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No.: ICC-02/05-01/20
Date: 4 December 2020

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
with Confidential, *EX PARTE*, only available to the Prosecution, Annex 1
Confidential Annexes 2 and 3**

**Prosecution’s seventh 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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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
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REGISTRY

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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 seventh 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, the Prosecution classifies Annex 1 to this report 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 2 is classified as confidential since it contains information relating to the Prosecution’s witness list. Pursuant to regulation 23*bis*(2), Annex 3 is classified as confidential as it concerns a decision and filings with the same classification.

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 sixth progress report submitted on 20 November 2020.⁴ The Prosecution will address in turn each of the specific topics on which the Chamber has requested information. The last section of this report and Annex 3 provide an update on an additional issue in accordance with the Chamber’s decision, issued on 12 October 2020.⁵

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

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

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

⁴ ICC-02/05-01/20-207.

⁵ ICC-02/05-01/20-181-Conf, para. 13 and p. 6.

*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. On 25 November 2020, the Prosecution informed the Defence that the disclosure for this reporting period will be executed on 7 December 2020 instead of at the end of November 2020.⁷ On that date, the Prosecution will be disclosing items to be relied on for the purpose of establishing the link between Mr Abd-Al-Rahman and the name Ali Kushayb, in accordance with the Chamber's order.⁸ Of these items, nine are witness statements cited in the Prosecution's applications under article 58 of the Statute against Mr Abd-Al-Rahman.

5. After the 7 December 2020 disclosure, a total of 41 items, including 26 witness statements, remain to be disclosed. The Prosecution will continue to disclose these items on a rolling basis.

*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

6. There are currently 34,454 items (174,553 pages) registered in the Prosecution's Ringtail database. Since the sixth progress report, primary review has been carried out on 499 items (3,390 pages), of which 301 items (2,543 pages) have been recommended for disclosure, however secondary review of these items is ongoing.¹⁰ There remain 22,197 items (108,533 pages) in the collection still requiring both primary and secondary review, which include newly registered evidence.¹¹

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

⁷ Email from Hai Do Duc to Cyril Laucci on 25 November 2020 at 19:03.

⁸ ICC-02/05-01/20-196, p. 20.

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

¹⁰ This total number excludes items that have already been disclosed.

¹¹ This number excludes materials from the UNCOI collection that were disclosed in bulk on 15 October 2020.

*Estimated timeline for evidence review and disclosure of all evidence in possession or control of the Prosecutor at the time of reporting*¹²

7. The Prosecution refers the Chamber to paragraphs 34-39 of the Prosecution's second request to postpone the confirmation hearing and related deadlines ("Second Postponement Request"), filed on 3 December 2020, which provide an update on this same issue.¹³

8. The tentative number for the list of witnesses that the Prosecution currently intends to rely on at the Confirmation of Charges Hearing is 98, including two additional witnesses added during the reporting period. To date, the Prosecution has disclosed material related to 44 of these witnesses.¹⁴ An additional 17 witness statements will be disclosed on 7 December 2020.

*Number and type of all items disclosed during the relevant period*¹⁵

9. As discussed in paragraph 4 above, the Prosecution has not disclosed items to the Defence during the relevant reporting period. The next disclosure will take place on 7 December 2020.

*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*¹⁶

10. In relation to witness protection issues, notwithstanding the ongoing challenges most recently reported in the Second Postponement Request,¹⁷ since 20 November 2020 the Protection Strategies Unit of the Office of the Prosecutor ("PSU") has provided clearance in relation to an additional 10 witnesses, amounting to a total

¹² ICC-02/05-01/20-169, para. 19(iii) and p. 20, order (f)(c).

¹³ ICC-02/05-01/20-218-Conf, paras. 34-39.

¹⁴ ICC-02/05-01/20-207, para. 10. Since no disclosure has occurred during the reporting period, the number of the disclosed witness statements remains unchanged. Eighteen of these witnesses were cited in the applications under article 58 of the Statute against Mr Abd-Al-Rahman.

¹⁵ ICC-02/05-01/20-169, para. 19(iv) and p. 20, order (f)(d).

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

¹⁷ ICC-02/05-01/20-218-Conf, paras 16-19; ICC-02/05-01/20-218-SECRET-Exp-Anx1.

of 75 witnesses. The Prosecution continues to re-establish contact with additional relevant witnesses.

*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*¹⁸

11. The Prosecution refers the Chamber to paragraphs 21 to 25, 40-47 and Annex 2 to the Second Postponement Request, which contain the most updated information in relation to investigative steps and challenges to date.¹⁹

*Documents subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute*²⁰

12. Annex 1 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*²¹

13. As foreshadowed in the Prosecution's sixth progress report,²² the Language Services Unit ("LSU") has completed draft translations of 21 items (508 pages) related to 4 witnesses, from English to Arabic. The LSU has also finalised the 32 transcripts related to two witnesses.²³

14. In addition, the LSU completed the translation of 10 other items – reports and a presentation – relating to one witness, from English to Arabic (179 pages).

15. On 24 November 2020, the Defence informed the Prosecution that it does not intend to address specific sections of statements to prioritise for translation.

¹⁸ ICC-02/05-01/20-169, para. 19(vi) and p. 21, order (f)(f).

¹⁹ ICC-02/05-01/20-218-Conf, paras. 21-26, 40-47; ICC-02/05-01/20-218-SECRET-Exp-Anx2.

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

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

²² ICC-02/05-01/20-207, para. 18.

²³ Witnesses P-0140 and P-558. See also ICC-02/05-01/20-207, para. 18.

Although it reserved its right to do so prior to the Confirmation Hearing, it indicated that any such requests would be very limited in numbers and pages.²⁴

16. Annex 2 to this report lists all of the items referred to in this section.

*Update on an additional issue in accordance with the Chamber's order, issued on 12 October 2020*²⁵

17. Annex 3 to this report contains the relevant information on this matter.

IV. CONCLUSION

18. The Prosecution continues to make every possible effort to progress the preparation of this case as quickly and effectively as possible. The Prosecution stands ready to provide the Chamber with any further information it may require.



James Stewart
Deputy Prosecutor

Dated this 4th day of December 2020

At The Hague, The Netherlands

²⁴ Email from Cyril Laucci to Julian Nicholls on 24 November 2020 at 14:56.

²⁵ ICC-02/05-01/20-181-Conf, para. 13 and p. 6.