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

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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
and Confidential Annex 2**

**Prosecution's seventeenth 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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I. INTRODUCTION

1. The Prosecution submits its seventeenth 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

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. In addition, Annex 2 is classified as confidential since it contains information relating to the Prosecution’s witnesses.

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 sixteenth progress report submitted on 23 April 2021.³ 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.”⁴

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 have been disclosed.

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-02/05-01/20-366.

⁴ 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.”

*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*⁵

5. The Prosecution informs the Chamber that as of today there are 35,916 items (182,847 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 newly collected and registered evidence comprising 39 items (236 pages).

*Estimated timeline for evidence review and disclosure of all evidence in possession or control of the Prosecutor at the time of reporting*⁶

6. The Prosecution will review the items newly registered in Ringtail, as referred to above, for disclosure in the coming days, and will continue to review new evidence consistent with its statutory disclosure obligations on a rolling basis.

*Number and type of all items disclosed during the relevant period*⁷

7. Since the last progress report, the Prosecution disclosed the statements of Witnesses P-0926⁸ and P-0935,⁹ as well as their Arabic translations,¹⁰ making a total of 156 witnesses disclosed to date. Furthermore, four screening notes of P-0941, P-0942, P-0943 and P-0945 were also disclosed in the reporting period. Since the last progress report, the Prosecution has disclosed 40 items (316 pages), related to 9 witnesses. Of these, three items have been re-disclosed with fewer redactions.

8. Information in relation to the number and type of items is provided in the Prosecution's notifications of the disclosure of evidence on 4 and 5 May 2021.¹¹

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

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

⁷ ICC-02/05-01/20-169, para. 19(iv) and p. 20, order (f)(d).

⁸ Disclosed on 26 April 2021.

⁹ Disclosed on 26 April 2021.

¹⁰ Disclosed on 4 May 2021.

¹¹ ICC-02/05-01/20-380.

*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*¹²

9. The Prosecution confirms that it disclosed all relevant items by the disclosure deadline.

*Updates on the status of discussions on agreements as to evidence*¹³

10. On 14 April 2021, the Prosecution emailed the Defence a proposed list of additional agreed facts concerning war crimes. On 28 April 2021, the Defence informed the Prosecution that there was no agreement on these additional proposed agreed facts concerning war crimes.¹⁴

*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*¹⁵

11. Annex 1 to this report contains an updated list of investigative steps being undertaken by the Prosecution. As stated in the previous progress reports,¹⁶ the COVID-19 pandemic continues to negatively impact the Prosecution's work, primarily in relation to the collection of evidence.¹⁷

*Documents subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute*¹⁸

12. 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.

¹² ICC-02/05-01/20-169, para. 19(v) and 20-21, order (f)(e).

¹³ 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."

¹⁴ Email from the Defence on 28 April 2021.

¹⁵ ICC-02/05-01/20-169, para. 19(vi) and 20-21, order (f)(f).

¹⁶ 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.

¹⁷ See ICC-02/05-01/20-157-Conf-Exp-Corr, paras. 25-26.

¹⁸ ICC-02/05-01/20-169, paras. 26-28 and 20-21, order (f)(g).

*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*¹⁹

13. On 6 May 2021, the Single Judge rejected the Prosecution's requests to vary the time limit for disclosing incriminating evidence in relation to Witnesses P-0924, P-0926, P-0935 and P-0643.²⁰ As a result, the Prosecution's final list of witnesses for the purposes of the confirmation hearing now stands at 111 witnesses. Annex 2 to this report contains the list of statements and transcripts relating to these witnesses, in relation to which all transcription and translation into Arabic has been completed.²¹ The second part of Annex 2 contains the list of witnesses disclosed by the Prosecution, other than those on its confirmation witness list.

14. In addition, the Prosecution notifies the Chamber that six witnesses were inadvertently cited in the Pre-Confirmation Brief,²² and 33 witnesses in the List of Evidence,²³ that were not included in the Prosecution's confirmation witness list. Given that Arabic translations of the relevant witnesses statements have not been disclosed, the Prosecution does not rely on these witnesses. In addition, the Prosecution has found two typographical errors relating to witness codes in the Pre-Confirmation Brief at footnotes 239²⁴ and 960.²⁵

15. During the reporting period, the Language Services Unit ("LSU") completed two draft translations of witness statements for Witnesses P-0926 and P-0935. In

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

²⁰ ICC-02/05-01/20-379.

²¹ The Prosecution has included the second statement of Witness P-0643 (DAR-OTP-0218-0638) in Annex 2 given the indication of the Single Judge that, to the extent that this statement provided corrections concerning the identity of a source of information as well as the name of another individual that were mentioned in his previous statement, the Chamber will take them into consideration. *See* ICC-02/05-01/20-379, para. 29.

²² P-0023 (fn. 137 and 171), P-0025 (fn. 159 and 163), P-0032 (fn. 122 and 139), P-0039 (fn. 159), P-0096 (fn. 146) and P-0666 (fn. 234), ICC-02/05-01/20-346-Conf-AnxA.

²³ P-0002, P-0003, P-0004, P-0006, P-0023, P-0025, P-0032, P-0036, P-0037, P-0038, P-0039, P-0042, P-0045, P-0046, P-0053, P-0054, P-0055, P-0069, P-0072, P-0074, P-0076, P-0078, P-0080, P-0090, P-0095, P-0096, P-0130, P-0231, P-0288, P-0289, P-0605, P-0666 and P-0793. *See* List of Evidence, ICC-02/05-01/20-346-Conf-AnxB.

²⁴ P-0107 is referenced instead of P-0117.

²⁵ P-0024 is referenced instead of P-0924.

addition, LSU completed the revised translation for DAR-OTP-0027-0271,²⁶ which will be disclosed shortly.

IV. CONCLUSION

14. The Prosecution submits its seventeenth progress report to the Chamber, and stands ready to provide any additional information as may be required.



Fatou Bensouda
Prosecutor

Dated this 7th day of May 2021

At The Hague, The Netherlands

²⁶ See Pre-Confirmation Brief, ICC-02/05-01/20-346-Conf-AnxA, fn. 112-114. The new translation is registered at DAR-OTP-0219-3573.