



Original: English

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

Date: 31 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 associated deadlines concerning newly obtained material and to introduce into evidence P-0922’s new statement under rule 68(3)”,  
29 March 2022, ICC-02/05-01/20-652-Conf**

**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**

Mr Karim A. A. Khan QC  
Ms Nazhat Shameem Khan  
Mr Julian Nicholls

**Counsel for the Defence**

Mr Cyril Laucci  
Mr Iain Edwards

**Legal Representatives of the Victims**

Ms Natalie von Wistinghausen  
Mr Nasser Mohamed Amin Abdalla

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

---

**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Section**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

## I. INTRODUCTION

1. On 8 September 2021, Trial Chamber I (“Chamber”) ordered the Prosecution to disclose all evidence which it intends to rely on by 5 January 2022 (“Disclosure Deadline”)<sup>1</sup> and to also provide the lists of witnesses and evidence (“Lists of Witnesses and Evidence”) that it intends to rely on at trial by the same date (“Lists of Witnesses and Evidence Deadline”).<sup>2</sup>

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 the Chamber to authorise (i) an extension of the lapsed Disclosure Deadline for the newly obtained material of P-0877,<sup>3</sup> P-0922,<sup>4</sup> P-0979,<sup>5</sup> P-0999<sup>6</sup> and P-1040<sup>7</sup> (the “Five Witnesses”) until 10 April 2022;<sup>8</sup> (ii) the addition to the Prosecution’s list of evidence (“List of Evidence”) of the material related to the Five Witnesses; and (iii) the addition of P-0979, P-0999 and P-1040 to the Prosecution’s List of Witnesses, whose

<sup>1</sup> First 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.

<sup>2</sup> [First Status Conference](#), p. 78, l. 11-12.

<sup>3</sup> P-0877, DAR-OTP-0224-0142 (Arabic translation at DAR-OTP-0220-2916); DAR-OTP-0224-0161; DAR-OTP-0224-0164; DAR-OTP-0224-0165; DAR-OTP-0224-0166; DAR-OTP-0224-0167; DAR-OTP-0224-0169; DAR-OTP-0224-0168, all items were disclosed on 18 March 2022.

<sup>4</sup> P-0922, DAR-OTP-0220-2864 (Arabic translation at DAR-OTP-0220-3021), DAR-OTP-0220-2875 (English translation at DAR-OTP-0220-3035), DAR-OTP-0220-2876 (English translation at DAR-OTP-0220-3037), disclosed on 18 March 2022 and the translations on 25 March 2022.

<sup>5</sup> P-0979, DAR-OTP-0224-0273 (Arabic translation to be disclosed as soon as practicable), DAR-OTP-0224-0299, DAR-OTP-0224-0302, DAR-OTP-0224-0303, DAR-OTP-0224-0304, DAR-OTP-0224-0305, DAR-OTP-0224-0306, DAR-OTP-0224-0307.

<sup>6</sup> P-0999, DAR-OTP-0220-3067; DAR-OTP-0220-3070; DAR-OTP-0220-3073; DAR-OTP-0220-3083; DAR-OTP-0220-3093; DAR-OTP-0220-3106; DAR-OTP-0220-3111; DAR-OTP-0220-3123; DAR-OTP-0220-3126; DAR-OTP-0220-3128, disclosed on 25 March 2022 (English translations to be disclosed as soon as practicable). P-0999, DAR-OTP-0224-0136 (English translation to be disclosed as soon as practicable). P-0999, DAR-OTP-0219-6069; DAR-OTP-0219-6073 (English translation at DAR-OTP-0219-7255); DAR-OTP-0219-6074 (English translation at DAR-OTP-0219-7257); DAR-OTP-0219-6075 (English translation at DAR-OTP-0219-7259); DAR-OTP-0219-6076 (English translation at DAR-OTP-0219-7261); DAR-OTP-0219-6077 (English translation at DAR-OTP-0219-7263); DAR-OTP-0219-6078 (English translation at DAR-OTP-0219-7265); DAR-OTP-0219-6079 (English translation at DAR-OTP-0219-7267); DAR-OTP-0219-6080 (English translation at DAR-OTP-0219-7269); DAR-OTP-0219-6081 (English translation at DAR-OTP-0219-7271); DAR-OTP-0219-6083 (English translation at DAR-OTP-0219-7273), disclosed on 17 December 2021.

<sup>7</sup> P-1040, DAR-OTP-0224-0184 (Arabic translation at DAR-OTP-0220-3146), DAR-OTP-0224-0216, DAR-OTP-0224-0215, DAR-OTP-0224-0214, DAR-OTP-0224-0213, DAR-OTP-0224-0212, DAR-OTP-0224-0211, DAR-OTP-0224-0210, DAR-OTP-0224-0209, DAR-OTP-0224-0208, DAR-OTP-0224-0207, DAR-OTP-0224-0206, DAR-OTP-0224-0205 (English translation at DAR-OTP-0220-3056), DAR-OTP-0224-0204 (English translation at DAR-OTP-0220-3054), DAR-OTP-0224-0203, DAR-OTP-0224-0201 (English translation at DAR-OTP-0220-3051), disclosed on 18 March 2022 and the translations on 25 March 2022.

<sup>8</sup> Footnotes 3-7 above indicate that most of the material related to the Five Witnesses has already been disclosed, with the exception of (i) the Arabic translation of P-0979’s statement; (ii) the English translation of P-0999’s transcripts; and (iii) the English translation of document DAR-OTP-0220-3128 provided by P-0999.

evidence primarily concerns charged crimes in Mukjar, Deleig and their surrounding areas, and the individual criminal responsibility of the Accused.

3. In addition, pursuant to rule 68(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests the Chamber to authorise the introduction into evidence of P-0922’s newly collected evidence.<sup>9</sup>

4. 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

5. Pursuant to regulation 23bis(1) of the Regulations, the Prosecution files this request and its Annex A as confidential, since they contain confidential information that identifies Prosecution witnesses. A public redacted version will be filed as soon as practicable.

## III. SUBMISSIONS

**There is good cause to authorise the disclosure of the material of the Five Witnesses and to add P-0979, P-0999 and P-1040 to the List of Witnesses after the lapsed Disclosure Deadline and Lists of Witnesses and Evidence 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 material of the Five Witnesses*

6. Despite best efforts, the Prosecution was unable to conduct and conclude the interviews of the Five Witnesses in order to disclose their material to the Defence

---

<sup>9</sup> P-0922’s first statement and its associated material has already been admitted under rule 68(3) of the Rules by the Chamber in its Decision on the Prosecution’s fourth and fifth request to introduce prior recorded testimonies under Rule 68(3), 21 February 2022, [ICC-02/05-01/20-602-Conf](#), para. 86.

before the Disclosure Deadline. This is due to the *coup d'état* in Sudan and the COVID-19 restrictions, which were explained in paragraphs 10 to 16 of the First Regulation 35 Application and are incorporated by reference herein.<sup>10</sup> Similarly, the jurisprudence of the Court on this matter has been laid out in the First and Second Regulation 35 Applications and is incorporated by reference herein.<sup>11</sup>

*The requested extension of the lapsed Disclosure Deadline for the addition of the material of the Five Witnesses to the List of Evidence and the addition of P-0979, P-0999 and P-1040 to the List of Witnesses is reasonable under the circumstances*

7. 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 witnesses, explaining the reasons for seeking such an extension.<sup>12</sup> The Chamber, however, ruled that the application was “premature” at that time in relation to witnesses whose testimony had not yet been obtained (the “Decision”),<sup>13</sup> which led to the submission of the Second Regulation 35 Application.<sup>14</sup>

8. Following the same reasoning provided by the Court in its Decision,<sup>15</sup> the Prosecution applies now for the extension of the lapsed Disclosure Deadline for the newly collected material related to the Five Witnesses. Consequently, the Prosecution also requests to add the material related to the Five Witnesses to its List of Evidence and to add P-0979, P-0999 and P-1040 to its List of Witnesses, which is justifiable on the same basis.

<sup>10</sup> 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-Red-Corr](#) (“First Regulation 35 Application”), paras. 10-16. *See also*, Prosecution’s application under regulation 35 to extend the disclosure and witness list deadlines, 11 March 2022, [ICC-02/05-01/20-624-Conf](#) (“Second Regulation 35 Application”), para. 12.

<sup>11</sup> [First Regulation 35 Application](#), paras.8-9; Second Regulation 35 Application, paras. 9-11.

<sup>12</sup> [First Regulation 35 Application](#), paras. 32, 34-35, 39.

<sup>13</sup> 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.

<sup>14</sup> [Second Regulation 35 Application](#), paras. 13-15.

<sup>15</sup> [Regulation 35 Decision](#), para. 8.

9. 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".<sup>16</sup> The Prosecution has made every effort to mitigate the effects of both the ongoing pandemic and the regime change in Sudan. 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**

10. 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 Lists of Witnesses and Evidence Deadline. 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-0877*

11. P-0877, [REDACTED]. After assuming its operations in Sudan, the Prosecution met with the witness on [REDACTED] to conduct an additional interview. However, [REDACTED]. In his second witness statement, P-0877 provides supplementary information and clarifications to his first statement of [REDACTED].<sup>17</sup>

12. P-0877 provides additional information on [REDACTED]. P-0877 clarifies that, contrary to what he told the Prosecution during his first statement, he is no longer in possession of the [REDACTED] but provides photographs of a similar one as a point of reference.<sup>18</sup> Further, P-0877 describes the process he followed to compile the lists of

---

<sup>16</sup> *Katanga & Ngudjolo* 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.

<sup>17</sup> P-0877, DAR-OTP-0217-0211.

<sup>18</sup> P-0877, DAR-OTP-0224-0142 at 0144-0145, paras. 13-18. See also Annex B: DAR-OTP-0224-0164; DAR-OTP-0224-0165; DAR-OTP-0224-0166; DAR-OTP-0224-0167 (photographs of [REDACTED]).

detainees and executed persons<sup>19</sup> as well as that of a notebook containing the names of 35 execution victims.<sup>20</sup> He also gives further details in relation to some of the victims, including *Umdah* Yahia Ahmed Zarruq.<sup>21</sup>

13. Lastly, P-0877 provides additional detailed information on the locations of the executions, [REDACTED]; clarification on two videos showing execution locations mentioned in his previous statement; clarification related to a photograph [REDACTED]; and information connecting some of the victims to these locations, including the *umda*hs and one survivor.<sup>22</sup>

14. P-0877's statement of [REDACTED]<sup>23</sup> and its associated material, including the lists of victims,<sup>24</sup> the notebook,<sup>25</sup> the [REDACTED],<sup>26</sup> two videos<sup>27</sup> and photograph<sup>28</sup> mentioned above, were disclosed to the Defence prior to the Disclosure Deadline. Thus, the Defence is aware of the core evidence for this witness. The addition to the List of Evidence of P-0877's second statement and its associated material, which clarify and/or expand on material already in possession of the Defence, is not prejudicial to the rights of the Accused.

15. P-0877's second statement was disclosed to the Defence on 18 March 2022, and the Arabic translation of the witness statement was disclosed on 25 March 2022.

- *Witness statement of P-0922*

<sup>19</sup> P-0877, DAR-OTP-0224-0142 at 0146-0149, paras. 20-27.

<sup>20</sup> P-0877, DAR-OTP-0224-0142 at 0149, para. 28, at 0150-0151, para. 31-35.

<sup>21</sup> P-0877, DAR-OTP-0224-0142 at 0146-0149, paras. 20-28.

<sup>22</sup> P-0877, DAR-OTP-0224-0142 at 0151-0158, paras. 37-56.

<sup>23</sup> DAR-OTP-0217-0211 (disclosed on 24 February 2021, 26 March 2021 and 26 November 2021).

<sup>24</sup> DAR-OTP-0216-0492 (English translation at DAR-OTP-0215-7304), DAR-OTP-0217-0273 (English translation at DAR-OTP-0217-0498), DAR-OTP-0217-0274 (English translation at DAR-OTP-0217-0500). All these documents were disclosed on 24 February 2021.

<sup>25</sup> DAR-OTP-0219-4180 (disclosed on 1 October 2021). English translation at DAR-OTP-0219-8795 (disclosed on 31 December 2021).

<sup>26</sup> DAR-OTP-0217-0276 (English translation at DAR-OTP-0217-0504), disclosed on 24 February 2021; DAR-OTP-0219-4005 (English translation at DAR-OTP-0219-4767), disclosed on 1 October 2021.

<sup>27</sup> DAR-OTP-0217-0278 (video), DAR-OTP-0215-8889 (transcript), DAR-OTP-0215-8891 (English translation), disclosed on 26 March 2021 and 24 February 2021 respectively; DAR-OTP-0217-0279 (video), disclosed on 24 February 2021.

<sup>28</sup> DAR-OTP-0217-0272 (disclosed on 24 February 2021 and 28 March 2021).

16. P-0922, [REDACTED]. In his second witness statement, P-0922 confirms [REDACTED].<sup>29</sup> P-0922 explains in detail the content of [REDACTED] and provides clarifications, including that [REDACTED] the loading of detainees onto vehicles which left towards Garsila and heard the sound of a gunshot about 10 minutes later;<sup>30</sup> and clarifies information related to *Umdah Zarruq*'s execution.<sup>31</sup>

17. P-0922's second statement includes the following exhibits: (i) a sketch of the Mukjar police station;<sup>32</sup> and (ii) [REDACTED], both hand drawn by P-0922 during the interview and which he explained in his statement.<sup>33</sup> P-0922's second statement was disclosed to the Defence on 18 March 2022, and the Arabic translation of the witness statement was disclosed on 25 March 2022.

18. P-0922's witness statement of [REDACTED]<sup>34</sup> and the transcript of the video discussed in his second statement<sup>35</sup> were already disclosed to the Defence, as such the Defence was aware of P-0922's core evidence prior to the Disclosure Deadline. Thus, the addition to the List of Evidence of P-0922's additional statement, which clarifies material already in possession of the Defence, is not prejudicial to the rights of the Accused.

19. In addition, considering that the Chamber has already authorised the introduction of P-0922's prior recorded testimony and its associated material into evidence under rule 68(3) of the Rules<sup>36</sup> and that the second statement is relevant, reliable, probative and does not go to prove of the acts and conducts of the Accused,

<sup>29</sup> P-0922, DAR-OTP-0220-2864 at 2866, para. 13.

<sup>30</sup> P-0922, DAR-OTP-0220-2864 at 2869-2870, paras. 29-37.

<sup>31</sup> P-0922, DAR-OTP-0220-2864 at 2871, paras. 41-43.

<sup>32</sup> P-0922, DAR-OTP-0220-2864 at 2867-2870, paras. 21-22, 33; DAR-OTP-0220-2875 (English translation at DAR-OTP-0220-3035).

<sup>33</sup> P-0922, DAR-OTP-0220-2864 at 2868, para. 25; DAR-OTP-0220-2876 (English translation at DAR-OTP-0220-3037).

<sup>34</sup> P-0922, DAR-OTP-0222-0312 (disclosed on 11 November 2021).

<sup>35</sup> DAR-OTP-0221-2009 (disclosed on 4 January 2022); Video DAR-OTP-0126-0065 (disclosed on 31 January 2022); Transcript DAR-OTP-0221-2067 and its English translation DAR-OTP-0221-2082 (disclosed on 5 January 2022).

<sup>36</sup> Decision on the Prosecution's fourth and fifth request to introduce prior recorded testimonies under Rule 68(3), 21 February 2022, [ICC-02/05-01/20-602-Conf](#), para. 86.



the Prosecution requests the introduction of the second statement and related material listed on Annex A under the same rule.

- *Witness statement of P-0979*

20. P-0979, a farmer in Sudan, was identified as a possible witness in June 2021. Despite its best efforts, the Prosecution's previous attempts to contact the witness were unsuccessful. Once activities in Sudan were re-established after the *coup d'état*, the Prosecution was able to liaise with the witness and secure an interview in March 2022. P-0979 provides information on the attacks on Kodoom on 15 and 30 August 2003,<sup>37</sup> as well as [REDACTED].<sup>38</sup>

21. P-0979 describes that on 15 August 2003, around the time of Friday prayer, Militia/*Janjaweed*,<sup>39</sup> [REDACTED],<sup>40</sup> attacked Kodoom, a mostly Fur town,<sup>41</sup> shooting randomly at the civilian population<sup>42</sup> and burning houses.<sup>43</sup>

22. [REDACTED] arrested by the Militia/*Janjaweed* and GoS Forces in February 2004. [REDACTED].<sup>44</sup> [REDACTED].<sup>45</sup> In March 2004, [REDACTED]. Ali Kushayb hit the detainees as they left their cells and was part of the convoy taking them to the execution location.<sup>46</sup> [REDACTED].<sup>47</sup> In addition, P-0979 authenticates [REDACTED].<sup>48</sup>

23. P-0979 statement and its associated material were disclosed on 29 March 2022. The Arabic translation of the statement will be disclosed as soon as practicable, and no later than 10 April 2022.

- *Audio interview of P-0999*

---

<sup>37</sup> P-0979, DAR-OTP-0224-0273 at 0282-0286, paras. 53-79.

<sup>38</sup> P-0979, DAR-OTP-0224-0273 at 0290-0296, paras. 101-132.

<sup>39</sup> P-0979, DAR-OTP-0224-0273 at 0283-0284, paras. 56-57, 62-64.

<sup>40</sup> P-0979, DAR-OTP-0224-0273 at 0283-0284, paras. 58-64.

<sup>41</sup> P-0979, DAR-OTP-0224-0273 at 0282, para. 55.

<sup>42</sup> P-0979, DAR-OTP-0224-0273 at 0283, para. 57.

<sup>43</sup> P-0979, DAR-OTP-0224-0273 at 0284, para. 66.

<sup>44</sup> P-0979, DAR-OTP-0224-0273 at 0290-0292, paras. 101-108.

<sup>45</sup> P-0979, DAR-OTP-0224-0273 at 0292, paras. 109-113. See also Annex D at DAR-OTP-0224-0307.

<sup>46</sup> P-0979, DAR-OTP-0224-0273 at 0293-0294, paras. 114-117.

<sup>47</sup> P-0979, DAR-OTP-0224-0273 at 0294-0295, paras. 118-127.

<sup>48</sup> P-0979, DAR-OTP-0224-0273 at, paras. 128-132. The video is at DAR-OTP-0217-0279 (disclosed on 24 February 2021).

24. P-0999, [REDACTED], is an eye-witness to the charged crimes in Deleig between 5 and 7 March 2004. He provides information on attacks by GoS Forces and the Militia/*Janjaweed*, led by Mr Abd-Al-Rahman, on villages around Deleig.<sup>49</sup> P-0999 also provides information on Mr Abd-Al-Rahman's background, profile and his leadership position as the commander of the Militia/*Janjaweed*.<sup>50</sup>

25. P-0999 recounts the displacement of civilians from the villages of Kertin, Sogo, Songa, Forgo, and Massa to Deleig. He describes his own displacement to [REDACTED].<sup>51</sup>

26. P-0999 provides evidence about the incident in Deleig on Friday, 5 March 2004, including the arrest of Fur civilians and community leaders by the Militia/*Janjaweed*.<sup>52</sup> P-0999 describes the mistreatment of the detainees by the Militia/*Janjaweed*.<sup>53</sup> He gives evidence about Mr Abd-Al-Rahman's direct involvement in the mistreatment of detainees, and his killing of three detainees, including Adam Jenif, by hitting them with his axe.<sup>54</sup> P-0999 also gives evidence about the loading of detainees onto vehicles which drove out of Deleig in the direction of Garsila, and the execution of detainees near Koska.<sup>55</sup> P-0999 further recounts the execution of *umdahs* in Fere on a Sunday in March 2004.<sup>56</sup>

27. P-0999 also provides information on how [REDACTED].<sup>57</sup> P-0999's evidence on this point is of a unique nature and is critical with respect to establishing the identities of the victims of the Deleig incident.

<sup>49</sup> P-0999, DAR-OTP-0220-3067 at 3068, l. 15-19.

<sup>50</sup> P-0999, DAR-OTP-0220-3067 at 3068, l. 17-20.

<sup>51</sup> P-0999, DAR-OTP-0220-3067 at 3068, l. 15-24; P-0999, DAR-OTP-0220-3073 at 3074, l. 28-36.

<sup>52</sup> P-0999, DAR-OTP-0220-3073 at 3074-3075, l. 28-44 and at 3078, l. 168-187.

<sup>53</sup> P-0999, DAR-OTP-0220-3073 at 3075, l. 52-60.

<sup>54</sup> P-0999, DAR-OTP-0220-3073 at 3075, l. 53-47 and at 3077, l. 123-134 and l. 151-153; P-0999, DAR-OTP-0220-3083 at 3085-3086, l. 36-119.

<sup>55</sup> P-0999, DAR-OTP-0220-3073 at 3075-3077, l. 72-153; P-0999, DAR-OTP-0220-3083 at 3085-3086, l. 36-119.

<sup>56</sup> P-0999, DAR-OTP-0220-3093 at 3100-3104, l. 228-368.

<sup>57</sup> P-0999, DAR-OTP-0220-3083 at 3091, l. 246-274; P-0999, DAR-OTP-0220-3093 at 3094-3100, l. 7-225; P-0999, DAR-OTP-0220-3111 at 3112-3119, l. 18-285.

28. The Prosecution set out in the First Regulation 35 Application the challenges it has faced in securing an interview with P-0999.<sup>58</sup> P-0999 [REDACTED]. Under these circumstances, the interview could only be arranged at the earliest in February 2022.

29. In any event, a list [REDACTED] incident provided by the witness was disclosed to the Defence prior to the Disclosure Deadline<sup>59</sup> and was relied on in Annex 23 to the Prosecution's Trial Brief.<sup>60</sup> Furthermore, the Prosecution disclosed P-0999's screening note with identity redactions on 17 December 2021 and made a further disclosure of P-0999's screening note, disclosing his identity, on 5 January 2022.

30. P-0999's transcripts, in Arabic, were disclosed to the Defence on 25 March 2022. English translations are currently being prepared and are expected to be completed by approximately 1 April 2022. The translations will be disclosed as soon as practicable after this date, but no later than 10 April 2022

- **P-1040**

31. P-1040, a Fur crime-base witness located in Sudan, was first contacted by the Prosecution in October 2021, but could only be interviewed in Khartoum between [REDACTED], due to the suspension of activities in Sudan following the *coup d'état* and the witness's unavailability to travel until [REDACTED]. P-1040, [REDACTED], provides information on the town, its population,<sup>61</sup> security and administrative organisation prior to the conflict<sup>62</sup> and attacks by Militia/*Janjaweed* on [REDACTED] in 2003, which cause the witness to be displaced to [REDACTED].<sup>63</sup> P-1040 describes the security situation in [REDACTED] when he arrived in town<sup>64</sup> and how checkpoints

---

<sup>58</sup> [First Regulation 35 Application](#), para. 25.

<sup>59</sup> 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.

<sup>60</sup> Annex 23 to the Public Redacted Version of Corrected Version of "Prosecution's Trial Brief", 5 January 2022, ICC-02/05-01/20-550-Conf-Exp-Corr, [ICC-02/05-01/20-550-Anx23-Corr-Red](#).

<sup>61</sup> P-1040, DAR-OTP-0224-0184 at 0187, paras. 15-16.

<sup>62</sup> P-1040, DAR-OTP-0224-0184 at 0188, paras. 17-22.

<sup>63</sup> P-1040, DAR-OTP-0224-0184 at 0188-0191, paras. 24-38.

<sup>64</sup> P-1040, DAR-OTP-0224-0184 at 0191-0192, paras. 39-41

controlled by the Popular Defence Forces (“PDF”) were established in [REDACTED].<sup>65</sup>  
[REDACTED].<sup>66</sup> [REDACTED]<sup>67</sup> [REDACTED].<sup>68</sup> [REDACTED].<sup>69</sup>

32. P-1040’s witness statement was disclosed on 18 March 2022 and the Arabic translation of the witness statement was disclosed on 29 March 2022.

*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*

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

34. Noting that both P-0877 and P-0922 are already on the List of Witnesses, the requested extension of the lapsed Witness List Deadline is limited to witnesses P-0979, P-0999 and P-1040.

35. The Accused’s rights under article 67 of the Statute, including in particular 67(1)(a) and (b), will not be materially impacted by this late disclosure. As set out above, the Prosecution previously disclosed material relating to P-0877 and P-0922 to the Defence and the newly collected testimonies solely clarify or elaborate on limited issues discussed in the earlier statements disclosed to the Defence. As such, the substantive information in the additional statements is not materially new to the Defence.

36. In relation to P-0979, P-0999 and P-1040, their accounts are relevant and will assist the Chamber in the determining the truth in this case. In addition, the identity, screening note and list of victims provided by P-0999 were all disclosed to the Defence

---

<sup>65</sup> P-1040, DAR-OTP-0224-0184 at 0192, para. 42.

<sup>66</sup> P-1040, DAR-OTP-0224-0184 at 0192-0193, paras. 42-47 and at 0196, para. 64.

<sup>67</sup> P-1040, DAR-OTP-0224-0184 at 0193, para. 48.

<sup>68</sup> P-1040, DAR-OTP-0224-0184 at 0194-0195, paras. 49-54 and at 0197, para. 66.

<sup>69</sup> P-1040, DAR-OTP-0224-0184 at 0195, paras. 55-57.

prior to the Disclosure Deadline.<sup>70</sup> The Prosecution is prepared to call these witnesses later in trial, so as to mitigate any prejudice 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

38. For the reasons outlined above, the Prosecution respectfully requests that the Chamber extend the lapsed Disclosure Deadline for the material relating to the Five Witnesses, as set out above. The Prosecution also requests permission to add material related to the Five Witnesses to its List of Evidence, and to add P-0979, P-0999 and P-1040 to its List of Witnesses. Lastly, the Prosecution requests the Chamber to introduce into evidence P-0922's second statement and its associated material pursuant to rule 68(3) of the Rules.




---

**Karim A. A. Khan QC**

**Prosecutor**

Dated this 31<sup>st</sup> day of March 2022

At The Hague, The Netherlands

---

<sup>70</sup> See above, para. 29.