



Original: English

No.: ICC-02/05-01/20
Date: 18 January 2021

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

First Joint Report regarding the “Order instructing the parties to liaise with a view to reaching an agreement as to evidence pursuant to rule 69 of the Rules of Procedure and Evidence”

Source: Office of the Prosecutor

Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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

The Office of the Prosecutor

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**

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 8 December 2020, the Single Judge, acting for Pre-Trial Chamber II (“Chamber”), ordered the Prosecution and the Defence (the “Parties”) to liaise with a view to reaching an agreement as to evidence pursuant to rule 69 of the Rules of Procedure and Evidence (“Order”)¹. Pursuant to the Order the Parties are required to submit a first progress report to the Chamber by no later than 18 January 2021².

II. SUBMISSIONS

2. Pursuant to the Order, the Parties have taken the below steps.

3. On 8 December 2020, the Defence sent an e-mail to the Prosecution in relation to the Order. The Defence proposed that the Prosecution identify a number of topics on which the Parties would seek agreement. The Defence would then agree or disagree with those topics, propose amendments and/or make additional propositions.

4. On 5 January 2021, the Prosecution sent an e-mail to the Defence proposing a number of topics in relation to contextual elements of war crimes. The Prosecution asked the Defence for its view on starting with those topics, so the Parties could then move forward to drafting more precise facts within the topics agreed.

5. On 7 January 2021, the Defence responded to the Prosecution’s e-mail. The Defence clarified that it understood that the Prosecution was proposing topics on which agreement on facts may be reached by the Parties, rather than proposing facts themselves. The Defence stated that it had no objection to the identification of these topics, but that it looked forward to receiving from the Prosecution precise and detailed facts in relation to each topic proposed by the Prosecution. In response to the topics proposed by the Prosecution, the Defence also provided some tentative indications as to the nature of facts they would like the Prosecution to propose, in order for the Defence to give its position on a particular fact. The Defence also

¹ [ICC-02/05-01/20-226](#) (“Order”)

² Order, para. 13.

proposed a format for submission by the Prosecution to the Defence of facts proposed for agreement.

6. Following the receipt of this email from the Defence, the Prosecution has been working on a list of detailed facts relating to contextual elements of war crimes for submission to the Defence for their review. The Prosecution aims to provide the Defence with the first list of facts by 29 January 2021.

7. The Prosecution is also working on identifying other topics for potential agreement, in particular the factual aspects of the contextual elements for crimes against humanity.³

III. CONCLUSION

8. The Parties respectfully submit this report on progress made in relation to agreed facts pursuant to the Order and reaffirm they are making efforts to reach an agreement on these facts as expeditiously as possible.



James Stewart
Deputy Prosecutor



Cyril Laucci
Lead Counsel for the Defence of Mr
Ali Muhammad Ali Abd-Al-Rahman

Dated this 18th day of January 2021

At The Hague, The Netherlands

³ Order, para. 12.