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

Date: 24 August 2020

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

Prosecution’s first progress report on the evidence review, translation and disclosure process

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. On 17 August 2020, Single Judge Rosario Salvatore Aitala (“Single Judge”), acting for Pre-Trial Chamber II (“Chamber”), ordered the Prosecution to submit, every other week starting on 24 August 2020,¹ “a detailed report to keep the Chamber abreast of any progress made with regard to the evidence review, translation and disclosure process.”²

II. SUBMISSIONS

2. The Prosecution submits that the following progress has been made with regard to the evidence review, translation and disclosure process relating to Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”) since 23 July 2020. The Prosecution has begun review on the tentative and approximate list of items on which it intends to rely at the confirmation hearing, as set out in its observations on disclosure submitted on 23 July 2020.³

Evidence Review

3. Since 23 July 2020, the Prosecution has reviewed a total of 860 items (10,218 pages) of evidence in its database relating to the situation in Darfur.⁴ Of the total number of items reviewed by the Prosecution, 421 items (1,819 pages) are affected by agreements in accordance with articles 54(3)(e), 72 and 93 of the Rome Statute. The Prosecution will send requests for consent to lift restrictions on disclosure to the relevant information providers on a rolling basis, and it will update the Chamber on the status of these requests accordingly.

¹ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, Order on disclosure and related matters, 17 August 2020, ICC-02/05-01/20-116 (“Order”), p. 8.

² Order, para. 17.

³ The scope of the Prosecution’s current review process does not include any witness statements or new evidence obtained after 23 July 2020, when it submitted initial observations on disclosure and related matters. Any witness statements or new evidence that the Prosecution obtains after this date will be reviewed and disclosed on a rolling basis. See *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, 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, 28 July 2020, ICC-02/05-01/20-103-Red.

⁴ This total number of items includes witness statements.

Translation and Transcription

4. Since 23 July 2020, the Language Services Unit (“LSU”) has been processing nine requests for draft English to Arabic translations and/or transcriptions of witness statements.⁵ The draft translation and transcription process is underway but remains subject to further review to ensure quality and terminological consistency in accordance with LSU’s standard procedures. The finalised translation of each witness statement will be disclosed to the Defence alongside an original copy pursuant to rule 76(3) of the Rules of Procedure and Evidence once any necessary redactions have been applied.

Disclosure

5. The Prosecution intends to disclose relevant items to the Defence on a monthly basis.⁶ As part of this commitment, the Prosecution will disclose those items identified as containing potentially exculpatory evidence under article 67(2) of the Statute, subject to inspection as material to the preparation of the Defence under rule 77 of the Rules, or that on which it intends to rely at the confirmation hearing under article 61(3)(b) of the Statute.⁷ The Prosecution will disclose approximately 166 items (1,695 pages) via the e-court system with the required metadata fields and necessary redactions on 31 August 2020.⁸

III. CONCLUSION

6. The Prosecution respectfully submits this report on its progress regarding the evidence review, translation and disclosure process related to Mr Abd-Al-Rahman since 23 July 2020. The Prosecution has provided these updates to the best of its ability given the size and complexity of the Darfur evidence collection, the changing

⁵ Draft translations and transcriptions for six of these requests are expected to be completed by mid-September 2020.

⁶ The Prosecution intends to contact the Defence regarding a working plan for ongoing disclosure as soon as practicable.

⁷ The Prosecution also confirms that it has incorporated the e-court and redaction protocols adopted by the Single Judge into its disclosure review guidelines. *See* Order, Annexes 1-2.

⁸ This estimated number of items that will be disclosed on 31 August 2020 remains subject to change.

nature of some figures and estimates due to its continuing investigation, its currently available resources and the time provided.



Fatou Bensouda
Prosecutor

Dated this 24th day of August 2020

At The Hague, The Netherlands