



Original: **English**

No.: **ICC-02/05-01/20**
Date: **16 October 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
with Confidential Annexes A-H**

Prosecution's notification of the disclosure of evidence on 15 October 2020

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

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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. The Prosecution submits to the Single Judge Rosario Salvatore Aitala (“Single Judge”), acting for Pre-Trial Chamber II, this notification of the disclosure of evidence pursuant to article 61(3)(b) of the Rome Statute, and rule 77 of the Rules of Procedure and Evidence.

II. CLASSIFICATION

2. This filing is classified as public with confidential Annexes A-H. The Prosecution classifies Annexes A-H as confidential since they relate to *inter partes* disclosure.

III. SUBMISSIONS

3. On 15 October 2020, the Prosecution disclosed in bulk to the Defence 5,065 items¹ from the United Nations Commission of Inquiry on Darfur (“UNCOI”) collection. The disclosed items are in the following packages:

- Pre-Confirmation INCRIM package 4: contains 47 items (1,048 pages);
- Pre-Confirmation Rule 77 package 4: contains 954 items (5,399 pages);
- Pre-Confirmation Rule 77 package 5: contains 981 items (6,113 pages);
- Pre-Confirmation Rule 77 package 6: contains 972 items (4,349 pages);
- Pre-Confirmation Rule 77 package 7: contains 713 items (5,850 pages);
- Pre-Confirmation Rule 77 package 8: contains 955 items (8,093 pages); and
- Pre-Confirmation Rule 77 package 9: contains 443 items (1,251 pages).

4. Based upon a discussion between the Prosecution and the Defence on 23 September 2020 concerning material from the UNCOI collection in the Prosecution’s possession, the Prosecution disclosed the entire collection without a “review in detail” for each individual item. Apart from 47 items which were specifically cited in

¹ The Prosecution informed the Chamber and the Defence in paragraph 9 of the filing ICC-02/05-01/20-179 that it anticipated to disclose 5,068 items from the United Nations Commission of Inquiry collection. However, upon careful review of the items, only 5,065 are truly related to this collection.

the Prosecution's applications under article 58(6)² and (7)³ ("arrest warrant applications") and were disclosed under the incriminating category, the remaining items of the collection were disclosed under rule 77 category.

5. In addition to the disclosure of the UNCOI collection, the Prosecution disclosed to the Defence 70 items (506 pages) in the Pre-Confirmation INCRIM package 3. Of these, 52 items are related to the Prosecution witnesses.⁴

6. The Prosecution uses this opportunity to inform the Chamber that out of the total 229 items which were referred to in the two arrest warrant applications, it has already disclosed 113 items⁵ to the Defence.

7. With respect to the applied redactions, they fall under the "standard categories" according to the procedure for exceptions to disclosure in the form of redaction of information adopted by the Single Judge on 17 August 2020.⁶



James Stewart
Deputy Prosecutor

Dated this 16th day of October 2020

At The Hague, The Netherlands

² ICC-02/05-01/20-6-Red2 (41 items).

³ ICC-02/05-56 (188 items).

⁴ This includes the material related to witnesses DAR-OTP-P-0026, DAR-OTP-P-0591, DAR-OTP-P-0617 and DAR-OTP-P-0675 whose evidence was referred to in the first and/or second Prosecution's Applications under Article 58(7) and (6).

⁵ Forty-seven items were disclosed in the Pre-Confirmation INCRIM package 1, five items in the Pre-Confirmation INCRIM package 2, four items in the Pre-Confirmation INCRIM package 3, forty-seven items in the Pre-Confirmation INCRIM package 4, eight items in the Pre-Confirmation Rule 77 package 2 and two items in the Pre-Confirmation Rule 77 package 3.

⁶ ICC-02/05-01/20-116, para. 12.