Darfur collection and overall scope of disclosure review

4. The Prosecution has approximately 33,215 items² (169,886 pages) in its Ringtail database relating to the Darfur situation. In addition, through a review process undertaken in recent weeks, it has also identified an additional approximately 4,000 items in another database that will need to be transferred to Ringtail. This material must be reviewed in order to assess whether it is disclosable as material intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing, or potentially exculpatory evidence under article 67(2) of the Rome Statute, or subject to inspection as material to the preparation of the Defence under rule 77 of the Rules of Procedure and Evidence (“Rules”).

¹ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, Order seeking observations on disclosure and related matters, 2 July 2020, ICC-02/05-01/20-14 (“Order”).

² This includes approximately 401 audio/video items, which are particularly time intensive to review.

5. At the time the Prosecution made its application under article 58(7) of the Statute in relation to Mr Abd-Al-Rahman on 27 February 2007,³ the Prosecution carefully analysed the evidence in its possession. However, since that time, the evidentiary review process remained in near dormancy for over 13 years. No litigation that would have triggered a disclosure review of the Darfur collection relating to Mr Abd-Al-Rahman took place. The Prosecution applied for a second warrant of arrest for Mr Abd-Al-Rahman on 3 November 2017.⁴ However, the drafting of that application did not require or entail a comprehensive review of the overall Darfur related material in its possession. Nor was there a related case that progressed to a stage where disclosure review would be necessary.

6. In addition, the Prosecution was not able to dedicate resources to carry out a prior disclosure review focused on Mr Abd-Al-Rahman since it could not anticipate which, if any, of the five suspects in the Darfur situation would be transferred to the Court. As noted in *Ongwen*, “it could not have been reasonably expected that the Prosecutor process the evidence and prepare requests for protective measures in the abstract as long as [the suspect] remained a fugitive.”⁵ No other ICC case has had a gap of over 13 years between the issuance of the initial warrant of arrest and transfer of the suspect to the Court.

7. Hence, it is essential that the evidence be comprehensively reviewed for disclosure for the first time in relation to Mr Abd-Al-Rahman. Disclosure review is a slow and labour-intensive exercise. In order to progress the review process, the Prosecution must develop disclosure guidelines and templates tailored to the case

³ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, Prosecutor’s Application under Article 58(7), 27 February 2007, ICC-02/05-56 (“First Arrest Warrant Application”)

⁴ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, Prosecution’s application pursuant to article 58(6) of the Rome Statute to amend the warrant of arrest for ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”) by adding new crimes, 3 November 2017, ICC-02/05-01/07-73-Secret-Exp, 26 June 2020, ICC-02/05-01/20-6-Red2 (“Second Arrest Warrant Application”).

⁵ *Prosecutor v. Ongwen*, Decision Postponing the Date of the Confirmation of Charges Hearing, 6 March 2015, ICC-02/04-01/15-206 (“*Ongwen* Postponement Decision”), para 27.

against Mr Abd-Al-Rahman. This work is underway.

8. From the Prosecution's experience in previous cases, it will take a substantial amount of time to complete this disclosure review. The Prosecution is currently calculating the number of hours the review will take and seeking additional resources to conduct this exercise.

9. Once disclosure review is fully underway, the Prosecution will disclose relevant items as soon as practicable on a periodic, rolling basis.

Staffing of the review team

10. The Prosecution is in the process of seeking sufficient staff for disclosure review as well as ongoing investigative and legal work. This process is expected to take at least several weeks. As was held in *Ntaganda*, and quoted with approval in *Ongwen*, "[w]here the suspect is evading justice for many years, it is neither possible nor reasonable to impose on the Prosecutor a permanent stand-by availability of the teams for years, pending a hypothetical surrender or voluntary appearance of the suspect."⁶

Impact of COVID-19 on operations

[REDACTED]

⁶ *Ongwen* Postponement Decision, para. 26, citing Pre-Trial Chamber II, *Prosecutor v. Ntaganda*, Decision on the 'Prosecution's Urgent Request to Postpone the Date of the Confirmation Hearing' and Setting a New Calendar for the Disclosure of Evidence Between the Parties", 17 June 2013, ICC-01/04-02/06-73, para. 35.

11. [REDACTED].

12. [REDACTED].

13. [REDACTED].

14. [REDACTED].

Impact on investigative work

15. The COVID-19 pandemic and the resulting remote working arrangements and travel restrictions continue to severely impact the Prosecution's ability to conduct investigative interviews and to collect additional evidence. The Prosecution has identified a significant number of potential witnesses, [REDACTED].

16. [REDACTED].

17. In addition, COVID-19 related travel restrictions negatively impact the prospect of the Prosecution obtaining access to the territory of Sudan, for the first time since 2007, so that it can conduct vital investigative activities.

Redaction protocol

18. The Prosecution requests that the Chamber adopt the model protocol set out in the Chambers Practice Manual for regulating the procedure for exceptions to disclosure by the Prosecutor in the form of redaction of information.⁷ Adoption of a redaction protocol at this stage of the proceedings will facilitate the discharge of the

⁷ Chambers Practice Manual, November 2019 ("Chambers Practice Manual"), p. 31-34. A similar protocol has been adopted in a number other cases before the Court. *See e.g. Prosecutor v. Al-Hassan*, Décision relative au système de divulgation et à d'autres questions connexes, 16 May 2018, ICC-01/12-01/18-31, paras. 27-35 (pertaining to the pre-trial phase of the proceedings); *Prosecutor v. Yekatom*, Decision on Disclosure and Related Matters, 23 January 2019, ICC-01/14-01/18-64-Red, paras. 23-32.

Prosecution's disclosure obligations in an efficient, expeditious and consistent manner.

19. Should the Chamber adopt the model protocol, the Prosecution will seize the Chamber of any specific requests for redactions falling outside the standard categories. In order to expedite the disclosure process, the Prosecution proposes to proceed to disclosure with the non-standard redactions applied, and to simultaneously file an application to the Chamber justifying the requested redactions. The Prosecution would provide any such application, redacted as necessary so as not to defeat its purpose, to the Defence. The applied redactions would then be maintained or lifted depending on the decision of the Chamber. A similar procedure has previously been adopted in the *Ongwen*,⁸ *Ntaganda*⁹ and *Al Hassan*¹⁰ cases.

IV. Responses to the Single Judge's Questions

(i) *What is the overall amount of written pieces of evidence the Prosecutor intends to rely upon at the confirmation hearing? How many pages does this evidence amount to? What is the original language of such evidence?*¹¹

(ii) *Does the Prosecutor intend to rely upon other non-written pieces of evidence such as photographs, video, or audio recordings? If so, what is the total length/time span and original language of such pieces of evidence?*¹²

20. At this preliminary stage, without having yet completed a comprehensive, evidence review focussed on Mr Abd-Al-Rahman, the Prosecution regrettably cannot provide a precise answer to the Single Judge's questions (i) and (ii) above.

⁸ See *Prosecutor v. Ongwen*, Decision on issues related to disclosure and exceptions thereto, 23 April 2015, ICC-02/04-01/15-224, para. 7.

⁹ See *Prosecutor v. Ntaganda*, Annex A to the Decision on the Protocol establishing a redaction regime, 12 December 2014, ICC-01/04-02/06-411-AnxA, paras. 48-50.

¹⁰ See *Prosecutor v. Al Hassan*, Decision on the evidence disclosure protocol and other related matters, 30 December 2019, ICC-01/12-01/18-546, para. 15 (pertaining to the trial phase of the proceedings).

¹¹ Order, para. 8(i).

¹² Order, para. 8 (ii).

21. Nevertheless, the Prosecution has arrived at the tentative, approximate number of 1,527 items of evidence that, at this stage, it intends to rely upon at the confirmation hearing. It is likely that this number will change due to a variety of factors, including the review of evidence in the possession of the Prosecution, its ongoing investigation and the determination of witness availability.

22. This figure breaks down as follows:

- a. 1,253 written pieces of evidence (14,946 pages):
 - i. English original language: 789 items (11,105 pages);
 - ii. Arabic original language: 293 items (2,307 pages); and
 - iii. Mixed language:¹³ 171 items (1,534 pages).
- b. 274 non-written pieces of evidence, including approximately 46 hours of audio/video recordings:
 - i. English original language: 11 items (approx. 13 hours duration);
 - ii. Arabic original language: 30 items (approx. 10.5 hours duration); and
 - iii. English/Arabic language mix: 24 items (approx. 22.5 hours duration).

(iii) *How many and which pieces of evidence can be immediately disclosed to the Defence without redactions? How many pages/time span does this evidence amount to?*¹⁴

23. The Prosecution has identified 1,909 items obtained from publically available sources amounting to 17,471 pages that can, following initial review, be immediately disclosed to the Defence without redactions.

¹³ These are mainly mixed English/Arabic materials.

¹⁴ Order, para. 8(iii).

24. On 22 July 2020, the Prosecution disclosed 632 of these items (2,411 pages) to the Defence in PDF versions. The Prosecution will also formally disclose these items via the e-court system, with the required metadata fields, following the Chamber's issuance of e-court and redaction protocols. The review of the remaining 1,277 items is ongoing and the relevant items will be disclosed as soon as practicable.

*(iv) What is the overall amount of exculpatory evidence that the Prosecutor shall disclose to the Defence as soon as practicable pursuant to article 67(2) of the Statute? How many pages/time span does this evidence amount to? Does this exculpatory evidence require redactions?*¹⁵

25. As noted above, the Prosecution has in its possession at least 33,215 items (169,886 pages) collected in connection with the situation in Darfur. This material must be reviewed as per article 67(2) of the Statute (and rule 77 of the Rules), for the purposes of disclosure to the Defence. Prior to such review, it is not possible for the Prosecution to accurately estimate the amount of potentially exculpatory evidence that will be disclosed under article 67(2) (and rule 77).

26. The Prosecution has identified approximately 119 witnesses that it intends to rely on at the confirmation hearing stage. However, there are a total number of approximately [REDACTED] witnesses in the Darfur situation, and it is very likely that the material obtained from these additional witnesses may also be relevant to article 67(2) (and rule 77). Future witnesses interviewed by the Prosecution will also likely generate additional material subject to article 67(2) (and rule 77).

27. The extent of the redactions to the disclosable material relating to these witnesses will depend on the security status of the relevant witness. As explained below, this assessment can only be made after the witnesses have been contacted

¹⁵ Order, para. 8(iv).

and their individual security situations have been determined. The Prosecution intends to make requests for non-standard redactions on a rolling basis.

*(v) How many witnesses, if any, does the Prosecutor intend to call to testify at the confirmation hearing?*¹⁶

28. The Prosecution currently intends to call up to five witnesses to testify at the confirmation hearing.

*(vi) How many witness statements does the Prosecutor intend to provide the Defence with for the purposes of the confirmation hearing, as provided in rule 76 of the Rules? Does the Prosecutor intend to provide such statements in their entirety or in the form of summaries, pursuant to articles 61(5) and 68(5) of the Statute?*¹⁷

29. The current number of witnesses that the Prosecution intends to rely on at the confirmation hearing is 119. These witnesses have provided 130 statements and transcripts (approx. 6,559 pages). These statements and transcripts will be prioritised for disclosure review and for any requests for non-disclosure of witnesses' identities. The Prosecution reiterates that it is very likely that these numbers will change in the near future due to the review of evidence in the possession of the Prosecution and ongoing collection of evidence.

¹⁶ Order, para. 8(v).

¹⁷ Order, para. 8(vi).

30. The current intention of the Prosecution is to disclose and rely on redacted statements. However, at this early stage, the Prosecution cannot rule out the possibility that it may also seek to rely on summaries of a limited number of witness statements at the confirmation hearing.

*(vii) What is the original language of the witness statements the Prosecutor intends to rely upon at the confirmation hearing? If applicable, have those statements been translated into Arabic, the language that the suspect fully understands and speaks, as required in rule 76(3) of the Rules? In the negative, what is the Prosecutor's estimate regarding the time needed to provide such translations?*¹⁸

31. The original language of the witness statements the Prosecution intends to rely on at the confirmation hearing is English, while transcripts of recorded interviews are in English and Arabic.¹⁹ Draft Arabic translations are currently available for 1,198 pages of witness statements. These draft pages still require review to ensure quality and terminological consistency in accordance with the standard procedures of the Office of the Prosecutor's ("OTP") Language Services Unit ("LSU").

32. Complete English to Arabic translation is still required for 2,007 pages of witness statements.²⁰ Subsequently, review of these 2,007 pages, as well as the existing 1,198 pages that are currently in a draft form, will be required before the translations are finalised.

33. Regarding the time needed to provide these translations, the LSU estimates that a team of five translators and one reviser, working full time, would take approximately ten months to complete the translation of these materials. These

¹⁸ Order, para. 8(vii).

¹⁹ There are approximately 3,384 pages of transcripts of interpreted interviews in a combination of English and Arabic for which no translation will be required.

²⁰ This total includes a 29 page English transcript of an interpreted interview in a combination of English and Fur.

resources are not currently available to the LSU, but they are working to obtain them.

*(viii) Does the Prosecutor intend to submit requests to withhold the identity of witnesses and, in the affirmative, how many witnesses would be concerned by such requests and how many statements of anonymous witnesses does the Prosecutor intend to rely upon?*²¹

*(ix) For the purposes of requesting to withhold the identity of a witness and related requests for redactions, have detailed and comprehensive security assessments been prepared for each witness on which the Prosecutor intends to rely at the confirmation hearing and, in the negative, what is the Prosecutor's estimate regarding the time needed to prepare them?*²²

34. The Prosecution does intend to submit requests to withhold the identity of some witnesses. [REDACTED], the Prosecution is not currently able to estimate with precision how many witnesses will require anonymity for the purposes of the confirmation hearing. It is likely that all statements and interviews of Prosecution witnesses will require some level of redaction, with some witnesses requiring anonymity.

35. On the basis of the current list of 119 witnesses, the OTP's Protection Strategies Unit ("PSU") anticipates that individual risk assessments ("IRAs") [REDACTED]. These IRAs will also be required for additional witnesses the Prosecution may add to its current list prior to the confirmation hearing. [REDACTED].

36. Subject to a full assessment of the security situation of each witness, the Prosecution will make the necessary requests to withhold the identity of a witness and related requests for redactions on a rolling basis.

²¹ Order, para. 8(viii).

²² Order, para. 8(ix).

(x) *Does the Prosecutor possess or control any books, documents, photographs or other tangible objects that the Defence shall be permitted to inspect as material to the preparation of the Defence under rule 77 of the Rules?*²³

37. The Prosecution does possess or control material subject to rule 77. This material will be subject to the same review procedure and timeline as set out in the Prosecution's response to question (iv) above, relating to material subject to article 67(2).

38. In addition to the Prosecution's own assessment of the information that falls within the parameters of rule 77, the Prosecution has invited the Defence to provide any themes, phrases or keywords that the Defence considers relevant to their preparation.²⁴ The Prosecution will prioritise the searches, review and disclosure of items in its evidence collection based on any information provided by the Defence.

(xi) *Are any of the Prosecutor's pieces of evidence, in particular exculpatory evidence or evidence considered as material for the preparation of the defence, affected by confidentiality agreements in accordance with articles 54(3)(e), 72 and 93 of the Statute? In the affirmative, has the Prosecutor undertaken, or will the Prosecutor undertake, steps to obtain the consent of the information provider(s) regarding the disclosure of such material?*²⁵

39. Approximately 3,754 items (14,901 pages) of material in the Prosecution's collection are affected by agreements in accordance with articles 54(3)(e), 72 and 93. The Prosecution had already commenced the review of this material prior to the surrender of Mr Abd-Al-Rahman, and had already sent a lifting request pertaining to the first batch of reviewed documents to the relevant information provider for its consent.

²³ Order, para. 8(x).

²⁴ Email sent by the Prosecution to the Defence on 22 July 2020 at 14:52.

²⁵ Order, para. 8(xi).

40. The Prosecution is currently prioritising the review of the remaining material. To date, the Prosecution has completed a primary review of nearly all of the items within this collection, and a significant portion of these materials has also been reviewed by secondary reviewers. However, the previous review of this material was conducted in relation to all of the Darfur suspects. Therefore, all documents covered by confidentiality restrictions will need to be reviewed anew by secondary reviewers to identify documents relating to the allegations against Mr Abd-Al-Rahman, in particular, any potentially exculpatory evidence, so that these documents can be prioritised for lifting requests.

41. The Prosecution will proceed to seek consent for the lifting of confidentiality restrictions from the relevant information providers on a rolling basis each time the review of a specific batch of document is completed.

*(xii) Does the Prosecutor intend to request protective measures for witnesses, victims or other persons at risk prior to disclosure of the names of the witnesses and/or of certain documents, pursuant to rules 87 and 88 of the Rules? Has the Prosecutor held consultation with the VWU regarding protective measures for witnesses, victims or other persons at risk? How many witnesses have been referred to the VWU for protection purposes, including relocation? How many witnesses does the Prosecutor intend to refer to the VWU for protection purposes, including relocation, before the confirmation hearing? What is the Prosecutor's estimate regarding the time needed for such measures to be put in place?*²⁶

42. The Prosecution anticipates referring witnesses to the VWU for protection advice and is consulting with the VWU regarding these potential referrals pursuant to rules 87 and 88.

²⁶ Order, para. 8(xii).

43. [REDACTED]²⁷ [REDACTED].

44. [REDACTED]. Following the completion of these security assessments, the Prosecution will consult with VWU, after which the Prosecution will be in a position to provide a reasonable time estimate for putting the relevant security measures into place.

45. [REDACTED].

46. The exact number of witnesses to be referred, and the time required to implement any necessary measures, will depend on a variety of factors, including: [REDACTED] h) additional Prosecution witnesses added to the existing witness list, either through evidence review or continued investigative activities; and i) the scope of disclosure of witness related evidence under articles 67(2) and rule 77, for which the Prosecution will need to consider protection measures.

*(xiii) Does the Prosecutor intend to submit requests in relation to unique investigative opportunities under article 56 of the Statute? What could be the impact of such requests on the disclosure process and the commencement of the confirmation hearing?*²⁸

47. The Prosecution intends to submit requests in relation to unique investigative opportunities under article 56 of the Statute. The Prosecution is currently envisioning this in the context of one, possibly two, such witnesses, but there will likely be additional requests as well. For existing witnesses, this will be determined in the course of the Prosecution's re-contact of these witnesses.

²⁷ [REDACTED].

²⁸ Order, para. 8(xiii).

48. Assuming that testimony taken pursuant to article 56 is limited to only two witnesses, and is taken in court and transcribed simultaneously, the Prosecution does not envision that this will significantly impact the disclosure process and the commencement of the confirmation hearing. However, if the Prosecution is required to submit requests under article 56 in relation to additional witnesses, this could have a material impact on the disclosure process and the commencement of the confirmation hearing.

*(xiv) Is the Prosecutor continuing the investigation regarding Mr Abd-Al-Rahman? What could be the impact of an ongoing investigation on the disclosure process, the protection of witnesses and the commencement of the confirmation hearing?*²⁹

49. The Prosecution intends to carry out additional investigation and is currently enlarging its investigation team for that purpose. These continuing investigations are necessitated by the age of the case.

50. Additional investigations will also depend in part on the availability of current Prosecution witnesses. As some witnesses will likely prove to be unavailable,³⁰ this will increase the need for additional investigations. The Prosecution notes in this context the findings of the Single Judge in the *Ongwen* case, made at an analogous stage in the proceedings:

“[...] the Single Judge accepts the Prosecutor’s expressed intention to enquire into old evidence, in particular to contact ‘32 core prosecution witnesses’ from the Kony et al. case. Witnesses were interviewed about ten years ago; they may no longer wish to cooperate with the Court or may have died. It is reasonable and prudent on the part of the Prosecutor to request additional

²⁹ Order, para. 8(xiv).

³⁰ [REDACTED].

time to contact and re-interview those witnesses and to assess anew their current security situation.”³¹

51. Moreover, several potential witnesses are yet to be interviewed. Some witnesses who could not be interviewed previously because of security and access issues may now be available. Analysis and follow-up investigations regarding previously collected evidence will be also be required. Current witnesses who remain available may have to be re-interviewed on discrete topics.

52. The ongoing investigation will generate new witness interviews that will have to be transcribed, translated, reviewed and disclosed with any appropriate redactions. The security of the newly interviewed witnesses will also have to be assessed and appropriate protective measures put in place. This may include requests for non-standard redactions to the relevant statements and other material obtained from the witnesses.

53. It is likely that additional evidence (unrelated to witnesses) will also be collected in the near future. These items too will likely have to be translated, reviewed and disclosed. Redactions may also be necessary.

*(xv) Does the Prosecutor intend to enlarge or reduce the factual scope of the charges brought against Mr Abd-Al-Rahman as compared to the incidents and alleged crimes currently set out in the ‘counts’ listed in the arrest warrants?*³²

54. A firm decision regarding the factual scope of the charges brought against Mr Abd-Al-Rahman has not yet been made. The Prosecution must first conclude an in-

³¹ *Ongwen* Postponement Decision, para. 31.

³² Order, para. 8(xv).

depth case review, after which the Prosecution will be in a better position to provide a precise response to this question.

*(xvi) Does the Prosecutor intend to charge different legal characterisations of the same conduct as separate counts (as in the First Warrant of Arrest) or as alternatives (as in the Second Warrant of Arrest)?*³³

55. The Prosecution intends to charge different legal characterisations of the same conduct as alternatives. When filing the document containing the charges, the Prosecution intends to request that the Pre-Trial Chamber confirm all alternative legal characterisations cited in the document that meet the test of “substantial grounds to believe.”

56. Where evidence establishes multiple legal characterisations of the same facts, it is appropriate that charges be confirmed under all substantiated modes of liability and the Trial Chamber be left to determine which of those legal characterisations meets the standard of proof at trial. The Appeals Chamber has held that a Trial Chamber may recharacterise facts and circumstances to include a mode of liability that was considered but not confirmed by the Pre-Trial Chamber, and that notice of such recharacterisation may be given even before the opening statements of the trial.³⁴

57. The facts and the evidence submitted may satisfy more than one mode of liability or crime and, as such, the Prosecution elects to charge modes of liability in the alternative. Confirming all of the applicable and substantiated legal characterisations on the same facts provides early notice to the Defence of the

³³ Order, para. 8(xvi).

³⁴ *Prosecutor v. Gbagbo and Blé Goudé*, “Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled ‘Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court’”, 18 December 2015, ICC-02/11-01/15-369.

different legal characterisations that may be considered at trial, thereby promoting judicial efficiency and reducing the potential disruptive effect of notifying the possible legal re-characterisation of facts at trial.

58. Charging alternative/cumulative modes of liability is expressly endorsed by the Chambers Practice Manual³⁵ and the Court's jurisprudence.³⁶ The Prosecution will request that the Chamber make findings on all modes of liability for which it finds substantial grounds, regardless of whether it thinks it is the best characterisation.

*(xvii) Bearing in mind the scheduled date for the confirmation hearing, when does the Prosecutor anticipate she will be able to complete disclosure?*³⁷

59. At this early stage, prior to the completion of security assessments, the evidence review, redaction and disclosure process, and the additional investigation, it is difficult for the Prosecution to provide a precise date. However, it is clear that the period necessary to complete these tasks will extend beyond the current date for the confirmation hearing.

60. In light of the above, and following a comprehensive assessment of the relevant factors, including the adverse impact of the ongoing COVID-19 pandemic, it is apparent that the Prosecution will not be able to adequately discharge its statutory duties vis-à-vis the Defence, or victims and witnesses, and will not be ready to proceed to a confirmation hearing on 7 December 2020. Accordingly, the Prosecution

³⁵ Chambers Practice Manual, para. 67 (“in the charges, the Prosecutor may plead alternative legal characterisations, both in terms of the crime(s) and the person's mode(s) of liability”).

³⁶ See *Prosecutor v. Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 14 June 2014, ICC-01/04-02/06-309, para. 100; *Prosecutor v. Yekatom and Ngaïssona*, Corrected version of Public Redacted Version of “Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona”, 14 May 2020, ICC-01/14-01/18-403-Red-Corr, para. 121.

³⁷ Order, para. 8(xvii).

is preparing a request for postponement of the confirmation hearing, which will be consistent with the terms of requests made to, and granted by, the Pre-Trial Chamber in comparable cases. This request will be submitted as soon as the Prosecution has gathered all of the information relevant and useful to the Chamber's determination of this request.

V. Conclusion

61. The Prosecution has answered the honourable Single Judge's questions to the best of its ability given the age of the case, the size and complexity of the Darfur collection, the number of witnesses, the currently available resources, and the time provided. Some of the figures and estimates provided may change as the Prosecution continues its preparations for the confirmation hearing and trial. The Prosecution stands ready to provide any additional information as may be required by the Chamber.



Fatou Bensouda, Prosecutor

Dated this 28th day of July 2020

At The Hague, The Netherlands