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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

Public redacted version of “Prosecution’s fifteenth application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0976, P-0992 and P-0994”, 24 August 2022, ICC-02/05-01/20-725

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I. INTRODUCTION

1. Pursuant to articles 64(3)(a), 69(2) and (4) of the Rome Statute, and rule 68(3) of the Rules of Evidence and Procedure (“Rules”), the Prosecution requests Trial Chamber I (“Chamber”) to (i) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of witnesses P-0976, P-0992 and P-0994 (“Three Witnesses”); and (ii) grant the time requested for the supplementary examination of each of the Three Witnesses (“Application”).² P-0976, P-0992 and P-0994 are currently scheduled to testify, respectively, on and 30 September, 7 October and 28-29 September 2022.

2. The Prior Recorded Testimonies of P-0976 and P-0992 relate primarily to the charged crimes in Mukjar and surrounding areas (Counts 12 to 21).³ P-0994’s Prior Recorded Testimony relates primarily to the charged crimes in Deleig and surrounding areas (Counts 22 to 31).⁴ All of the Prior Recorded Testimonies are relevant, reliable and probative.

3. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of the in-court testimony of the Three Witnesses from 15 hours to three hours.

4. Furthermore, the introduction into evidence of the Prior Recorded Testimonies is not prejudicial to or inconsistent with the rights of Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”), as the Three Witnesses will be available for cross-examination by the Defence and any further questioning by the Chamber.

II. CLASSIFICATION

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Application and its Annex A are classified as confidential, since they contain information that identifies the Three Witnesses. A public redacted version of the Application will be filed as soon as practicable.

¹ Annex A (A1 to A3) lists the prior recorded testimonies of the Three Witnesses which comprise their witness statements (at I) and associated material (at II). The material related to the witness’s prior recorded testimony which the Prosecution does not seek to introduce into evidence is also included (at III). Hyperlinks to this material are also included. See Conduct of Proceedings Directions, [ICC-02/05-01/20-478](#), para. 47.

² This Application is submitted in accordance with [Directions on the Conduct of Proceedings](#), paras. 46-48.

³ See Confirmation Decision, [ICC-02/05-01/20-433-Corr](#), paras. 97-105 and p. 58-63, 68-69.

⁴ See Confirmation Decision, [ICC-02/05-01/20-433-Corr](#), paras. 106-114 and p. 63-67, 69-70.

III. SUBMISSIONS

6. The Prosecution relies on its previous submissions on the legal framework for the introduction into evidence of prior recorded testimony under rule 68(3) of the Rules, as set out in its first rule 68(3) application.⁵

7. The Prosecution seeks limited time to conduct a focussed supplementary examination for each of the Three Witnesses. This time estimate is consistent with the prior jurisprudence of the Court⁶ and will be used to elicit further focussed *viva voce* evidence on certain issues that require clarification or elaboration, as set out below.

8. The associated material which the Prosecution seeks to introduce into evidence for each of the Three Witnesses forms an integral part of their Prior Recorded Testimonies.⁷ These items are necessary to fully comprehend the accounts of the Three Witnesses, as they discuss the items and, when required, clarify them in their statements.⁸

A. Overview of the Prior Recorded Testimonies of the Three Witnesses

(i) *Prior Recorded Testimony of Witness P-0976*

9. P-0976, [REDACTED],⁹ provides evidence on the structure and background of the PPF and other forces, especially in Mukjar.¹⁰

10. P-0976 also mentions the arrival of Central Reserve Forces (“CRF”) and the Militia/*Janjaweed* in Mukjar in August 2003¹¹ and the attack on villages east and north of Mukjar by these forces in 2003.¹² The witness also provides evidence on the arrival of additional CRF

⁵ Prosecution’s first application under Rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0717, P-0757, P-0834, P-0868 and P-0882, [ICC-02/05-01/20-547-Conf](#) (“First Application”).

⁶ *Lubanga* Prior Recorded Statements Decision, [ICC-01/04-01/06-1603](#), para. 25; *Lubanga* Hearing Transcript, [ICC-01/04-01/06-T-205-Red3-ENG](#), p. 19, l. 11 *et seq*; *Katanga* Prior Recorded Testimony Decision, [ICC-01/04-01/07-2233-Corr](#), paras. 16-17; *Ntaganda* Hearing Transcript, [ICC-01/04-02/06-T-110-Red2-ENG](#), p. 34, l. 8-13; *Gbabgo & Blé Goude* Annex A to Decision Adopting Amended and Supplemented Conduct of Proceedings Directions, [ICC-02/11-01/15-498-AnxA](#), para. 40.

⁷ *See Yekatom & Ngaissona* Decision on the Prosecution Requests under Rule 68(3), [ICC-01/14-01/18-907-Red](#), para. 26.

⁸ *Ntaganda* Transcript of 20 June 2016, [ICC-01/04-02/06-T-105-Red2-ENG](#), p. 94, l. 2-7. *See also*, *Ntaganda* Decision on Prosecution application under Rule 68, [ICC-01/04-02/06-1205](#), para.7; *Ntaganda* Decision on Rule 68, [ICC-01/04-02/06-1029](#), para. 23, 35; *Ruto & Sang* Decision on the Admission of Prior Recorded Testimony, [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33.

⁹ P-0976, DAR-OTP-0222-0526 at 0528, paras. 11-13.

¹⁰ P-0976, DAR-OTP-0222-0526 at 0529-0530, paras. 19-23, 26 and at 0537, paras. 68-70.

¹¹ P-0976, DAR-OTP-0222-0526 at 0530, paras. 24-25.

¹² P-0976, DAR-OTP-0222-0526 at 0531, paras. 27-30.

forces,¹³ as well as of Militia/*Janjaweed* under the command of Mr Abd-Al-Rahman to Mukjar in early 2004.¹⁴

11. P-0976 further details [REDACTED].¹⁵ The witness also provides evidence on Mr Abd-Al-Rahman's position of authority as a leader of the Militia/*Janjaweed* in Garsila¹⁶ and on the gathering of Militia/*Janjaweed*, including a speech by Mr Abd-Al-Rahman containing operational details of the Sindu operation.¹⁷

12. Moreover, P-0976 provides evidence on a visit by a delegation including Ahmed Harun to Mukjar in February 2004, in order to distribute weapons prior to the Sindu operation.¹⁸ In relation to this operation, P-0976 mentions the occurrence of aerial bombings in the Sindu region¹⁹ and attacks led by GoS Forces and Militia/*Janjaweed* on more than 20 villages and mountains stretching from Mukjar to the Sindu area,²⁰ causing the mass displacement of people towards Mukjar.²¹ [REDACTED].²²

13. Regarding the Mukjar incident, P-0976 provides evidence on how displaced males, including *sheikhs* and *umdahs*, were being arrested at checkpoints²³ and detained under inhumane conditions in Mukjar.²⁴ [REDACTED] and community leaders including *Umdah* Issa Harun Nour, *Umdah* Adam Husayn Abdelm Mahmoud (also known as Doori) and others.²⁵ [REDACTED].²⁶ [REDACTED].²⁷

14. Lastly, P-0976 provides evidence on the events at the Mukjar police station prior to the removal of detainees. P-0976 observed Mr Abd-Al-Rahman carrying an axe which he used to beat detainees while verbally abusing them.²⁸ [REDACTED].²⁹ [REDACTED].³⁰

¹³ P-0976, DAR-OTP-0222-0526 at 0530, paras. 25-26.

¹⁴ P-0976, DAR-OTP-0222-0526 at 0532-0534, paras. 38-46, 50-52.

¹⁵ P-0976, DAR-OTP-0222-0526 at 0531, paras. 31-32.

¹⁶ P-0976, DAR-OTP-0222-0526 at 0531-0534, paras. 33-37, 48-49 and at 0536, para. 63.

¹⁷ P-0976, DAR-OTP-0222-0526 at 0532, para. 36.

¹⁸ P-0976, DAR-OTP-0222-0526 at 0535-0536, paras. 59-65.

¹⁹ P-0976, DAR-OTP-0222-0526 at 0536, para. 66.

²⁰ P-0976, DAR-OTP-0222-0526 at 0534-0536, paras. 53-56, 66 and at 0538, para. 79.

²¹ P-0976, DAR-OTP-0222-0526 at 0535-0536, paras. 57, 67.

²² P-0976, DAR-OTP-0222-0526 at 0537, paras. 71-72.

²³ P-0976, DAR-OTP-0222-0526 at 0535, paras. 57-58.

²⁴ P-0976, DAR-OTP-0222-0526 at 0537-0538, paras. 74-76, 79-80.

²⁵ P-0976, DAR-OTP-0222-0526 at 0538-0539, paras. 81-87 and at 0541-0542, paras. 95, 103.

²⁶ P-0976, DAR-OTP-0222-0526 at 0539-0540, paras. 88-89.

²⁷ P-0976, DAR-OTP-0222-0526 at 0540, para. 90.

²⁸ P-0976, DAR-OTP-0222-0526 at 0540, para. 90.

²⁹ P-0976, DAR-OTP-0222-0526 at 0540-0541, paras. 91-93.

³⁰ P-0976, DAR-OTP-0222-0526 at 0541-0542, paras. 93-94, 96-98.

15. P-0976's prior recorded testimony comprises one statement and associated material consisting of: (i) a sketch map of the Mukjar police station;³¹ (ii) a sketch map of the area surrounding the Mukjar police station;³² (iii) a sketch map depicting Mukjar at a greater scale;³³ (iv) a colour chart used to indicate the colour of PPF uniform;³⁴ (v) a colour chart to indicate the colour of the uniform used by Ali Kushayb in a meeting in Garsila, as well as the colours of land cruisers which transported detainees from the Mukjar police station to be executed;³⁵ (vi) a colour chart used to indicate the colour of vehicles used by Ali Kushayb, Al-Sadiq Ahmad Uthman Zakariya (also known as Solonga) and Al-Dayf Samih;³⁶ (vii) an aircraft list to identify an Antonov plane;³⁷ (viii) an aircraft list to identify a helicopter used by Harun to visit Mukjar in early 2004;³⁸ and (ix) a colour chart used to indicate the colour of CRF uniform.³⁹

The Prosecution requests one hour for its limited supplementary examination of P-0976

16. The Prosecution seeks one hour to conduct a supplementary examination of P-0976 on topics including: (i) [REDACTED]; (ii) the distribution of weapons in Mukjar in February 2004; (iii) the arrest and detention of young men and *Umdahs* in Mukjar in February/March 2004; (iv) [REDACTED]; (v) the removal and execution of detainees during the Mukjar incident; (vi) the execution sites near Mukjar and Nyerli [REDACTED], and (vii) Mr Abd-Al-Rahman's involvement in the Mukjar incident at the relevant time.

17. The Prosecution had previously estimated that it would require 4.5 hours for direct examination of P-0976⁴⁰ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

³¹ P-0976, DAR-OTP-0222-0526 at 0528, para. 14 and at 0542, paras. 99, 102; DAR-OTP-0222-0546.

³² P-0976, DAR-OTP-0222-0526 at 0529, para. 15; DAR-OTP-0222-0547 (English translation at DAR-OTP-0219-9088).

³³ P-0976, DAR-OTP-0222-0526 at 0529, para. 16; DAR-OTP-0222-0548 (English translation at DAR-OTP-0220-1203).

³⁴ P-0976, DAR-OTP-0222-0526 at 0530, para. 23; DAR-OTP-0222-0549.

³⁵ P-0976, DAR-OTP-0222-0526 at 0532, para. 34 and at 0541, para. 93; DAR-OTP-0222-0550.

³⁶ P-0976, DAR-OTP-0222-0526 at 0534, para. 50; DAR-OTP-0222-0551.

³⁷ P-0976, DAR-OTP-0222-0526 at 0535, para. 59; DAR-OTP-0222-0552.

³⁸ P-0976, DAR-OTP-0222-0526 at 0535, para. 59; DAR-OTP-0222-0554.

³⁹ P-0976, DAR-OTP-0222-0526 at 0530, para. 24; DAR-OTP-0222-0555.

⁴⁰ Annex 1 to the Prosecution's submission of the updated List of Witnesses and List of Evidence, 9 May 2022, [ICC-02/05-01/20-685-Conf-Anx1](#).

(ii) *Prior Recorded Testimony of Witness P-0992*

18. P-0992, [REDACTED],⁴¹ provides evidence of attacks by Militia/*Janjaweed* on a number of villages in July 2003⁴² and August 2003,⁴³ which resulted in civilians being displaced to Mukjar. [REDACTED].⁴⁴ P-0992 also mentions a rebel attack on Mukjar in 2003 and the increased presence of GoS Forces and Militia/*Janjaweed* in the village.⁴⁵

19. P-0992 also provides evidence on the structure of the Militia/*Janjaweed*, including the position of authority of Mr Abd-Al-Rahman and Al-Dayf Samih,⁴⁶ and the distribution of weapons to Militia/*Janjaweed* by the GoS in February 2004.⁴⁷

20. P-0992 further details the arrival of Mr Abd-Al-Rahman to Mukjar in February 2004, along with the GoS Forces and the Militia/*Janjaweed*, before the Sindu operation⁴⁸ and the attacks on villages from Mukjar to Sindu during this operation.⁴⁹ P-0992 also provides evidence of Abdullah Torshein instructing the PPF to arrest any rebels that came to Mukjar in about March 2004.⁵⁰ During the gathering, P-0992 also heard Torshein receive a phone call and tell the person P-0992 believed to be Ahmed Harun, that Mr Abd-Al-Rahman should not kill people.⁵¹

21. [REDACTED].⁵² [REDACTED],⁵³ [REDACTED],⁵⁴ [REDACTED].⁵⁵

22. [REDACTED].⁵⁶ [REDACTED].⁵⁷ [REDACTED].⁵⁸ Lastly, P-0992 provides evidence on the loading of prisoners, including the *Umdahs*, into vehicles under the supervision of Mr Abd-Al-Rahman.⁵⁹ P-0992 later heard from one intelligence officer that the detainees he saw loaded

⁴¹ P-0992, DAR-OTP-0221-0668 at 0671, paras. 13-14.

⁴² P-0992, DAR-OTP-0221-0668 at 0671-0672, paras. 15-16.

⁴³ P-0992, DAR-OTP-0221-0668 at 0672-0673, paras. 17-25.

⁴⁴ P-0992, DAR-OTP-0221-0668 at 0671, para. 13 and at 0673-0675, paras. 23, 30-31, 33, 35.

⁴⁵ P-0992, DAR-OTP-0221-0668 at 0673-0674, paras. 26-29.

⁴⁶ P-0992, DAR-OTP-0221-0668 at 0674-0676, paras. 32, 34, 39, 41-42.

⁴⁷ P-0992, DAR-OTP-0221-0668 at 0675, paras. 36-38.

⁴⁸ P-0992, DAR-OTP-0221-0668 at 0675-0676, paras. 39-40.

⁴⁹ P-0992, DAR-OTP-0221-0668 at 0676-0677, paras. 43-46.

⁵⁰ P-0992, DAR-OTP-0221-0668 at 0677, paras. 47-48.

⁵¹ P-0992, DAR-OTP-0221-0668 at 0677, paras. 49-50.

⁵² P-0992, DAR-OTP-0221-0668 at 0678, paras. 54-58.

⁵³ P-0992, DAR-OTP-0221-0668 at 0679, para. 61.

⁵⁴ P-0992, DAR-OTP-0221-0668 at 0682, para. 77.

⁵⁵ P-0992, DAR-OTP-0221-0668 at 0679, paras. 63-64.

⁵⁶ P-0992, DAR-OTP-0221-0668 at 0680, para. 67.

⁵⁷ P-0992, DAR-OTP-0221-0668 at 0680-0681, paras. 69-73.

⁵⁸ P-0992, DAR-OTP-0221-0668 at 0680, para. 70.

⁵⁹ P-0992, DAR-OTP-0221-0668 at 0680-0681, paras. 69-74.

into these vehicles were all killed at a khor.⁶⁰ [REDACTED], P-0992 saw one of the graves' locations on the way to Garsila.⁶¹

23. P-0992's prior recorded testimony comprises one statement and associated material consisting of: (i) a chart used by P-0992 to indicate the colour of the uniform worn by government forces;⁶² (ii) a sketch of Mukjar police station;⁶³ and (iii) a Google Earth image of Mukjar in 2006 which the witness was unable to mark.⁶⁴

The Prosecution requests one hour for its limited supplementary examination of P-0992

24. The Prosecution seeks one hour to conduct a supplementary examination of P-0992 on topics including: (i) the distribution of weapons in Mukjar in February/March 2004; (ii) the arrest and detention of young men and *Umdahs* in Mukjar in February/March 2004; (iii) [REDACTED]; (iv) the execution of detainees during the Mukjar incident; and (v) Mr Abd-Al-Rahman's involvement in the Mukjar incident at the relevant time.

25. The Prosecution had previously estimated that it would require six hours for direct examination of P-0992,⁶⁵ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

(iii) *Prior Recorded Testimony of Witness P-0994*

26. P-0994 is [REDACTED], including during the time of the charged events between about 5 and 7 March 2004.⁶⁶

27. P-0994 provides direct evidence that on or about 5 March 2004, Militia/*Janjaweed* surrounded Deleig. On that day, [REDACTED] Mr Abd-Al-Rahman and the Militia/*Janjaweed* arrest displaced Fur males and bring them outside the Deleig police station, where they were

⁶⁰ P-0992, DAR-OTP-0221-0668 at 0682, para. 75.

⁶¹ P-0992, DAR-OTP-0221-0668 at 0682, para. 76.

⁶² P-0992, DAR-OTP-0221-0668 at 0674, para. 29; DAR-OTP-0221-0688.

⁶³ P-0992, DAR-OTP-0221-0668 at 0679-0680, para. 65 and at 0683, paras. 84-86; DAR-OTP-0221-0689.

⁶⁴ P-0992, DAR-OTP-0221-0668 at 0683, para. 87; DAR-OTP-0221-0690.

⁶⁵ Annex 1 to the Prosecution's submission of the updated List of Witnesses and List of Evidence, 9 May 2022, [ICC-02/05-01/20-685-Conf-Anx1](#).

⁶⁶ P-0994, DAR-OTP-0222-0055 at 0058, 0060, 0062 paras. 14, 22, 32.

mistreated and kept in deplorable conditions.⁶⁷ [REDACTED] the Militia/*Janjaweed* loading the detainees onto Mr Abd-Al-Rahman's vehicle and later heard that they were executed.⁶⁸

28. [REDACTED] Mr Abd-Al-Rahman and the Militia/*Janjaweed* brought the Garsila PDF coordinator Adam Abd-Al-Rahman, also known as Jenif, to the Deleig police station on or about 5 March 2004.⁶⁹ [REDACTED] Mr Abd-Al-Rahman hit Jenif on the back of his head with an axe.⁷⁰ The next day, P-0994 heard that Jenif had been taken away and executed.⁷¹

29. P-0994 further provides evidence on the detention of *Umdah* Adam Adam Deguis (also known as Kindiri) inside the Deleig police station on or about 5 March 2004, [REDACTED].⁷² On Sunday (on or about 7 March 2004), [REDACTED] *Umdah* Kindiri, *Umdah* Jiddo Khamis, *Umdah* Dirbo, *Sheikh* Ismael Abdul Aziz and Hassan Adam Musa (veterinary nurse in Garsila) in Mr Abd-Al-Rahman's vehicle next to a restaurant at the market.⁷³ [REDACTED] Mr Abd-Al-Rahman giving instructions to transport the detainees to Nyala.⁷⁴ P-0994 later heard that these five men were driven in the direction of Fere and executed.⁷⁵

30. Further, P-0994 provides evidence on Mr Abd-Al-Rahman's identity and background including his military service, physical description and ownership of a pharmacy selling animal medicine in Garsila.⁷⁶ P-0994 also provides direct evidence on Mr Abd-Al-Rahman's presence, indicia of authority, and role during the Deleig incident on or about 5 to 7 March 2004.⁷⁷

31. In addition, on or about 5 March 2004, [REDACTED] intelligence officers Hamdi present in Deleig⁷⁸ and PDF officer Hassaballah [REDACTED].⁷⁹

⁶⁷ P-0994, DAR-OTP-0222-0055 at 0062-0064, paras. 32-41.

⁶⁸ P-0994, DAR-OTP-0222-0055 at 0067-0068, paras. 55-61.

⁶⁹ P-0994, DAR-OTP-0222-0055 at 0064-0065, paras. 45, 47.

⁷⁰ P-0994, DAR-OTP-0222-0055 at 0065, para. 48.

⁷¹ P-0994, DAR-OTP-0222-0055 at 0065-0066, paras. 49-50.

⁷² P-0994, DAR-OTP-0222-0055 at 0064-0065, 0072-0073, paras. 45-46, 84.

⁷³ P-0994, DAR-OTP-0222-0055 at 0071-0072, para. 79-81.

⁷⁴ P-0994, DAR-OTP-0222-0055 at 0072, para. 82.

⁷⁵ P-0994, DAR-OTP-0222-0055 at 0072, para. 83.

⁷⁶ P-0994, DAR-OTP-0222-0055 at 0060-0062, paras. 23-31.

⁷⁷ P-0994, DAR-OTP-0222-0055 at 0063, 0065-0068, 0071-0073, 36, 47, 48, 51, 56, 62, 79-84.

⁷⁸ P-0994, DAR-OTP-0222-0055 at 0069, paras. 66-67.

⁷⁹ P-0994, DAR-OTP-0222-0055 at 0069-0070, paras. 68-69.

32. P-0994's prior recorded testimony⁸⁰ comprises one statement,⁸¹ and associated material consisting of: (i) a sketch drawn by P-0994 of the Deleig police station and its surroundings;⁸² (ii) a sketch drawn by P-0994 of Mr Abd-Al-Rahman's Central Reserve Forces ("CRF") epaulette;⁸³ (iii) a signed photographic image of Deleig where P-0994 marked several locations in Deleig, including the police station;⁸⁴ and (iv) a photograph of Mr Abd-Al-Rahman shown to P-0994 during the interview.⁸⁵

The Prosecution requests one hour for its limited supplementary examination of P-0994

33. The Prosecution seeks one hour to conduct a supplementary examination of P-0994 on topics including: (i) the arrest, detention and mistreatment of males in Deleig on or about 5 March 2004; (ii) the detention and mistreatment of Jenif on or about 5 March 2004; (iii) the transportation of five detainees on or about 7 March 2004, including several community leaders; (iv) his observations of Mr Abd-Al-Rahman during the Deleig incident; and (v) Mr Abd-Al-Rahman's identity and background, including the ownership of a pharmacy in Garsila.

34. The Prosecution estimates that it would require 4.5 hours for the direct examination of P-0994,⁸⁶ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

B. The Prior Recorded Testimonies of the Three Witnesses are cumulative to, and corroborative of, evidence to be provided by viva voce witnesses

35. The evidence provided by P-0976 and P-0992 on the Mukjar incident in February/March 2004 is corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses on: (a) the charges of persecution, torture, other inhumane acts, and outrages upon personal dignity regarding the arrest and the conditions of detention of men perceived

⁸⁰ See Annex A – A3.

⁸¹ DAR-OTP-0222-0055.

⁸² DAR-OTP-0222-0077 (Translation at DAR-OTP-0220-1221).

⁸³ DAR-OTP-0222-0078 (Translation at DAR-OTP-0220-1223).

⁸⁴ DAR-OTP-0222-0079.

⁸⁵ DAR-OTP-0222-0082.

⁸⁶ Annex 1 to the Prosecution's submission of the updated List of Witnesses and List of Evidence, 9 May 2022, [ICC-02/05-01/20-685-Conf-Anx1](#), p. 5.

to be associated with or supportive of rebel armed groups;⁸⁷ (b) the murder and attempted murder of detainees;⁸⁸ and (c) Mr Abd-Al-Rahman's involvement in the Mukjar incident.⁸⁹

39. Evidence provided by P-0994 with respect to several central aspects relevant to the Deleig incident is corroborative of, and cumulative to, evidence to be provided *viva voce* witnesses:

- a. the arrest of Fur males displaced to Deleig from the surrounding areas, between about 5 and about 7 March 2004;⁹⁰
- b. the detention and mistreatment of male Fur civilians in the open area near the Deleig police station on or about 5 March 2004;⁹¹
- c. the loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times on or about 5 March 2004;⁹²
- d. Mr Abd-Al-Rahman's presence during, and supervision of, the process of loading detainees onto vehicles;⁹³
- e. the transportation of a group of detainees, including community leader, between on or about 7 March 2004;⁹⁴
- f. the arrest and mistreatment of Jenif in Deleig by Mr Abd-Al-Rahman and his men on or about 5 March 2004.⁹⁵

36. On the issue of the Accused's identity, information provided by P-0994 corroborates information agreed upon by the Defence and the Prosecution in relation to Mr Abd-Al-Rahman – that Mr Abd-Al-Rahman lived in Garsila where he opened a shop near the

⁸⁷ Such as P-0029, P-0129, P-0188, P-0903, P-0905, P-0919, P-0979, P-0984, P-0990 and P-1040.

⁸⁸ Such as P-0129, P-0188, P-0885, P-0919, P-0979 and P-1040.

⁸⁹ Such as P-0029, P-0129, P-0188, P-0877, P-0885, P-0905, P-0919 P-0931, P-0990.

⁹⁰ The evidence of P-0994 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0907, P-0924, P-0973 and P-0987.

⁹¹ The evidence of P-0994 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0924, P-0931, P-0973 and P-0987.

⁹² The evidence of is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0924, P-0973 and P-0987.

⁹³ The evidence of P-0994 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0924, P-0973 and P-0987.

⁹⁴ The evidence of P-0994 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0027 and P-0907.

⁹⁵ The evidence of P-0994 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907 and P-0987.

Agricultural Bank from which he sold medication and that Mr Abd-Al-Rahman was a member of the CRF – thus narrowing the scope of the contested issue of the Accused identity.⁹⁶

37. In addition, the evidence provided by the Three Witnesses on the senior leadership position of Mr Abd-Al-Rahman in the Militia/*Janjaweed* who cooperated with and/or exerted influence over GoS Forces at the locality level is also cumulative to, or corroborative of, evidence that will be elicited by other *viva voce* witnesses,⁹⁷ as is the evidence they provide on the contextual elements of war crimes⁹⁸ and crimes against humanity.⁹⁹

C. *The Prior Recorded Testimonies of the Three Witnesses are relevant, reliable and probative to the case*

38. The Prior Recorded Testimonies that the Prosecution seeks to introduce into evidence pursuant to rule 68(3) of the Rules are relevant, reliable and probative. In addition, the Prior Recorded Testimonies of the Three Witnesses contain sufficient indicia of reliability.¹⁰⁰ The witnesses have signed their Prior Recorded Testimonies, attesting to the fact that they were voluntarily given and record their best recollection of events.¹⁰¹ These Prior Recorded Testimonies also bear the interpreters' signature and certification that each witness heard and understood the translation.¹⁰²

⁹⁶ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, 9 November 2021, [ICC-02/05-01/20-504-AnxA](#), facts 11, 13, 14, 15.

⁹⁷ Such as P-0029, P-0643, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0987, and P-1021.

⁹⁸ P-0992 provides information on the integration of Militia/*Janjaweed* into GoS Forces that is corroborated by P-0643, P-0935, P-0994, among others. Information provided by P-0976 on GoS Forces and Militia/*Janjaweed* joint military operations against rebel bases is corroborated by, among others, P-0935 and P-0883. Information provided by P-0992 on the occurrence of a rebel attack on Mukjar is corroborative of evidence provided by, *inter alia*, P-0029 and P-0878. Information on the structure of the PPF provided by the witnesses is cumulative to evidence provided by, *inter alia*, P-0883 and P-0895. Lastly, evidence provided by the Three Witnesses on police being prevented from filing reports of crimes committed by GoS Forces and Militia/*Janjaweed* is cumulative to evidence provided by P-0874, P-0883, P-0885, P-0984, P-0987, among others.

⁹⁹ The information provided by the Three Witnesses on the use of public resources to recruit, train and/or arm Militia/*Janjaweed* is corroborative of, and cumulative to, the evidence provided by P-0011, P-0029, P-0643, P-0874, P-0878, P-0883, P-0885, P-0905, P-0935, P-0926, P-0984.

¹⁰⁰ *Ntaganda* Rule 68(3) Preliminary Ruling, [ICC-01/04-02/06-1640-Red](#), para. 9.

¹⁰¹ P-0976, DAR-OTP-0222-0526 at 0544; P-0992, DAR-OTP-0221-0668 at 0685; P-0994, DAR-OTP-0222-0055 at 0075.

¹⁰² P-0976, DAR-OTP-0222-0526 at 0544-0545; P-0992, DAR-OTP-0221-0668 at 0686-0687; P-0994, DAR-OTP-0222-0055 at 0076.

D. The introduction of the Prior Recorded Testimonies of the Three Witnesses is not prejudicial to or inconsistent with the rights of the Accused

39. The introduction of the Prior Recorded Testimonies of the Three Witnesses into evidence would not be prejudicial to or inconsistent with the rights of the Accused, since, as required by rule 68(3) of the Rules, the witnesses will be present before the Chamber, their evidence will only be introduced if they do not object to it, and the Defence, along with the victims' representatives and the Chamber, will have an opportunity to fully examine the witness during the proceedings.¹⁰³

IV. CONCLUSION

40. For the foregoing reasons, the Prosecution requests that the Chamber grant the Application, subject to the fulfilment of the further conditions of rule 68(3) of the Rules.



Karim A. A. Khan QC
Prosecutor

Dated this 25th day of August 2022
At The Hague, The Netherlands

¹⁰³ See [First Rule 68\(3\) Decision](#), paras. 11-12.