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

Date: 23 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**

**Prosecution’s sixteenth 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**

Ms Amal Clooney  
Mr Nasser Mohamed Amin Abdalla

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. INTRODUCTION

1. The Prosecution submits its sixteenth 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 2020<sup>1</sup> and 2 October 2020.<sup>2</sup>

## II. CLASSIFICATION

2. Pursuant to regulation 23bis(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.

## 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 fifteenth progress report submitted on 9 April 2021.<sup>3</sup> 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.”<sup>4</sup>

*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*

4. The Prosecution confirms that the relevant items referred to above have been disclosed.

*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*<sup>5</sup>

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

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

<sup>3</sup> ICC-02/05-01/20-337.

<sup>4</sup> 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.”

<sup>5</sup> ICC-02/05-01/20-169, para. 19(ii) and p. 20, order (f)(b).

5. The Prosecution informs the Chamber that as of today there are 35,854 items (182,493 pages) registered in the Prosecution's Ringtail database. The Prosecution confirms that these items have been subject to review and disclosure as necessary, consistent with the Prosecution's disclosure obligations with the exception of 28 recently registered items that are currently under review.

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<sup>6</sup>*

7. The provisional list of witnesses for the confirmation hearing now stands at 112 witnesses.<sup>7</sup> Since the last report, the Prosecution disclosed the statement of witness P-0924 and an additional statement of witness P-0643<sup>8</sup>, as well as their Arabic translations.<sup>9</sup>

8. Since the last report, the Prosecution has disclosed an additional witness<sup>10</sup> not included on its current witness list for the confirmation hearing, making a total of 154 witnesses disclosed to date.

9. Since the last progress report<sup>11</sup>, in total the Prosecution has disclosed 795 items (6,603 pages), including material related to 40 witnesses.<sup>12</sup>

*Number and type of all items disclosed during the relevant period<sup>13</sup>*

<sup>6</sup> ICC-02/05-01/20-169, para. 19(iii) and p. 20, order (f)(c).

<sup>7</sup> On 22 April 2021 the Prosecution also made an application to request the Chamber's authorisation to add witnesses P-0926 and P-0935 to the list of witnesses for the purpose of relying on the recently received statements of these witnesses at the Confirmation Hearing, *see* ICC-02/05-01/20-359-Red ("Regulation 35Application").

<sup>8</sup> Disclosed on 14 April 2021.

<sup>9</sup> Disclosed on 14 April 2021.

<sup>10</sup> Witness P-0924.

<sup>11</sup> ICC-02/05-01/20-337, para. 4.

<sup>12</sup> Witnesses P-0015, P-0021, P-0027, P-0028, P-0029, P-0032, P-0037, P-0046, P-0061, P-0069, P-0074, P-0078, P-0082, P-0083, P-0086, P-0087, P-0102, P-0112, P-0117, P-0118, P-0122, P-0129, P-0131, P-0140, P-0212, P-0479, P-0547, P-0589, P-0607, P-0617, P-0643, P-0651, P-0666, P-0714, P-0718, P-0719, P-0724, P-725, P-0850 and P-0924 have been disclosed.

<sup>13</sup> ICC-02/05-01/20-169, para. 19(iv) and p. 20, order (f)(d).

10. Information in relation to the number and type of items is provided in the Prosecution's notification of the disclosure of evidence on 14 and 15 April 2021<sup>14</sup> and 16 and 20 April 2021.<sup>15</sup>

*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 them*<sup>16</sup>

11. In relation to witness protection issues, since 9 April 2021, the Protection Strategies Unit of the Office of the Prosecutor ("PSU") has provided clearance in relation to 2 additional witnesses,<sup>17</sup> amounting to a total of 132 witnesses. The Prosecution continues to re-establish contact with additional relevant witnesses.

*Updates on the status of discussions on agreements as to evidence*

12. Pursuant to the Order of the Single Judge on 16 February 2021,<sup>18</sup> on 14 April 2021 the Prosecution and Defence filed a second joint submission in relation to eight agreed facts relating to the contextual elements for crimes against humanity, as well as a map of West Darfur.<sup>19</sup>

13. On 14 April 2021, the Prosecution emailed the Defence a list of additional facts concerning war crimes and is awaiting a response.

*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*<sup>20</sup>

14. Annex 1 to this report contains an updated list of investigative steps being undertaken by the Prosecution. As stated in the previous progress reports,<sup>21</sup> the

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<sup>14</sup> ICC-02/05-01/20-350.

<sup>15</sup> ICC-02/05-01/20-357.

<sup>16</sup> ICC-02/05-01/20-169, para. 19(v) and pp. 20-21, order (f)(e).

<sup>17</sup> Witnesses P-0926 and P-0935, who are subject to the Regulation 35 Application.

<sup>18</sup> 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."

<sup>19</sup> ICC-02/05-01/20-343, paras. 2-3.

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

<sup>21</sup> 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.

COVID-19 pandemic continues to negatively impact the Prosecution's work, primarily in relation to the collection of evidence.<sup>22</sup>

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

15. The Prosecution has completed the review of documents subject to agreements pursuant to articles 54(3)(e), 72 and 93(8) of the Statute and contacted all relevant providers. As such there is no annex related to the review and disclosure of these items.

*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*<sup>24</sup>

16. Subject to the information provided in paragraph 7 above, the Prosecution has no further updates to the information previously provided in Annex 3 to its fifteenth progress report. Given the limited nature of this update, the Prosecution has not included a similar annex in this sixteenth progress report.

17. As set out in paragraph 7 above, during the reporting period, the Language Services Unit ("LSU") completed two draft translations of witness statements for Witnesses P-0924 and P-0643. The translation of the statements for Witnesses P-0926 and P-0935, who are subject to the Regulation 35 Application, have also been requested.

#### **IV. CONCLUSION**

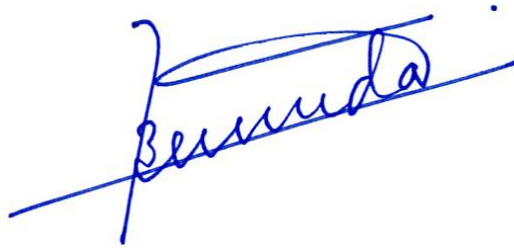
18. The Prosecution continues to make every possible effort to progress the preparation of this case as quickly and effectively as possible.

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

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

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



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**Fatou Bensouda**  
**Prosecutor**

Dated this 23<sup>rd</sup> day of April 2021

At The Hague, The Netherlands