

Pursuant to Trial Chamber I's instruction, dated 14 November 2024, this document has been reclassified as "Public"

ICC-02/05-01/20

CONFIDENTIAL

ANNEX I

to the Defence's Final Brief

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List of 15 unresolved legal and procedural issues impacting on the fairness of the trial mentioned in PART II – Chapter 1 of the Defence's Final Brief

- (i) The absence of any special agreement concluded with the Government of Sudan authorizing the Court to exercise its functions and powers on the territory of Sudan, pursuant to Article 4(2) of the Statute;¹
- (ii) The Government of Sudan's systematic denial of all Defence requests for judicial assistance;²
- (iii) Absence of support for Defence field missions in Sudan from the United Nations;³
- (iv) Registry's denial of security support for Defence's field missions in Sudan;⁴
- (v) Non-disclosure of the *Memorandum of Understanding* concluded between the Government of Sudan and the Office of the Prosecutor for its exclusive needs;⁵
- (vi) Inadmissibility of evidence not complying with the Court's Information Security Policies;⁶

¹ ICC-02/05-01/20-231-Conf-Exp (public redacted version [ICC-02/05-01/20-231-Red](#)) (application); [ICC-02/05-01/20-402](#) (application denied); [ICC-02/05-01/20-433](#), paras. 17-18 (leave to appeal denied); ICC-02/05-01/20-532-Conf (public redacted version [ICC-02/05-01/20-532-Red](#)) (application); ICC-02/05-01/20-561-Conf (public redacted version [ICC-02/05-01/20-561-Red](#)) (application denied); T-020, p. 83, line 25-p. 86, line 25 (leave to appeal denied); ICC-02/05-01/20-623-Conf (public redacted version [ICC-02/05-01/20-623-Red](#)) (application for reconsideration); ICC-02/05-01/20-650-Conf (public redacted version [ICC-02/05-01/20-650-Red](#)) (reconsideration denied).

² ICC-02/05-01/20-263-Conf-Exp (public redacted version [ICC-02/05-01/20-263-Red2](#)) (application); ; ICC-02/05-01/20-532-Conf (public redacted version [ICC-02/05-01/20-532-Red](#)) (application); ICC-02/05-01/20-557-Conf-Exp (public redacted version [ICC-02/05-01/20-557-Red](#)) (application); ICC-02/05-01/20-678-Conf (public redacted version [ICC-02/05-01/20-678-Red](#)) (application); ICC-02/05-01/20-768-Conf-Exp (application); [ICC-02/05-01/20-806](#) (application denied); [ICC-02/05-01/20-820](#) (leave to appeal denied); ICC-02/05-01/20-849 (application); ICC-02/05-01/20-853-Conf (public redacted version [ICC-02/05-01/20-853-Red](#)); ICC-02/05-01/20-875-Conf (public redacted version [ICC-02/05-01/20-875-Red](#)) (leave to appeal denied); ; ICC-02/05-01/20-902-Conf-Exp (public redacted version [ICC-02/05-01/20-902-Red](#)) (application); ICC-02/05-01/20-916-Conf-Exp (public redacted version [ICC-02/05-01/20-916-Red](#)) (application denied); ICC-02/05-01/20-938-Conf (public redacted version [ICC-02/05-01/20-938-Red](#)) (leave to appeal denied).

³ [ICC-02/05-01/20-269](#) (application); [ICC-02/05-01/20-402](#) (application denied); [ICC-02/05-01/20-433](#), paras. 17-18 (leave to appeal denied).

⁴ ICC-02/05-01/20-272-Conf-Exp (public redacted version [ICC-02/05-01/20-272-Red](#)) (application); [ICC-02/05-01/20-402](#) (application denied); [ICC-02/05-01/20-433](#), paras. 17-18 (leave to appeal denied); ICC-02/05-01/20-501-Conf-Exp (public redacted version [ICC-02/05-01/20-501-Red](#)) (application); ICC-02/05-01/20-561-Conf (public redacted version [ICC-02/05-01/20-561-Red](#)) (application denied); T-020, p. 83, line 25-p. 86, line 25 (leave to appeal denied); ; ICC-02/05-01/20-623-Conf (public redacted version [ICC-02/05-01/20-623-Red](#)) (application for reconsideration); ICC-02/05-01/20-650-Conf (public redacted version [ICC-02/05-01/20-650-Red](#)) (reconsideration denied); [ICC-02/05-01/20-643](#) (application); ICC-02/05-01/20-902-Conf-Exp (public redacted version [ICC-02/05-01/20-902-Red](#)) (application); ICC-02/05-01/20-916-Conf-Exp (public redacted version [ICC-02/05-01/20-916-Red](#)) (application denied); ICC-02/05-01/20-938-Conf (public redacted version [ICC-02/05-01/20-938-Red](#)) (leave to appeal denied).

⁵ [ICC-02/05-01/20-289](#) (application); ICC-02/05-01/20-323-Conf (public redacted version [ICC-02/05-01/20-323-Red](#)) (application denied); [ICC-02/05-01/20-372](#) (leave to appeal denied).

⁶ [ICC-02/05-01/20-322](#) (application); [ICC-02/05-01/20-402](#) (application denied); [ICC-02/05-01/20-433](#), paras. 17-18 (leave to appeal denied); [ICC-02/05-01/20-505-tENG](#) (application); T-017, p. 47, line 9-p. 48, line 21 (application denied); [ICC-02/05-01/20-525](#) (leave to appeal denied).

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- (vii) Inadmissibility of evidence collected in Sudan;⁷
- (viii) Various procedural, material and legal flaws impacting on the validity of the Confirmation Decision;⁸
- (ix) Non-disclosure of applications submitted by Group A and Group B victims;⁹
- (x) Impossibility of protecting victims, witnesses and other persons at risk on account of the activities of the Court in Sudan;¹⁰
- (xi) Prohibition of cooperation with the Court under Sudanese criminal law;¹¹
- (xii) Inadmissibility of evidence of the nickname *Ali Kushayb* collected after the Confirmation Hearing;¹²
- (xiii) Undue restriction on the right to a public hearing;¹³
- (xiv) Disclosure of identity of Defence witnesses to third parties with no protection;¹⁴ and
- (xv) Inadmissibility of Facebook documents.¹⁵

⁷ ICC-02/05-01/20-349-Conf-Exp (public redacted version [ICC-02/05-01/20-349-Red](#)) (application); [ICC-02/05-01/20-402](#) (application denied); [ICC-02/05-01/20-433](#), paras. 17-18 (leave to appeal denied); ICC-02/05-01/20-568-Conf (public redacted version [ICC-02/05-01/20-568-Red](#)) (application); ICC-02/05-01/20-588-Conf (public redacted version [ICC-02/05-01/20-588-Red](#)) (application denied); [ICC-02/05-01/20-605](#) (leave to appeal denied).

⁸ [ICC-02/05-01/20-465](#) (application for leave to appeal the confirmation decision); [ICC-02/05-01/20-517](#) (leave to appeal denied).

⁹ [ICC-02/05-01/20-497](#) (application); T-017, p. 44, line 18-p. 47, line 8 (application denied); [ICC-02/05-01/20-525](#) (leave to appeal denied); ICC-02/05-01/20-717-Conf (public redacted version [ICC-02/05-01/20-717-Red](#)) (application for reconsideration); [ICC-02/05-01/20-759](#) (reconsideration denied); [ICC-02/05-01/20-774](#) (leave to appeal denied).

¹⁰ ICC-02/05-01/20-485-Conf (public redacted version [ICC-02/05-01/20-485-Red](#)) (application); ICC-02/05-01/20-561-Conf (public redacted version [ICC-02/05-01/20-561-Red](#)) (application denied); T-020, p. 83, line 25-p. 86, line 25 (leave to appeal denied); ICC-02/05-01/20-623-Conf (public redacted version [ICC-02/05-01/20-623-Red](#)) (application for reconsideration); ICC-02/05-01/20-650-Conf (public redacted version [ICC-02/05-01/20-650-Red](#)) (reconsideration denied); ICC-02/05-01/20-942-Conf-Exp (public redacted version [ICC-02/05-01/20-942-Red](#)) (application).

¹¹ ICC-02/05-01/20-532-Conf (public redacted version [ICC-02/05-01/20-532-Red](#)) (application); ICC-02/05-01/20-561-Conf (public redacted version [ICC-02/05-01/20-561-Red](#)) (application denied); ; T-020, p. 83, line 25 to p. 86, line 25 (leave to appeal denied); ICC-02/05-01/20-623-Conf (public redacted version [ICC-02/05-01/20-623-Red](#)) (application for reconsideration); ICC-02/05-01/20-650-Conf (public redacted version [ICC-02/05-01/20-650-Red](#)) (reconsideration denied); ICC-02/05-01/20-979-Conf (application); ICC-02/05-01/20-995-Conf (public redacted version [ICC-02/05-01/20-995-Red](#)) (application denied).

¹² [ICC-02/05-01/20-636](#) (application); ICC-02/05-01/20-668-Conf (public redacted version [ICC-02/05-01/20-668-Red](#)) (application denied); [ICC-02/05-01/20-682](#) (leave to appeal denied).

¹³ [ICC-02/05-01/20-932](#) (application); email from the Chamber, 31 May 2023, 2.51 p.m. (application denied); ICC-02/05-01/20-1029-Conf (application); email from Chamber, 12 October 2023, 11.57 a.m. (application denied); T-128, p. 48, line 14-p. 54, line 14 (application denied).

¹⁴ ICC-02/05-01/20-1007-Conf (Public redacted version [ICC-02/05-01/20-1007-Red](#)) (application); ICC-02/05-01/20-1013-Conf (Public redacted version [ICC-02/05-01/20-1013-Red](#)) (application denied); ICC-02/05-01/20-1024-Conf (leave to appeal denied).

¹⁵ ICC-02/05-01/20-1041-Conf (public redacted version [ICC-02/05-01/20-1041-Red](#)) (oral application denied); ICC-02/05-01/20-1047-Conf (public redacted version [ICC-02/05-01/20-1047-Red](#)) (leave to appeal denied).