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Date: **15 March 2022**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

**Public Redacted Version of “Prosecution’s application under regulation 35 to
extend the disclosure and witness list deadlines”, 10 March 2022,
ICC-02/05-01/20-624-Conf**

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I. INTRODUCTION

1. On 8 September 2021, the Chamber ordered the Prosecution to disclose all evidence which it intends to rely on by 5 January 2022 (“Disclosure Deadline”)¹ and to also provide the list of witnesses (“List of Witnesses”) that it intends to rely on at trial by 5 January 2022 (“Witness List Deadline”).²

2. Pursuant to regulation 35 of the Regulations of the Court (“Regulations”) and articles 64(2), 64(6)(f) and 69(3) of the Rome Statute (“Statute”), the Prosecution requests that Trial Chamber I (“Chamber”) extend the lapsed Disclosure and Witness List Deadlines to: (i) disclose material relating to P-0878,³ P-0916⁴ and P-1047⁵ (the “Three Witnesses”); (ii) permit the addition to the Prosecution’s list of evidence (“List of Evidence”) of the material of the Three Witnesses; and (iii) permit the addition to the Prosecution’s List of Witnesses of P-0916, P-1047, P-1061 and P-1062.

3. On 16 December 2021, the Prosecution submitted an application pursuant to regulation 35 of the Regulations concerning the Three Witnesses and others, requesting the Chamber to extend the Disclosure Deadline in relation to these witnesses⁶ due to a *coup d’état* in Sudan on 25 October 2021 and renewed travel restrictions imposed as a result of the ongoing COVID-19 pandemic (“First Regulation 35 Application”).⁷

4. On 24 December 2021, the Chamber ruled that since the Prosecution had not yet conducted and/or concluded interviews of the Three Witnesses and others, it

¹ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, Status Conference (“Status Conference”), 8 September 2021, ICC-02/05-01/20-T-013-ENG, p. 17, l. 23-25 and p. 18, l. 1-7 and p. 78, l. 1-13.

² Status Conference, p. 78, l. 11-12.

³ DAR-OTP-0224-0071, DAR-OTP-0224-0086, DAR-OTP-0224-0093 and DAR-OTP-0224-0094, disclosed on 25 February 2022.

⁴ DAR-OTP-0224-0023, DAR-OTP-0220-1925, DAR-OTP-0224-0047, DAR-OTP-0224-0048, DAR-OTP-0224-0049, DAR-OTP-0224-0050 and DAR-OTP-0224-0053, disclosed on 25 February 2022.

⁵ DAR-OTP-0220-2101, DAR-OTP-0220-2120, DAR-OTP-0220-2142, DAR-OTP-0220-2160, DAR-OTP-0220-2181, DAR-OTP-0220-2199, DAR-OTP-0220-2206, DAR-OTP-0220-2226, and DAR-OTP-0220-2243, disclosed on 4 March 2022.

⁶ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, “Corrected version of “Prosecution’s request for an extension of time to disclose materials of seven witnesses and a report pursuant to regulation 35 of the Regulations of the Court”, 16 December 2021, ICC-02/05-01/20-541-Conf-Exp” (“First Regulation 35 Application”).

⁷ First Regulation 35 Application, paras. 10-12.

“consider[ed] it premature to consider any request pursuant to Regulation 35 of the Regulations.”⁸ The Chamber further ruled, that once the Prosecution has possession of the prior recorded testimony and any related material of among others, the Three Witnesses, the Prosecution should then seek the Chamber’s leave to add them to the List of Evidence and to rely on the material at trial.⁹

5. Specifically, the Prosecution requests: (i) that the lapsed Disclosure Deadline be extended; (ii) that the witness statements of P-0916 and P-0878, and transcripts of P-1047, be added to the List of Evidence; (iii) the addition of P-1061 and P-1062 to the List of Witnesses, whose evidence concerns the biometric examination of the Accused, which the Defence does not oppose;¹⁰ and (iv) the addition of P-0916 and P-1047 to the List of Witnesses, whose evidence primarily concerns charged crimes in Mukjar and surrounding areas and the individual criminal responsibility of the Accused.

6. Together, this material relates to core issues in the case and will assist the Chamber in its determination of the truth under article 69(3) of the Statute. Moreover, as set out below, an extension of time of the lapsed Disclosure Deadline and Witness List Deadline will not cause any prejudice to the Accused’s right to a fair trial under article 67(1).

II. CLASSIFICATION

7. Pursuant to regulation 23*bis*(1) of the Regulations, the Prosecution files this request as confidential, since it contains confidential information that identifies the witnesses. The Prosecution will file a public redacted version as soon as practicable.

III. SUBMISSIONS

⁸ *Prosecutor v. Abd-Al-Rahman (“Ali Kushayb”)*, “Decision on the Prosecution’s request for an extension of time limit to disclose and add items to its list of evidence and list of witnesses” (“Regulation 35 Decision”), 24 December 2021, ICC-02/05-01/20-545-Conf, para. 8.

⁹ Regulation 35 Decision, para. 8.

¹⁰ Face to face meeting between the Prosecution and Defence teams at the ICC Premises on 22 February 2022.

There is good cause to authorise the disclosure of the material of the Three Witnesses and to add P-0916, P-1047, P-1061 and P-1062 to the List of Witnesses after the lapsed Disclosure Deadline and Witness List Deadline

A coup d'état in Sudan and extended COVID-19 restrictions demonstrate good cause and justify an extension of the lapsed time limit for the disclosure of the materials of the Three Witnesses

8. Despite best efforts, the Prosecution was unable to conduct and conclude the interviews of the Three Witnesses in order to disclose their material to the Defence before the Disclosure Deadline. The difficulties set out below led the Prosecution to file the First Regulation 35 Application concerning these Three Witnesses and others prior to the Disclosure Deadline.¹¹

9. Regulation 35(2) of the Regulations provides that the Chamber “may extend or reduce a time limit if good cause is shown [...]. After the lapse of a time limit, an extension of time may only be granted if the participant seeking the extension can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.”

10. The Appeals Chamber has held that “[a] cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.”¹²

11. As the *Ntaganda* Trial Chamber held, “additions to a list of witnesses after the relevant deadline may, in principle, be made when the terms of Regulation 35(2) of the Regulations are met or, even where the terms of that regulation have not been met,

¹¹ First Regulation 35 Application, para. 43.

¹² *Prosecutor v. Katanga and Ngudjolo Chui*, “Reasons for the ‘Decision on the Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’”, 27 June 2008, ICC-01/04-01/07-653, para. 5.

where to do so would nonetheless be in the interests of justice and the determination of the truth”.¹³

12. As noted in the First Regulation 35 Application concerning the Three Witnesses and others,¹⁴ the Prosecution’s efforts to interview and/or conclude interviews of witnesses in Sudan was materially affected by: “(i) the significant disruption to cooperation between the Prosecution and the GoS. In particular, many GoS focal points upon whom the Prosecution relied on to facilitate its operations in Sudan have been removed from their positions and have not yet been replaced; (ii) the severe disruption to internet services and phone networks in Sudan as a result of the *coup d’état* which has impeded the Prosecution’s ability to contact witnesses and conduct interviews remotely; and (iii) the ongoing political and security related instability in Sudan, as well as increased COVID-19 related travel restrictions, which have forced the Prosecution to cease its ongoing investigations in Sudan and prevented any further investigative activities on the ground, including witness interviews, as well as witness security assessments.”¹⁵

13. Notwithstanding the challenges as set out in the First Regulation 35 Application, the Prosecution deployed to Sudan in December 2021 to re-establish contact with the GoS, including for the purpose of facilitating an investigative mission in January to complete the scheduled interviews of the Three Witnesses.¹⁶ During January and February 2022, the investigative mission went ahead as planned, despite the various security and health risks. During this mission, the Prosecution team was able to finalise the statement of P-0916, which was earlier aborted due to the *coup d’état* in Sudan, conduct the re-interview of P-0878 and conduct the interview of P-1047. Notably, as previously explained, all Three Witnesses were also unable and/or unwilling to travel outside the territory of Sudan.¹⁷

¹³ *Prosecutor v. Ntaganda*, “Decision on Prosecution application under Rule 68(2)(b) and Regulation 35 for admission of prior record testimony of Witness P-0551”, 19 January 2017, ICC-01/04-02/06-1733, para. 6.

¹⁴ First Regulation 35 Application, paras. 13-16.

¹⁵ First Regulation 35 Application, para. 14 (fn. omitted).

¹⁶ First Regulation 35 Application, paras. 13-16.

¹⁷ First Regulation 35 Application, paras. 32, 35, 39.

The requested extension of the lapsed Disclosure Deadline for the addition of the materials of the Three Witnesses to the List of Evidence and the addition of P-0916, P-1047, P-1061 and P-1062 to the List of Witnesses is reasonable under the circumstances

14. On 16 December 2021, the Prosecution filed in advance of the Disclosure Deadline its request to extend the Disclosure Deadline in light of its challenges in securing the interviews of, among others, the Three Witnesses.¹⁸ The Prosecution set out in the First Regulation 35 Application the relevance of the testimony that the Three Witnesses¹⁹ would provide to the charges against the Accused,²⁰ as well as the reasons for seeking an extension of the Disclosure Deadline in respect of the Three Witnesses and others.²¹ However, the Chamber ruled that the application was “premature” at that time.²²

15. Additionally, the request to add P-0916 and P-1047 to the List of Witnesses is intrinsically linked to the request to add their material to the List of Evidence after the lapsed Disclosure Deadline and as such, this addition is justifiable on the same basis.

16. On 24 December 2021, in response to the First Regulation 35 Application, the Chamber authorised the Prosecution to disclose the report from the Netherlands Forensic Institute (“NFI”) (“NFI Report”) on 31 January 2022.²³ The Prosecution now seeks authorisation to add P-1061 and P-1062 to the List of Witnesses, as their anticipated evidence relates to the biometric examination of the Accused. The Defence does not oppose this request.²⁴

17. Together, the reasons set out above, which were beyond the Prosecution’s control, constitute good cause and “objectively provide justification for the inability of [the Prosecution] to comply with [its disclosure] obligations”.²⁵ The Prosecution has

¹⁸ First Regulation 35 Application.

¹⁹ P-0878 is already on the List of Witnesses, see #85 at ICC-02/05-01/20-551-Conf-Anx2-Red.

²⁰ First Regulation 35 Application, paras. 31, 33, 38.

²¹ First Regulation 35 Application, paras. 32, 34-35, 39.

²² Regulation 35 Decision, para. 8.

²³ Regulation 35 Decision, para. 9.

²⁴ Face to face meeting between the Prosecution and Defence teams at the ICC Premises on 22 February 2022.

²⁵ *Prosecutor v. Katanga and Ngudjolo Chui*, “Reasons for the ‘Decision on the Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations

made every effort to mitigate the factors referred to above. As a result, the requested extensions of the lapsed Disclosure Deadline and Witness List Deadline are reasonable under these circumstances.

The witnesses provide critical evidence that is required to determine the truth

18. It is in the interests of justice and consistent with the Chamber's functions under articles 64(2) and 69(3) of the Statute to grant the Prosecution's request for an extension of the Disclosure Deadline and Witness List Deadline. The evidence from the witnesses will provide the Chamber with critical evidence regarding the charged crimes and the individual criminal responsibility of the Accused, as set out below.

Overview of Witnesses

- *Witness statement of P-0916*

19. P-0916, a [REDACTED] located in Sudan, [REDACTED]. P-0916 provides testimony on the background of the Darfur conflict,²⁶ rebel attacks on Mukjar in July²⁷ and August 2003,²⁸ and the presence of Government of Sudan ("GoS") Forces²⁹ in Mukjar³⁰ as well as the arrest of males between August and October 2003.³¹ P-0916 also provides evidence on the Accused's background and his role as a Militia/*Janjaweed* leader³² and presence in Mukjar in August 2003,³³ where he attended a meeting with State Minister for the Ministry of the Interior Ahmad Harun ("Harun") and other high-ranking officials,³⁴ before moving to attack Mukjar and other villages,³⁵ including

on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation", 27 June 2008, ICC-01/04-01/07-653, para. 5.

²⁶ P-0916, DAR-OTP-0224-0023 at 0025-0026, paras. 6-10.

²⁷ P-0916, DAR-OTP-0224-0023 at 0026-0027, paras. 11-13.

²⁸ P-0916, DAR-OTP-0224-0023 at 0027-0028, paras. 19-20.

²⁹ The GoS forces included the Sudanese Armed Forces, also known as the Sudanese People's Armed Forces, the Popular Defence Forces, the Central Reserve Forces, the Popular Police Forces and the Sudanese Police (together, the "GoS Forces").

³⁰ P-0916, DAR-OTP-0224-0023 at 0027-0028, paras. 14-18, 21-22.

³¹ P-0916, DAR-OTP-0224-0023 at 0028-0031, paras. 23-31.

³² P-0916, DAR-OTP-0224-0023 at 0032-0033, paras. 37-38.

³³ P-0916, DAR-OTP-0224-0023 at 0032-0033, para. 36.

³⁴ P-0916, DAR-OTP-0224-0023 at 0033, paras. 39-40.

³⁵ P-0916, DAR-OTP-0224-0023 at 0033, paras. 41-44.

Kodoom, Bindisi and surrounding villages,³⁶ resulting in civilians being displaced to Mukjar.³⁷

20. P-0916 also provides evidence on a rebel attack on Mukjar in February 2004³⁸ and the Accused's arrival to Mukjar with Militia/*Janjaweed* at the same time.³⁹ The witness describes meetings of high-ranking officials in Mukjar, including Harun and the Accused, which took place at the end of February 2004,⁴⁰ prior to the Sindu operation.⁴¹ P-0916 details the establishment of checkpoints around Mukjar and the arrest and detention of civilians purported to be allies or supporters of rebel groups, especially civilian leaders.⁴² P-0916 further provides evidence on the execution of detainees.⁴³ Lastly, P-0916 provides evidence on the difficulty of reporting sexual violence during the charged period⁴⁴ and also information regarding the Accused's identity.⁴⁵

21. The Prosecution has set out in the First Regulation 35 Application, the challenges it faced in completing P-0916's interview.⁴⁶ The Prosecution also outlined in the same application,⁴⁷ the anticipated evidence of P-0916, so as to give notice to the Defence of the likely relevance of P-0916's evidence to the case. Furthermore, the Prosecution disclosed P-0916's screening note with identity redactions on 17 December 2021 and made a further disclosure of P-0916's screening note, without identity redactions, on 14 February 2022.

22. P-0916's witness statement and the Arabic translation of witness statement, were disclosed to the Defence on 25 February 2022.

³⁶ P-0916, DAR-OTP-0224-0023 at 0034, paras. 46-47.

³⁷ P-0916, DAR-OTP-0224-0023 at 0033-0034, paras. 43, 45.

³⁸ P-0916, DAR-OTP-0224-0023 at 0034, para. 49 and 0036, para. 63.

³⁹ P-0916, DAR-OTP-0224-0023 at 0034-0035, paras. 49-55, 58 and 0037, para. 65.

⁴⁰ P-0916, DAR-OTP-0224-0023 at 0035-0037, paras. 59-60, 64.

⁴¹ P-0916, DAR-OTP-0224-0023 at 0037-0038, paras. 66-73.

⁴² P-0916, DAR-OTP-0224-0023 at 0038-0042, paras. 74-82, 85-90, 92-94.

⁴³ P-0916, DAR-OTP-0224-0023 at 0040-0043, paras. 83, 92, 95-101.

⁴⁴ P-0916, DAR-OTP-0224-0023 at 0043-0044, paras. 102-108.

⁴⁵ P-0916, DAR-OTP-0224-0023 at 0035, paras. 56-57.

⁴⁶ First Regulation 35 Application, para. 32.

⁴⁷ First Regulation 35 Application, para. 31.

- *Witness statement of P-0878*

23. P-0878, located in Sudan, is a former [REDACTED] who was based in [REDACTED]. In his additional witness statement, P-0878 corrects material information in the statement that P-0878 provided to the [REDACTED], including in relation to Harun using language that “incited the Fursan”,⁴⁸ evidence that the Accused was commander of the *Fursan*, which was “left out” of [REDACTED] statement,⁴⁹ and that P-0878 received [REDACTED], as indicated in his [REDACTED].⁵⁰

24. P-0878 also provides additional evidence relating to the presence of Militia/*Janjaweed* leaders Al-Dayf Samih (“Samih”) and Muhammad Adam Bonjouse during the attack on Kodoom and Bindisi,⁵¹ and in Mukjar in August 2003, at the same time he saw the Accused.⁵² P-0878 further clarifies the circumstances in which he provided his handwritten statement.⁵³

25. The Prosecution has set out in the First Regulation 35 Application the challenges it faced in securing the re-interview of P-0878.⁵⁴ P-0878’s witness statement,⁵⁵ together with his handwritten statement,⁵⁶ and [REDACTED⁵⁷] have already been disclosed to the Defence, as such the Defence were aware of this witness’ core evidence prior to the Disclosure Deadline. Thus, the addition to the List of Evidence of P-0878’s additional statement, which amplify and/or clarify material already in the possession of the Defence, would not be prejudicial to the rights of the Accused.

⁴⁸ DAR-OTP-0224-0071 at 0074-0075, para. 14.

⁴⁹ DAR-OTP-0224-0071 at 0075, para. 15.

⁵⁰ DAR-OTP-0224-0071 at 0075-0076, para. 19.

⁵¹ DAR-OTP-0224-0071 at 0079, paras. 36-39.

⁵² DAR-OTP-0224-0071 at 0079, para. 37.

⁵³ DAR-OTP-0224-0071 at 0081, paras. 45-49.

⁵⁴ First Regulation 35 Application, paras. 34-35.

⁵⁵ Prosecution Interview of P-0878, DAR-OTP-0219-3062, disclosed first on 28 March 2021 and again on 25 October 2021 in a less redacted version.

⁵⁶ Handwritten Statement of P-0878, DAR-OTP-0217-0334, disclosed first on 27 March 2021 and again on 25 October 2021 in a lesser redacted version. English translation at DAR-OTP-0215-9919, disclosed on the same dates as the original.

⁵⁷ DAR-OTP-0218-0289 at 0304, disclosed on 26 March 2021 and DAR-OTP-0218-0352 at 0355, disclosed on 25 March 2021. English translation available at DAR-OTP-0219-2619 at 2625, disclosed on 28 March 2021.

26. P-0878's additional statement was disclosed to the Defence on 25 February 2022, and the Arabic translation of witness statement was disclosed on 4 March 2022.

- *Witness statement of P-1047*

27. P-1047, [REDACTED], including during the charged period.⁵⁸ As the [REDACTED] Locality, he knew the Accused⁵⁹ and had a [REDACTED,] including Harun.⁶⁰ He was present in Mukjar in 2003-2004 and provides evidence in relation to rebel attacks on Mukjar,⁶¹ the integration of the Militia/*Janjaweed* into GoS Forces in Mukjar,⁶² as well as GoS armed operations conducted against rebel forces, including in the Sindu area in around February 2004.⁶³

28. P-1047 also provides evidence in relation to the detention of persons in the police station in Mukjar following the Sindu operation.⁶⁴ [REDACTED] in Mukjar by Minister of the Interior Abdel Raheem Muhammad Hussein and Harun,⁶⁵ as well as his [REDACTED] with Harun,⁶⁶ Abd-Al-Hakam⁶⁷ and Samih.⁶⁸ P-1047 further

⁵⁸ P-1047, DAR-OTP-0220-2101 at 2111, l. 344-346; P-1047, DAR-OTP-0220-2120 at 2122, l. 57-58 and 2127, l. 214-215 and 2139, l. 643-644.

⁵⁹ P-1047, DAR-OTP-0220-2101 at 2112, l. 371-376; P-1047, DAR-OTP-0220-2206 at 2211-2212, l. 163-199 and 2217-2218, l. 382-441; P-1047, DAR-OTP-0220-2226 at 2234, l. 292-296.

⁶⁰ P-1047, DAR-OTP-0220-2120 at 2128-2129, l. 270-310; P-1047, DAR-OTP-0220-2142 at 2155, l. 453-462; P-1047, DAR-OTP-0220-2160 at 2162-2163, l. 56-97 and 2166, l. 200-209 and 2172-2174, l. 424-485; P-1047, DAR-OTP-0220-2206 at 2215, l. 314-333 and 2217-2218, l. 382-427.

⁶¹ P-1047, DAR-OTP-0220-2120 at 2132-2140, l. 404-430, 451-481, 532-535, 562-567, 570-681; P-1047, DAR-OTP-0220-2142 at 2147-2150, l. 170-229, 272-287; P-1047, DAR-OTP-0220-2181 at 2191, l. 345-375 and 2192, l. 392-397 and 2195, l. 523-525 and 2197, l. 579; P-1047, DAR-OTP-0220-2199 at 2201, l. 55-57, 71-72; P-1047, DAR-OTP-0220-2226 at 2229, l. 87-104 and 2235-2237, l. 314-413.

⁶² P-1047, DAR-OTP-0220-2206 at 2221, l. 527-530; P-1047, DAR-OTP-0220-2120 at 2131, l. 374-377; P-1047, DAR-OTP-0220-2160 at 2172-2174, l. 424-463, 474-479; P-1047, DAR-OTP-0220-2243 at 2245-2247, l. 61-123.

⁶³ P-1047, DAR-OTP-0220-2142 at 2149-2151, l. 231-320; P-1047, DAR-OTP-0220-2206 at 2212, l. 220-227 and 2214, l. 277-279.

⁶⁴ P-1047, DAR-OTP-0220-2142 at 2155-2156, l. 430-432, 453-490; P-1047, DAR-OTP-0220-2160 at 2162-2164, l. 48-146 and 2169-2174, l. 307-485 and 2176-2179, l. 545-659; P-1047, DAR-OTP-0220-2206 at 2215-2216, l. 314-361.

⁶⁵ P-1047, DAR-OTP-0220-2142 at 2147-2148, l. 183-198; P-1047, DAR-OTP-0220-2160 at 2166, l. 186-209; P-1047, DAR-OTP-0220-2199 at 2204, l. 171-175.

⁶⁶ P-1047, DAR-OTP-0220-2142 at 2155, l. 456-462; P-1047, DAR-OTP-0220-2160 at 2162-2163, l. 56-97 and 2172-2174, l. 424-478; P-1047, DAR-OTP-0220-2206 at 2215, l. 327-333 and 2218, l. 418-427 and 2223, l. 591-593.

⁶⁷ P-1047, DAR-OTP-0220-2120 at 2140, l. 699-708; P-1047, DAR-OTP-0220-2181 at 2187-2188, l. 205-230 and 2189, l. 282-288 and 2191, l. 353-378 and 2196, l. 558-563; P-1047, DAR-OTP-0220-2206 at 2210, l. 165-173; P-1047, DAR-OTP-0220-2226 at 2229-2230, l. 114-121 and 2241, l. 544-557; P-1047, DAR-OTP-0220-2243 at 2258, l. 551-554.

⁶⁸ P-1047, DAR-OTP-0220-2120 at 2131-2132, l. 386-400.

describes his [REDACTED] with the Accused, during one of which the Accused spoke directly to Harun by satellite phone.⁶⁹

29. The Prosecution had set out in the First Regulation 35 Application the challenges it faced in securing an interview with P-1047.⁷⁰ An [REDACTED] was disclosed to the Defence, prior to the Disclosure Deadline.⁷¹ Furthermore, the Prosecution disclosed P-1047's screening note with identity redactions on 4 January 2022 and made a further disclosure of P-1047's screening note, without identity redactions, on 14 February 2022.

30. P-1047's draft transcripts, in both English and Arabic were disclosed to the Defence on 4 March 2022.

- ***P-1061 and P-1062***

31. P-1061 is a forensic investigator employed to the Hague Police Unit ("HPU") and attached to the Forensic Investigative Team, was a part of the team involved in the biometric examination of the Accused. P-1061 subsequently provided a report ("HPU Report")⁷² setting out his role and responsibility, alongside his colleague, in the examination of the Accused, which included taking the Accused's physical measurements and photographs of his body. They later marked the photographs to indicate special markings on the body of the Accused.

32. P-1062 is an analyst with the NFI, who was a part of a team that analysed photographs of the Accused against still images from a purported video recording of the Accused, which informed their findings in the NFI Report.⁷³

The requested extension after the lapse of the Disclosure Deadline and Witness List Deadline is not prejudicial to the Accused's right to a fair trial

⁶⁹ See above fn. 59.

⁷⁰ First Regulation 35 Application, para. 39.

⁷¹ DAR-OTP-0218-0240, at 0249, disclosed on 29 March 2021 and DAR-OTP-0218-0413 at 0421, disclosed on 25 March 2021. English translation at DAR-OTP-0219-2611 at 2618, disclosed on 28 March 2021.

⁷² DAR-OTP-0223-0241, disclosed on 5 January 2022. English translation at DAR-OTP-0220-1529, disclosed on 24 January 2022.

⁷³ DAR-OTP-0223-0443, DAR-OTP-0223-0454, and DAR-OTP-0223-0461, disclosed on 31 January 2022.

33. The requested extension of the Disclosure Deadline after the lapse of time is limited only to material related to the Three Witnesses which the Prosecution has not been able to disclose earlier due to circumstances which are outside of its control.

34. Noting that P-0878 is already on the List of Witnesses, the requested extension of the lapsed Witness List Deadline to permit the addition of P-0916, P-1047, P-1061 and P-1062 is limited to these witnesses, who provide relevant evidence to the case.

35. As set out in preceding paragraphs, the Prosecution was unable to secure material related to the Three Witnesses before the Disclosure Deadline. The Prosecution notes that the Defence does not object to the addition of P-1061 and P-1062 to the List of Witnesses. For P-0916 and P-1047, the Prosecution is prepared to call these witnesses later in trial, so as to mitigate any prejudice to the Defence.

36. The Accused's rights under article 67 of the Statute, including in particular 67(1)(a) and (b), will not be materially impacted on the basis that the Prosecution: (i) as set out above, the Prosecution previously disclosed some materials relating to the Three Witnesses; (ii) will call two of the Three Witnesses⁷⁴ to testify at a later stage of trial, if necessary; and (iii) the additional witness statement of P-0878 is an elaboration of issues discussed in his earlier statements disclosed to the Defence, and as such the substantive information in the additional statement is not materially new to the Defence.

37. These measures will mitigate any potential prejudice to the Accused and ensure consistency with the Prosecution's duty to establish the truth under article 54, the rights of the victims under article 68, and the Chamber's duty to conduct a fair and expeditious trial, with full respect for the rights of the accused and due regard for the protection of victims and witnesses, under article 64(2) of the Statute.

IV. CONCLUSION

⁷⁴ P-0916 and P-1047.

38. For the reasons outlined above, the Prosecution respectfully requests that the Chamber extend the lapsed Disclosure Deadline for the material relating to the Three Witnesses, as set out above. The Prosecution also requests permission to add material related to the Three Witnesses to its List of Evidence, and to add P-0916, P-1047, P-1061 and P-1062 to its List of Witnesses.



Karim A.A. Khan QC
Prosecutor

Dated this 15th day of March 2022

At The Hague, The Netherlands