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

Date: **2 May 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 urgent application under regulation 35 for variation of time limits related to the introduction of a document concerning Witness P-0903”, 4 April 2022, ICC-02/05-01/20-662-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

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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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”)¹ and to also provide the list of evidence (“List of Evidence”) that it intends to rely on at trial by the same date.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 the Chamber to authorise (i) an extension of the lapsed Disclosure Deadline for document DAR-OTP-0222-5010, a photograph of P-0903’s [REDACTED]; and (ii) the addition of this item to the Prosecution’s List of Evidence.

3. This material 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 List of Evidence Deadline will not cause any prejudice to the Accused’s right to a fair trial under article 67(1).

II. CLASSIFICATION

4. Pursuant to regulation 23*bis*(1) of the Regulations, the Prosecution files this request as confidential, since it contains confidential information that identifies a Prosecution witness. A public redacted version will be filed as soon as practicable.

III. SUBMISSIONS

A variation of the time limit is necessary and justified

5. Under regulation 35(2) of the Regulations, a Chamber may extend a time limit before it has lapsed, if good cause is shown. The jurisprudence of the Court on this

¹ 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.

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

matter has been laid out in the First and Second Regulation 35 Applications and is incorporated by reference herein.³

6. The Prosecution has inadvertently failed to disclose a photograph showing P-0903's [REDACTED]. The Prosecution found the photograph last week when it conducted searches in all its databases in preparation of the upcoming testimony of Witness P-0903. Shortly thereafter, on 1 April 2022, the Prosecution sent via email to the Defence a courtesy copy of the photograph and formally disclosed it on 4 April 2022.

7. The Prosecution has made every effort to mitigate the effects of the late disclosure of this document and submits that the requested extensions of the lapsed Disclosure Deadline and List of Evidence Deadline are reasonable under these circumstances given that, as explained in detail below, this information is not new to the Defence.

Granting the request does not unfairly prejudice the rights of the Accused

8. 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. The requested extension is limited to one document.

9. The Defence was aware of the fact that P-0903 had an [REDACTED] as this information is contained in P-0903's witness statement: "[REDACTED]"⁴ P-0903's witness statement was first disclosed on 22 September 2021 and a lesser redacted version on 10 December 2021, both times prior to the Disclosure Deadline. Other photographs showing P-0903's different [REDACTED] were also disclosed on 22

³ 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.8-9; 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"), paras. 9-11.

⁴ DAR-OTP-0221-0436 at 0446, para. 50.

September 2022.⁵ Therefore, the substantive information in the photograph is not materially new to the Defence.

10. The Defence was provided with a courtesy copy of the photograph on 1 April 2022. Witness P-0903 is scheduled to testify in court on 12 and 13 April 2022, which gives the Defence sufficient time to inspect the photograph and ask any potential questions related to it during cross-examination.

11. 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 List of Evidence Deadline. Witness P-0903 will provide the Chamber with critical evidence regarding the charged crimes and the individual criminal responsibility of the Accused.

IV. CONCLUSION

12. For the reasons outlined above, the Prosecution respectfully requests that the Chamber extend the lapsed Disclosure Deadline and List of Evidence Deadline for document DAR-OTP-0222-5010 related to Witness P-0903.



Karim A. A. Khan QC

Prosecutor

Dated this 2nd day of May 2022

At The Hague, The Netherlands

⁵ DAR-OTP-0219-5103; DAR-OTP-0219-5104.