

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/05-01/20

Date: 16 May 2024

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

**Decision on the Defence Request to admit Duncan Castellvi as an Expert Witness
and to introduce his evidence under Rule 68(3) of the Rules**

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
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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

Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section Other**

1. On 13 May 2024, the Defence requested that Trial Chamber I (the ‘Chamber’):
(i) admit Duncan Castellvi (‘D-0037’) as an expert witness; (ii) allow him to testify under Rule 68(3) of the Rules of Procedure and Evidence (the ‘Rules’); and (iii) authorise the introduction into evidence of his expert report (the ‘Report’), documentation establishing his qualifications and supporting material thereto, pursuant to this provision (the ‘Request’).¹ The Defence also reports that, in the context of *inter partes* discussions, the Prosecution indicated that it did not oppose this expert’s admission under Rule 68(3) of the Rules.²
2. On 16 May 2024, the Prosecution sent an email confirming that it does not oppose the Request.³
3. The Chamber incorporates, by reference, the general framework applicable to the admission of expert witnesses, as set out in a previous decision.⁴ The Chamber further incorporates, by reference, the general framework applicable to the assessment of requests for introduction of prior recorded testimonies pursuant to Rule 68(3) of the Rules.⁵
4. The Chamber notes that the Prosecution does not challenge D-0037’s expertise.⁶ Having considered D-0037’s academic background and professional experience,⁷ the Chamber accepts that, as submitted by the Defence,⁸ the witness is sufficiently qualified to provide expert evidence on Facebook, more specifically on its functioning and issues of authentication and reliability of related material.

¹ Defence request to admit Mr Duncan Castellvi as an expert witness and his expert report into evidence, under Rule 68(3), ICC-02/05-01/20-1125, paras 12-26, with four confidential annexes. The Defence further gave notice of its addition of D-0037 to its list of witnesses (Request, ICC-02/05-01/20-1125, para. 6). The Chamber recalls that in its oral ruling, the Chamber accepted the Defence’s updated list of witnesses, including D-0037. *See* Transcript of hearing, 24 April 2024, ICC-02/05-01/20-T-150-CONF-ENG, p. 17, line 24 to p. 20, line 19.

² Request, ICC-02/05-01/20-1125, para. 7.

³ E-mail from the Prosecution, 16 May 2024, at 10:45.

⁴ Decision on the Defence Request to admit Dr Philippe Gout as an Expert Witness, 30 November 2023, ICC-02/05-01/20-1044, paras 9-11.

⁵ First Decision on the Prosecution’s request to introduce prior recorded testimonies under Rule 68(3), 20 January 2022, ICC-02/05-01/20-559-Red, paras 7-17.

⁶ Request, ICC-02/05-01/20-1125, para. 7. The Chamber further notes that, during a hearing on 24 April 2024, the Prosecution stated that it does not oppose the admission of D-0037 as an expert witness. *See* Transcript of hearing, 24 April 2024, ICC-02/05-01/20-T-150-CONF-ENG, p.10, lines 17-18.

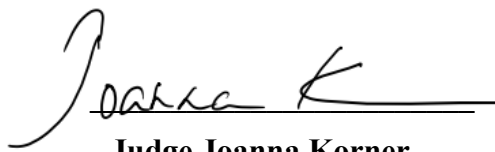
⁷ Annex C to the Defence request to admit Mr Duncan Castellvi as an expert witness and his expert report into evidence, under Rule 68(3), 13 May 2024, ICC-02/05-01/20-1125-Conf-AnxC.

⁸ Request, ICC-02/05-01/20-1125, paras 13-16.

5. Moreover, as submitted by the Defence,⁹ the Chamber finds that D-0037's expert opinion may assist the Chamber in its assessment of the evidence on the record. As submitted by the Defence,¹⁰ the topics, covered by the report, are ones that fall within D-0037's expertise.

6. Finally, the Chamber notes the parties' agreement to introduce the Report, the documentation establishing D-0037's qualifications and the supporting material thereto under Rule 68(3) of the Rules.¹¹ Noting the absence of objections by the parties, the Chamber authorises the introduction into evidence of these materials pursuant to this provision. The Chamber's preliminary ruling is subject to the witness' appearance before the Chamber and his consent to the introduction of the aforesaid materials under Rule 68(3) of the Rules.

7. Considering the above, the Chamber grants the Request.

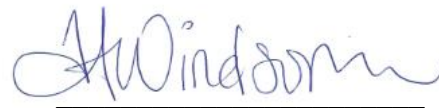


Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this 16 May 2024

At The Hague, The Netherlands

⁹ Request, ICC-02/05-01/20-1125, paras 19-23.

¹⁰ Request, ICC-02/05-01/20-1125, paras 17-18.

¹¹ Request, ICC-02/05-01/20-1125, para. 24.