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

Date: 9 April 2021

PRE-TRIAL CHAMBER II

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

SITUATION IN DARFUR, SUDAN

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

**Public
with SECRET, *EX PARTE*, only available to the Prosecution, Annex 1
Confidential, *EX PARTE*, only available to the Prosecution, Annex 2
Confidential Annex 3**

**Prosecution’s fifteenth 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:

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I. INTRODUCTION

1. The Prosecution submits its fifteenth progress report on the evidence review, translation and disclosure process in accordance with the orders of Pre-Trial Chamber II (“Chamber”), issued on 17 August 2020¹ and 2 October 2020.² The Prosecution also provides updates on an additional issue in accordance with the Chamber’s decision, issued on 12 October 2020.³

II. CLASSIFICATION

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court and regulation 14 of the Regulations of the Registry, the Prosecution classifies Annex 1 to this report as secret, *ex parte*, only available to the Prosecution, since it contains highly sensitive information relating to the Prosecution’s ongoing investigation. Annex 2 is classified as confidential, *ex parte*, only available to the Prosecution, since it contains information pertaining to documents in the Prosecution’s collection subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute. Annex 3 is classified as confidential since it contains information relating to the Prosecution’s witnesses.

III. SUBMISSIONS

3. This report updates the Chamber on progress made in relation to the evidence review, translation and disclosure process since the Prosecution’s fourteenth progress report submitted on 19 March 2021.⁴ Pursuant to the Single Judge’s order issued on 16 February 2021, the Prosecution also provides an update on its discussions with the Defence on “agreements as to the evidence.”⁵

¹ ICC-02/05-01/20-116, paras. 16-17 and p. 8.

² ICC-02/05-01/20-169, para. 19 and pp. 20-21, order (f).

³ ICC-02/05-01/20-181-Conf, para. 13 and p. 6.

⁴ ICC-02/05-01/20-311.

⁵ ICC-02/05-01/20-260. Email from the Pre-Trial Chamber II communications, 16 February 2021, 17:04, “The Prosecutor is instructed to henceforth include updates about the status of discussions on agreements as to evidence in the bi-weekly progress reports.”

*Confirmation as to when the Prosecutor has made available to the Defence all evidence and supporting material relied upon for the purposes of the First Warrant and the Second Warrant, subject only to the adoption of protective measures pursuant to rule 87 of the Rules*⁶

4. Since the last progress report,⁷ the Prosecution has disclosed 2,053 items (20,146 pages), including material related to 42 witnesses.⁸

*Number and type of the items of evidence in the possession or control of the Prosecutor still requiring first and/or second review in order to determine whether it should be disclosed*⁹

5. The Prosecution informs the Chamber that as of today there are 35,734 items (182,110 pages) registered in the Prosecution's Ringtail database. The Prosecution confirms that these items have now all been subject to review and disclosed as necessary, consistent with the Prosecution's disclosure obligations. This includes all material related to the witnesses whose evidence will be relied upon at the confirmation hearing, were cited in the Applications, and those responsive to keyword searches.

6. The Prosecution will continue to fulfil its disclosure obligations and review the evidence in its collection.

*Estimated timeline for evidence review and disclosure of all evidence in possession or control of the Prosecutor at the time of reporting*¹⁰

7. The provisional list of witnesses for the confirmation hearing now stands at 112 witnesses.¹¹

⁶ ICC-02/05-01/20-169, para. 19(i) and p. 20, order (f)(a).

⁷ ICC-02/05-01/20-311, para. 4.

⁸ Witnesses P-0002, P-0018, P-0021, P-0033, P-0039, P-0043, P-0047, P-0054, P-0065, P-0069, P-0074, P-0078, P-0080, P-0090, P-0095, P-0108, P-0109, P-0120, P-0122, P-0129, P-0130, P-0188, P-0289, P-0307, P-0470, P-0547, P-0550, P-0553, P-0605, P-0718, P-0793, P-0877, P-0878, P-0882, P-0883, P-0894, P-0895, P-0905, P-0913, P-0918, P-0919 and P-0921 have been disclosed.

⁹ ICC-02/05-01/20-169, para. 19(ii) and p. 20, order (f)(b).

¹⁰ ICC-02/05-01/20-169, para. 19(iii) and p. 20, order (f)(c).

¹¹ The Prosecution removed witness P-0665 from its list of confirmation witnesses and added witness P-0921. In addition, the Prosecution will imminently make an application to request the Chamber's authorisation to add witness P-0924 to the list of witnesses for the purpose of relying on the recently received statement of this witness at the Confirmation Hearing. This is reflected in Annex 3 to this report.

8. Since the last report, the Prosecution has disclosed an additional 19 witnesses¹² not included on its current witness list for the confirmation hearing, making a total of 153 witnesses disclosed to date.

9. Annex 3 to this report, tailored in accordance with the Single Judge's instructions conveyed by email on 19 January 2021,¹³ contains the updated information in relation to the recently disclosed witnesses.

Number and type of all items disclosed during the relevant period¹⁴

10. Information in relation to the number and type of items is provided in paragraph 5 above as well as the Prosecution's notification of the disclosure of evidence between 19 and 29 March 2021¹⁵ and 1 April 2021.¹⁶

Number and type of items identified as disclosable but not yet disclosed, including a detailed explanation as to the relevance to the Prosecutor's case, the obstacles that have prevented the Prosecutor from disclosing the items, and steps taken to overcome them¹⁷

11. In relation to witness protection issues, since 19 March 2021, the Protection Strategies Unit of the Office of the Prosecutor ("PSU") has provided clearance in relation to 10 additional witnesses,¹⁸ amounting to a total of 130 witnesses. This number includes confirmation witnesses, as well as other witnesses not included on the Prosecution's current witness list. The Prosecution continues to re-establish contact with additional relevant witnesses.

¹² Witnesses P-0002, P-0018, P-00039, P-0047, P-0054, P-0069, P-0074, P-0078, P-0080, P-0090, P-0095, P-130, P-0289, P-0307, P-0470, P-0550, P-0553, P-0605 and P-0793.

¹³ ICC-02/05-01/20-265, para. 8.

¹⁴ ICC-02/05-01/20-169, para. 19(iv) and p. 20, order (f)(d).

¹⁵ ICC-02/05-01/20-327 .

¹⁶ ICC-02/05-01/20-335.

¹⁷ ICC-02/05-01/20-169, para. 19(v) and pp. 20-21, order (f)(e).

¹⁸ Witnesses P-0065, P-0069, P-0074, P-0129, P-0877, P-0878, P-0883, P-0913, P-0918 and P-0921.

Updates on the status of discussions on agreements as to evidence

12. Pursuant to the Order of the Single Judge on 16 February 2021,¹⁹ on 6 April 2021, the Prosecution submitted to the Defence a list of additional facts relating to the contextual elements of crimes against humanity.

13. The Prosecution is currently preparing a list of agreed facts relating to Mr ABD-AL-RAHMAN's background and will submit this to the Defence once finalised.

*A detailed schedule of any investigative step the Prosecutor may plan to conduct before the confirmation hearing, notifying the Chamber of any obstacles that may arise*²⁰

14. Annex 1 to this report contains an updated list of investigative steps being undertaken by the Prosecution in preparation for the confirmation hearing. As stated in the previous progress reports,²¹ the COVID-19 pandemic continues to negatively impact the Prosecution's work, primarily in relation to the collection of evidence.²²

*Documents subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute*²³

15. Annex 2 to this report contains the updated information in relation to the documents in the Prosecution's collection subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute.

*Detailed list of all witness statements to be relied upon for the purposes of the confirmation hearing, indicating whether transcripts and/or translation into Arabic so far exist and the progress made in this regard*²⁴

16. Annex 3 to this report contains a list of the witness statements and transcripts relating to the 111 witnesses that the Prosecution intends to rely upon for the

¹⁹ ICC-02/05-01/20-260. Email from the Pre-Trial Chamber II communications, 16 February 2021 17:04, "The Prosecutor is instructed to henceforth include updates about the status of discussions on agreements as to evidence in the bi-weekly progress reports."

²⁰ ICC-02/05-01/20-169, para. 19(vi) and pp. 20-21, order (f)(f).

²¹ ICC-02/05-01/20-200, paras. 14 and 15; ICC-02/05-01/20-207, paras. 14 and 15; ICC-02/05-01/20-265, paras. 15-16 and ICC-02/05-01/20-278, para. 13.

²² See ICC-02/05-01/20-157-Conf-Exp-Corr, paras. 25-26.

²³ ICC-02/05-01/20-169, paras. 26-28 and pp. 20-21, order (f)(g).

²⁴ ICC-02/05-01/20-169, pp. 20-21, order (f)(h).


purposes of the confirmation hearing, and the progress made to date in relation to their transcription and translation into Arabic.

17. During the reporting period, the Language Services Unit (“LSU”) completed four draft translations for Witnesses P-0878, P-0882, P-0912 and P-0918.

18. As the Chamber authorised in its Decision extending the time limit for disclosure and translation²⁵, on 1 April 2021, Arabic translations and transcripts relating to Witnesses P-0878 and P-0921 were disclosed.

IV. CONCLUSION

19. The Prosecution continues to make every possible effort to progress the preparation of this case as quickly and effectively as possible.



Fatou Bensouda
Prosecutor

Dated this 9th day of April 2021

At The Hague, The Netherlands

²⁵ ICC-02/05-01/20-326