



Original: English

No. ICC-02/05-01/20

Date: 25 August 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 redacted version of the
Decision on the Prosecution's application to introduce prior recorded testimony
of P-0129 under Rule 68(3)**

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Karim A.A. Khan
Nazhat Shameem Khan
Julian Nicholls

Counsel for the Defence

Cyril Laucci
Iain Edwards

Legal Representatives of Victims

Natalie von Wistinghausen
Anand Shah

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

I. Procedural history

1. On 20 January 2022, Trial Chamber I ('the Chamber') issued its first decision on the Prosecution's application to introduce prior recorded testimonies under Rule 68(3) of the Rules of Procedure and Evidence (the 'Rules'), setting out the general framework for the introduction of prior testimonies pursuant to this provision.¹
2. On 19 August 2022, following an instruction of the Chamber,² the Prosecution made an application to introduce the prior recorded testimony of P-0129 pursuant to Rule 68(3) of the Rules (the 'Application').³
3. On 24 August 2022, the Defence responded to the Application, stating it does not oppose the Application (the 'Response').⁴

II. Analysis

4. The Chamber incorporates by reference the general framework applicable to the assessment of applications for introduction of prior recorded statements pursuant to Rule 68(3) of the Rules.⁵
5. P-0129 is a crime base witness who provides evidence on alleged attacks in Tendy and Bindisi, among other locations,⁶ as well as the charges incidents in Mukjar and Deleig. As regards the accused, the witness refers to his alleged participation in the arrest and detention of men in Mukjar (where P-0129 was detained),⁷ their transport and execution (P-0129 survived the alleged execution). The witness also refers to an alleged meeting between Ja'afar Abd-Al-Hakam and the accused in Deleig, in July

¹ First Decision on the Prosecution's request to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-559-Conf. A public redacted version was notified on the same day, ICC-02/05-01/20-559-Red (hereinafter: 'First Rule 68(3) Decision').

² The Chamber informed the parties that it is of the preliminary view that P-0129 could be introduced via Rule 68(3) of the Rules and that the Prosecution may file such an application by 19 August 2022 (responses to be filed by 25 August 2022). *See* e-mail from the Chamber, 16 August 2022, at 16:19.

³ E-mail from the Prosecution, 19 September 2022, at 16:18 with Annex A.

⁴ E-mail from the Defence, 24 August 2022 at 11:04.

⁵ First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 7-17.

⁶ *See for example* DAR-OTP-0128-0128, paras 30-38, DAR-OTP-0220-0703, para. 17 ; DAR-OTP-0223-0157, paras 32, 131-154.

⁷ DAR-OTP-0128-0128, paras 39-72,

2003.⁸ As regards the crimes allegedly committed in Deleig, the witness provides namely hearsay evidence about the alleged arrest, detention and execution of men.⁹

6. In addition to three witness statements,¹⁰ the Prosecution seeks to introduce as associated material a series of sketches made by the witness during the interview as well as P-0129's [REDACTED].¹¹

7. The Prosecution requests 2 hour to conduct a supplementary examination (instead of the 9 hours estimated for *viva voce* examination).

8. The Chamber notes the Prosecution's submission that the evidence of P-0129 is corroborative and/or cumulative to that of other witnesses that have testified or are due to testify in respect of alleged crimes in Mukjar and Deleig. Noting that the Defence does not object the Application, the Chamber is thus satisfied that the introduction of P-0129's prior recorded statement will not be prejudicial to the accused.

9. Noting the Defence does not oppose, the Prosecution may use two hours for the supplementary examination of the witness.

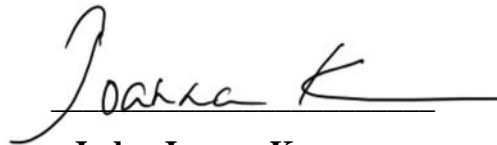
⁸ DAR-OTP-0128-0128, paras 24-27.

⁹ DAR-OTP-0128-0128, paras 83-90.

¹⁰ DAR-OTP-0128-0128, DAR-OTP-0220-0703, DAR-OTP-0223-0157.

¹¹ Application, Annex A.

10. Accordingly, the Chamber authorises the introduction of the prior recorded testimony of P-0129 identified in the Application and its corresponding annex, pursuant to Rule 68(3) of the Rules. The Chamber's preliminary ruling is subject to witnesses' appearance before the Chamber and their consent to the introduction of their testimony pursuant to this provision.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 25 August 2022

At The Hague, the Netherlands