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No.: ICC-02/05-01/20
Date: 16 February 2021

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-D**

Prosecution's notification of the disclosure of evidence on 15 February 2021

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

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**

Ms Paolina Massidda

**The Office of Public Counsel for the
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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 articles 61(3)(b) of the Rome Statute.

II. CLASSIFICATION

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

III. SUBMISSIONS

3. On 15 February 2021, the Prosecution disclosed to the Defence 237 items (2,402 pages). The disclosed items are in the following packages:

- Pre-Confirmation INCRIM package 21: contains 36 items (548 pages)
- Pre-Confirmation INCRIM package 22: contains 154 items (782 pages)
- Pre-Confirmation INCRIM package 23: contains 15 items (328 pages)
- Pre-Confirmation Rule 77 package 14: contains 32 items (744 pages)

4. INCRIM package 21 contains the items related to the 4 witnesses whose identities cannot be disclosed at this stage. INCRIM package 22 contains the items related to the witnesses whose evidence will be relied upon at the confirmation hearing. INCRIM package 23 contains 15 Arabic translations of the previously disclosed witness statements. Rule 77 package 14 contains material to the preparation of the defence or intended for use by the Prosecution for the purposes of the confirmation hearing or at trial including 24 transcripts of witness DAR-OTP-P-0102.

5. The Prosecution informs the Single Judge that in these INCRIM packages, the majority of the disclosed items were cited in the first and/or second applications

under article 58 of the Rome Statute and/or will be relied upon at the confirmation hearing.

6. Most of the disclosed items relate to witnesses whose identity can be disclosed to the Defence. The redactions applied to these items are minimal and are applied according to the procedure for exceptions to disclosure that was adopted by the Single Judge on 17 August 2020.¹

8. There are several items that the Prosecution applied redactions under code F to information related to the witnesses whose identity cannot be disclosed to the Defence at this stage. The Prosecution intends to submit an application for the authorisation of the non-disclosure of the identifying information of the concerned witnesses as instructed by the Chamber.²



James Stewart
Deputy Prosecutor

Dated this 16th day of February 2021

At The Hague, The Netherlands

¹ ICC-02/05-01/20-116, para. 12.

² ICC-02/05-01/20-196, para. 34.