



Original: English

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

Date: 21 May 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
**with SECRET, *EX PARTE*, only available to the Prosecution, Annex 1,
Confidential Annex 2 and Confidential *ex parte* only available to the Prosecution
Annex 3**

**Prosecution’s eighteenth 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:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci

Legal Representatives of the Victims

Ms Amal Clooney

Mr Nasser Mohamed Amin Abdalla

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
Defence**

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 its eighteenth 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. Annex 2 to this report is classified as confidential, since it contains information relating to the Prosecution’s witnesses. In addition, Annex 3 to this report is classified as confidential, *ex parte*, only available to the Prosecution, since it contains information pertaining to the locations of Prosecution 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 seventeenth progress report submitted on 7 May 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-02/05-01/20-382.

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 36,117 items (183, 596 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 197 items (641 pages) in Dutch. These items have been assigned to a reviewer and are currently being reviewed.

*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 is reviewing 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 one item (13 pages) of evidence (English translation of a video) relating to Witness P-0581. Information related to this disclosure is provided in the Prosecution's notification of the disclosure of evidence on 18 May 2021.⁸

*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*⁹

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

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 ICC-02/05-01/20-394.

⁹ ICC-02/05-01/20-169, para. 19(v) and 20-21, order (f)(e).

*Updates on the status of discussions on agreements as to evidence*¹⁰

9. In the last progress report,¹¹ the Prosecution informed the Chamber that the Defence communicated via email that there was no agreement on the additional proposed facts in relation to war crimes. The Defence also noted in their reply that the parties “may have reached the limits of what can be agreed upon and shall keep other issues for judicial determination.”¹² As a result, the Prosecution and Defence have not engaged further on this issue.

*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*¹³

10. Annex 1 to this report contains an updated list of investigative steps being undertaken by the Prosecution. As stated in the previous progress reports,¹⁴ the COVID-19 pandemic continues to negatively impact the Prosecution’s work, primarily in relation to the collection of evidence.¹⁵

*Documents subject to agreements pursuant to articles 54(3)(e), 72, and 93(8) of the Statute*¹⁶

11. There are no further update since the last report,¹⁷ as all processes have been completed in relation to this matter.

*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*¹⁸

¹⁰ 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.”

¹¹ ICC-02/05-01/20-382, para. 10.

¹² Email from the Defence on 28 April 2021.

¹³ ICC-02/05-01/20-169, para. 19(vi) and 20-21, order (f)(f).

¹⁴ 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, ICC-02/05-01/20-278, para. 13 and ICC-02/05-01/20-382, para. 11.

¹⁵ See ICC-02/05-01/20-157-Conf-Exp-Corr, paras. 25-26.

¹⁶ ICC-02/05-01/20-169, paras. 26-28 and 20-21, order (f)(g).

¹⁷ ICC-02/05-01/20-382, para. 12.

¹⁸ ICC-02/05-01/20-169, p. 20-21, order (f)(h).

12. The Prosecution's list of witnesses for the purposes of the confirmation hearing stands at 111 witnesses. Since the last report, there are no further updates for Annex 2 to this report.

13. In accordance with the Single Judge's decision of 12 May 2021,¹⁹ the Prosecution has continued to make all reasonable efforts to locate Witnesses P-0008, P-0034 and P-0085. It has now re-established contact with Witnesses P-0008 and P-0034, but the current whereabouts of Witness P-0085 remain unknown. For the assistance of the Chamber, additional information with respect to the Prosecution's contact with these witnesses and their current locations is contained in Annex 3 to this report.

14. The Language Services Unit ("LSU") has completed all translations and transcriptions for witnesses and their related evidential material.

IV. CONCLUSION

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



Fatou Bensouda
Prosecutor

Dated this 21st day of May 2021

At The Hague, The Netherlands

¹⁹ ICC-02/05-01/20-386, paras. 26-29 and p. 15.