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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
Prosecution’s submissions regarding the conduct of the confirmation hearing

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 Applicants

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(Participation/Reparation)**

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REGISTRY

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Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. SUBMISSIONS

1. Pursuant to the order¹ of Pre-Trial Chamber II (“Chamber”), the Prosecution submits observations regarding the conduct of the confirmation hearing. The Prosecution recommends that the confirmation hearing take place in the following sequence:

- a. Introductory remarks by the Chamber.
- b. Reading of the charges.²
- c. Presentation on the merits by the Prosecution.³
- d. Presentation on the merits by Legal Representatives of Victims.
- e. Presentation on the merits by the Defence.⁴
- f. Final observations by the Prosecution.⁵
- g. Final observations by Legal Representatives of Victims.
- h. Final observations by the Defence.⁶

Challenges to jurisdiction or admissibility

2. The Prosecution does not intend to raise any questions regarding jurisdiction or admissibility in the context of the confirmation of charges. The Prosecution requests that, in the event that the Defence intends to raise such matters, they do so in writing, prior to the confirmation hearing.⁷ The Prosecution further requests that it be granted sufficient time to respond to such claims in writing.

¹ Email communication from Pre-Trial Chamber II, on 19 April 2021 at 16:50.

² Pursuant to Rule 122 (1) of the Rules of Procedure and Evidence (“Rules”).

³ Pursuant to Rule 122 (7).

⁴ Pursuant to Rule 122 (7).

⁵ Pursuant to Rule 122 (8).

⁶ Pursuant to Rule 122 (8).

⁷ As prescribed in Rule 122 (2) and Rule 58.

Objections or observations related to the proper conduct of the proceedings

3. Barring unforeseen circumstances, the Prosecution will not raise objections or observations related to the proper conduct of the proceedings.⁸ Here too, the Prosecution requests that, in the event that the Defence intends to raise such matters, they do so in writing, prior to the confirmation hearing. The Prosecution further requests that it be granted sufficient time to respond to such claims in writing.

Witness testimony

4. The Prosecution does not currently intend to call any witnesses during the confirmation hearing. If the Defence intends to do so, the Prosecution requests that it be provided adequate notice and that a detailed summary of anticipated testimony be disclosed at least 15 days prior to the confirmation hearing.⁹

Grounds to exclude criminal responsibility

5. Similarly, the Prosecution requests that the Defence notify the Prosecution of its intent to raise the existence of an alibi, or raise a ground for excluding criminal responsibility provided for in article 31, paragraph 1¹⁰ at least 15 days prior to the confirmation hearing.¹¹

Allocation of time for oral submissions on the merits

6. The Prosecution respectfully requests the allocation of six hours for its oral submissions on the merits (excluding final observations). The Prosecution intends to use the time to make submissions regarding, *inter alia*, contextual elements of article 7 and article 8, common elements of modes of liability, and crimes set out in the Document Containing the Charges and Pre-Confirmation Brief. Assuming a

⁸ Pursuant to Rule 122 (3).

⁹ See, in this context, rule 121 (6).

¹⁰ See, in this context, rule 79.

¹¹ See, in this context, rule 121 (6).

sitting schedule of three standard sessions a day, the Prosecution will therefore be able to complete its oral submissions by the end of the first session on 25 May 2021.

Visual aids

7. The Prosecution intends to use visual aids such as PowerPoint slides and annotated maps during the presentation of its case.

Final observations

8. Additionally, the Prosecution will require approximately 45 minutes for any final observations pursuant to rule 122 (8) of the Rules. The Prosecution notes, however, that the time required for final observations may vary based on the nature and extent of the issues that arise during the hearing. The Prosecution recommends that, as per prior practice,¹² final observations by all parties and participants be limited to responding to 1) arguments raised during the hearing and/or 2) any questions from the Chamber.



Fatou Bensouda
Prosecutor

Dated this 23rd day of April 2021

At The Hague, The Netherlands

¹² See, for example, ICC-02/04-01/15-401.