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No. ICC-02/05-01/20

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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

**Decision on the Prosecution's sixth request to introduce prior recorded
testimonies under Rule 68(3)**

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

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Other

I. Procedural history

1. On 20 January 2022, Trial Chamber I ('the Chamber') issued its first decision on the Prosecution's request 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 (the 'First Rule 68(3) Decision').¹
2. On 3 February 2022, the Prosecution filed its sixth application to introduce the prior recorded testimonies of 21 witnesses pursuant to Rule 68(3) of the Rules (the 'Sixth Request').² The witnesses concerned are: P-0027, P-0059, P-0060, P-0091, P-0106, P-0119, P-0585, P-0592, P-0607, P-0617, P-0651, P-0697, P-0712, P-0725, P-0726, P-0736, P-0850, P-0894, P-0895, P-0926, and P-0980.
3. On 8 February 2022, the Chamber issued its decision on the Prosecution's second and third requests to introduce prior recorded testimonies under Rule 68(3) (the 'Second Rules 68(3) Decision').³
4. On 18 February 2022, the Defence filed its response to the Sixth Request (the 'Response').⁴

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 that same date, ICC-02/05-01/20-559-Red (hereinafter: 'First Rule 68(3) Decision').

² Prosecution's sixth application under rule 68(3) to introduce into evidence prior recorded testimony of 21 witnesses, ICC-02/05-01/20-580-Conf with confidential annex A. A public redacted version was notified on 8 February 2022, ICC-02/05-01/20-580-Red (hereinafter: 'Sixth Request').

³ Decision on the Prosecution's second and third requests to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-588-Conf. A public redacted version was notified on that same date, ICC-02/05-01/20-588-Red (hereinafter: 'Second Rule 68(3) Decision'). *See also* Decision on the Defence's request for leave to appeal the Decision on the Prosecution's second and third requests to introduce prior recorded testimonies under Rule 68(3), 23 February 2022, ICC-02/05-01/20-605.

⁴ Defence response to Prosecution's sixth application under rule 68(3) to introduce into evidence prior recorded testimony of 21 witnesses, ICC-02/05-01/20-580-Conf, ICC-02/05-01/20-601-Conf. A public redacted version was notified on 21 February 2022, ICC-02/05-01/20-601-Red (hereinafter: 'Response'). On 8 February 2022, the Chamber granted the Defence's request for an extension of time limit to respond to the Sixth Request, *See* Transcript of hearing, 8 February 2022, ICC-02/05-01/20-T-022-CONF-ENG, p. 30, lines 1-16.

5. On 21 February 2022, the Chamber issued its decision on the Prosecution’s fourth and fifth requests to introduce prior recorded testimonies under Rule 68(3) (the ‘Third Rules 68(3) Decision’).⁵

II. Analysis

6. The Chamber incorporates by reference the general framework applicable to the assessment of requests for introduction of prior recorded statements pursuant to Rule 68(3) of the Rules.⁶

7. In the Sixth Request, the Prosecution notes that, after *inter partes* consultation, the Defence did not agree to the introduction of the prior recorded testimonies of any of the witnesses identified in the Sixth Request.⁷ However, in its Response, the Defence stated that it does not oppose the Request in respect of witnesses P-0712 and P-0725.⁸

A. General objections raised by the Defence

8. First, with regard to witnesses P-0059, P-0106, P-0119, P-0585, P-0607, P-0617 and P-0651, the Defence submits that little time would be saved if each of them testified under Rule 68(3) of the Rules and that this cannot outweigh the Defence’s interest in the witnesses testifying entirely *viva voce*.⁹ The Chamber reiterates that admission under Rule 68(3) contributes to the expeditious conduct of the trial.¹⁰

9. Second, incorporating by reference its previous submissions, the Defence repeats its previous submission,¹¹ that all witness statements are inadmissible as a result of the erroneous marking as ‘restricted’ instead of ‘confidential’.¹² This has been ruled upon by this Chamber on multiple occasions.¹³ Equally the Chamber reiterates —it is to be

⁵ Decision on the Prosecution’s fourth and fifth request to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-602-Conf, A public redacted version was filed on that same date, ICC-02/05-01/20-602-Red (hereinafter: ‘Third Rule 68(3) Decision’).

⁶ First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 7-17.

⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 105. The Defence nevertheless objects generally to the lack of compliance with the Court’s Information Protection Policy and to the admissibility of witness statements taken in non-States parties.

⁸ Response, ICC-02/05-01/20-601-Conf, para. 2.

⁹ Response, ICC-02/05-01/20-601-Conf, paras 12, 16-18, 20-22.

¹⁰ Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para. 11.

¹¹ Réponse à la Requête ICC-02/05-01/20-547-Conf, 5 January 2022, ICC-02/05-01/20-549-Conf, paras 14-15. A public redacted version was notified on 10 January 2022, ICC-02/05-01/20-549-Red.

¹² Response, ICC-02/05-01/20-601-Conf, para. 5.

¹³ First Decision on the Prosecution’s requests to introduce prior recorded testimonies under Rule 68(2)(b), 2 March 2022, ICC-02/05-01/20-612-Conf, para. 21. A public redacted version was notified on the same date, ICC-02/05-01/20-612-Red (hereinafter: ‘First Rule 68(2)(b) Decision’). *See also* Decision

hoped for the last time— that it is not necessary for the Defence to repeat submissions on which rulings have been made, in order to preserve the appeal rights of the accused.¹⁴

10. Third, for the record and to preserve Mr Abd-Al-Rahman’s appeal rights, the Defence incorporates, by reference, its submissions on the absence of a valid special agreement under Article 4(2) of the Rome Statute (the ‘Statute’) between the Court and non-States Parties, including Sudan, where some of the witnesses in the Sixth Request may have been interviewed.¹⁵ The Defence does not identify any specific witness in the Sixth Request who may be the subject of this objection.¹⁶ The Chamber notes that this issue also has been raised in previous written and oral submissions, and previously been ruled upon.¹⁷ Accordingly, the Chamber will disregard this aspect of the Defence’s submissions.¹⁸

B. Reliability of the prior recorded testimonies

11. In respect of all witnesses in the Sixth Request, except for P-0712 and P-0725, the Defence incorporates, by reference, its previous submissions relating to the witness statement-taking process which in its view produces unreliable statements and which, if introduced via Rule 68(3) of the Rules would result in prejudice to the accused.¹⁹

12. The Defence also questions the reliability of the prior statements of P-0059, P-0060, P-0106, P-0585, P-0592, P-0607, P-0617, P-0697, P-0736 and P-0894, on the

on the Defence’s requests for leave to appeal the oral decisions on the inadmissibility of evidence and victims’ participation, 2 December 2021, ICC-02/05-01/20-525; Transcript of hearing, 12 November 2021, ICC-02/05-01/20-T-017-Red-ENG, p. 36, line 12 to p. 42, line 10; p. 47, line 9 to p. 48, line 21; First Rule 68(3) Decision, ICC-02/05-01/20-559-Red, paras 18-19.

¹⁴ First Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Conf, para. 21.

¹⁵ Response, ICC-02/05-01/20-601-Conf, para. 6. *See* Defence’s Response to Request ICC-02/05-01/20-555-Conf, 31 January 2022, ICC-02/05-01/20-568-Conf, paras 5-11. A public redacted version was notified on 1 February 2022, ICC-02/05-01/20-568-Red.

¹⁶ Response, ICC-02/05-01/20-601-Conf, para. 6

¹⁷ First Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Conf, para. 24, *referring to* Second Rule 68(3) Decision, ICC-02/05-01/20-588-Conf, paras 9-17. *See also* Decision on Defence submissions on cooperation with Sudan, 21 January 2022, ICC-02/05-01/20-561-Conf. A public redacted version was notified on that same date, ICC-02/05-01/20-561-Red.

¹⁸ First Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Conf, para. 24; Second Rule 68(3) Decision, ICC-02/05-01/20-588-Conf, paras 9-17; Decision on the Defence’s request for leave to appeal the Decision on the Prosecution’s second and third requests to introduce prior recorded testimonies under Rule 68(3), 23 February 2022, ICC-02/05-01/20-605.

¹⁹ Transcript of hearing, 8 February 2022, ICC-02/05-01/20-T-022-CONF-ENG, p. 11, line 21 to p. 21, line 15.

ground that ‘they either did not complete their primary education, or otherwise only received very rudimentary education’.²⁰

13. As regards the issues of reliability raised by the Defence, the Chamber recalls its prior rulings on the matter.²¹ In particular, the Chamber emphasises that, as determined by the Appeals Chamber, reliability is to be considered on a case-by-case basis and the Chamber has wide discretion as to whether to take into account only formal requirements, or take into account other factors.²² Moreover, Rule 68(3) of the Rules allows the Defence to cross-examine witnesses regarding their evidence, reliability and credibility.²³

14. Accordingly, the Chamber rejects the over-arching objections made by the Defence. This is without prejudice to the Chamber’s case-by-case analysis below, particularly bearing in mind the rights of the accused.

15. The Chamber emphasises that the only matters it is able to consider, when making its decision on individual witnesses, are those specified in the prosecution application and the Defence Response.

C. The prior recorded testimonies

P-0027

16. P-0027, a Fur civilian, is a witness of alleged incidents in Deleig and surrounding areas, particularly in relation to the charges of torture, outrages upon personal dignity, cruel treatment, and other inhumane acts.²⁴

²⁰ Response, ICC-02/05-01/20-601-Conf, para. 8.

²¹ First Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Conf, para. 25; Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, paras 8-15; Second Rule 68(3) Decision, ICC-02/05-01/20-588-Conf, para. 59; Transcript of hearing, ICC-02/05-01/20-T-022-CONF, p. 17, line 21 to p. 18, line 3. *See also* jurisprudence referred to in the Third Rule 68(3) Decision, fn. 18.

²² First Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Conf, para. 25. *See also* Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para. 14, *referring to* Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled “Decision on the Prosecutor’s application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)”, 1 November 2016, ICC-02/11-01/15-744 (OA8), paras 101-103.

²³ Second Rule 68(3) Decision, ICC-02/05-01/20-588-Conf, para. 59; Transcript of hearing, ICC-02/05-01/20-T-022-CONF, p. 14, lines 23 et seq. *See also* Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, paras 8-15.

²⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 10.

17. As regards the accused, the witness's evidence refers to his alleged presence and actions in Deleig, and particularly outside Deleig police station.²⁵

18. The prior recorded testimony of P-0027 includes three witness statements taken by the Prosecution in February 2006, November 2020 and December 2021.²⁶ Additionally, the Prosecution seeks the submission of associated material, namely, photographs and videos of P-0027, as well as P-0027's identification documents, an investigator's report and a medical certificate.²⁷

19. The Prosecution requests one hour to conduct a supplementary examination (instead of the 4.5 hours estimated for *viva voce* examination).²⁸

20. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules. First, it submits that parts of the testimony refer to the alleged involvement of 'Ali Koshib' in uncharged incidents,²⁹ as well as the charged incident in Deleig.³⁰ The Defence also refers to P-0027's evidence on the identification of 'Ali Koshib' purportedly as someone [REDACTED] and describing him as the head of the Militia/*Janjaweed* in Garsila.³¹ The Defence refers to P-0027's [REDACTED] and conversations which P-0027 overheard about him, [REDACTED] 'Ali Koshib' apparently spoke with either the President or Vice-President.³²

21. The Chamber notes the Prosecution's submission that the evidence of P-0027 is corroborative of, and cumulative to, other witnesses who will testify entirely *viva voce* on the alleged incidents in Deleig and surrounding areas, particularly the alleged targeting and detention of Fur men who were displaced to Deleig from the surrounding areas;³³ and their alleged detention and mistreatment in the open area near Deleig police station.³⁴ The Chamber further notes that P-0027's evidence in this regard is not unique

²⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 10.

²⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 11.

²⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 12 and Annex A.

²⁸ Sixth Request, ICC-02/05-01/20-580-Conf, paras 13-14.

²⁹ Response, ICC-02/05-01/20-601-Conf, para. 11, *referring to* DAR-OTP-0094-0091, paras 33-39.

³⁰ Response, ICC-02/05-01/20-601-Conf, para. 11, *referring to* DAR-OTP-0094-0091, paras 44, 48-50, 58.

³¹ Response, ICC-02/05-01/20-601-Conf, para. 11, *referring to* DAR-OTP-0094-0091, para. 65.

³² Response, ICC-02/05-01/20-601-Conf, para. 11, *referring to* DAR-OTP-0094-0091, paras 66-73 and DAR-OTP-0216-0738, para. 28.

³³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

³⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

or otherwise particularly significant in the body of the expected evidence on this incident. In fact, in paragraphs 48 and 49 of the witness statement,³⁵ P-0027 accepts that he did not actually see the arrival of the Militia/*Janjaweed* in Deleig in the beginning of March 2004, but was told about it by someone else. In paragraph 50 of the witness statement,³⁶ although P-0027 is an eyewitness of the treatment of detainees at Deleig police station, his evidence in this regard is not unique and is, as noted above, corroborative of and cumulative to that of other civilians who will testify *viva voce*.

22. As regards the acts and conduct of the accused, and in addition to the conclusions set out previously by the Chamber,³⁷ the Chamber notes the Prosecution's submission that the evidence of P-0027 on the accused's alleged mistreatment of detainees in the open area near Deleig police station;³⁸ his alleged involvement in and supervision of the loading of detainees, including community leaders, onto vehicles, which drove out of Deleig and returned empty, is corroborative of and cumulative to that of other witnesses who will testify *viva voce*.³⁹ Further, the Chamber notes the Prosecution's submission that parts of the testimony relating to the identification and position of 'Ali Koshib' are also corroborative of and cumulative to the evidence of other witnesses who will testify entirely *viva voce*.⁴⁰

23. Nonetheless, the Chamber notes in particular those parts of P-0027's testimony referred to by the Defence in which the witness allegedly had direct interaction with 'Ali Koshib'.⁴¹ P-0027 provides detailed evidence about the accused which is unique, given P-0027's alleged [REDACTED].⁴²

³⁵ DAR-OTP-0094-0091, paras 48-49.

³⁶ DAR-OTP-0094-0091, para 50.

³⁷ First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras. 20-25; Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para 7;

³⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0879, P-0907, P-0924, P-0973 and P-0994.

³⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

⁴⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0117, P-0129, P-0131, P-0589, P-0643, P-0718, P-0769, P-0874, P-0878, P-0879, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990, P-0994 and P-1021.

⁴¹ Response, ICC-02/05-01/20-601-Conf, para. 11, *referring to* DAR-OTP-0094-0091, paras 65-73 and DAR-OTP-0216-0738, para. 28.

⁴² DAR-OTP-0094-0091, paras 65-73.

24. Although the factors discussed above are not, *per se*, an obstacle to authorising the introduction of evidence under Rule 68(3) of the Rules, in the instant case, P-0027's evidence, which is based on his alleged direct interaction with and proximity to 'Ali Koshib' during the period relevant to the charges, is sufficiently detailed and unique. Accordingly, the Chamber, in this particular circumstance, determines that it is preferable that the entirety of P-0027's evidence is heard *viva voce*.

P-0059

25. P-0059, a Fur [REDACTED], provides evidence relating to elements of individual criminal responsibility of the accused, particularly the actions and role of the accused as the Militia/*Janjaweed* commander in Wadi Salih.⁴³

26. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, three sketches drawn by P-0059 and 18 photographs of P-0059.⁴⁴

27. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).⁴⁵

28. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the senior position of 'Ali Kosheb'⁴⁶ in the Militia/*Janjaweed*,⁴⁷ as well as the physical description and nickname of 'Ali Kosheb'.⁴⁸ The Defence notes that P-0059 describes 'Ali Kosheb' as having both of his ears pierced, whereas neither of Mr Abd-Al-Rahman's ears are pierced.⁴⁹

29. The Chamber notes the Prosecution's submission that the evidence of P-0059 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the alleged leadership position of accused in the Militia/*Janjaweed*;⁵⁰ and the

⁴³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 15.

⁴⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 16 and Annex A.

⁴⁵ Sixth Request, ICC-02/05-01/20-580-Conf, paras 17-18.

⁴⁶ Response, ICC-02/05-01/20-601-Conf, para. 12, *referring to* DAR-OTP-0095-0095, paras 133, 139.

⁴⁷ Response, ICC-02/05-01/20-601-Conf, para. 12, *referring to* DAR-OTP-0095-0095, para. 120.

⁴⁸ Response, ICC-02/05-01/20-601-Conf, para. 12, *referring to* DAR-OTP-0095-0095, paras 133, 139.

⁴⁹ Response, ICC-02/05-01/20-601-Conf, para. 12, *referring to* DAR-OTP-0095-0095, para. 139.

⁵⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

evidence on the alleged involvement of the accused in the recruitment, training, arming, funding and distribution of other resources to the Militia/*Janjaweed* by the Government of Sudan.⁵¹ The Chamber notes that P-0059's evidence in this regard is not unique or otherwise particularly significant in the body of the expected evidence. In fact, in paragraph 120 of the statement, [REDACTED].⁵² In paragraphs 121 and 130 referred to by the Defence, [REDACTED].⁵³

30. The Chamber notes that P-0059's description of 'Ali Kosheb' as having both of his ears pierced, is in a sense unique, [REDACTED] and allegedly saw the accused at the time.⁵⁴ The Chamber notes that, should the Defence desire to cross-examine on this point, which –if the assertion that Mr Abd-Al-Rahman does not in fact have pierced ears be borne out by evidence– is a point which is in their favour, they will have ample opportunity to question the witness regarding the alleged physical description of 'Ali Kosheb' and any purported discrepancies between P-0059's testimony and that of other witnesses, as well as P-0059's evidence on the alleged leadership position of 'Ali Kosheb' in the Militia/*Janjaweed* and his alleged nickname.⁵⁵ The Chamber further notes that P-0059's evidence on the nickname of 'Ali Kosheb',⁵⁶ has little significance in the body of the expected evidence on the issue of the identity of the accused.

31. The Chamber is satisfied that the introduction of P-0059's prior recorded testimony will not occasion any prejudice to the accused.

P-0060

32. P-0060, a Fur [REDACTED], provides testimony on the alleged incidents in Deleig and surrounding areas, and the contextual elements of the crimes.⁵⁷

33. As regards the accused, the witness's evidence refers to his identity and background, his alleged position as a senior leader of the Militia/*Janjaweed*, his alleged

⁵¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, *referring to* P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

⁵² DAR-OTP-0095-0095, para. 120.

⁵³ DAR-OTP-0095-0095, para. 120.

⁵⁴ DAR-OTP-0095-0095, para. 139.

⁵⁵ DAR-OTP-0095-0095, para. 133.

⁵⁶ DAR-OTP-0095-0095, para. 133.

⁵⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 19.

cooperation with Government of Sudan Forces, and his alleged presence and participation in the Deleig operation.⁵⁸

34. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, four maps and two sketches drawn by P-0060, an index, four photographs of P-0060 and an investigator's note.⁵⁹

35. The Prosecution requests one hour to conduct a supplementary examination (instead of the 4.5 hours estimated for *viva voce* examination).⁶⁰

36. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the alleged position and identity of 'Ali Koshib',⁶¹ and the alleged presence, authority and participation of 'Ali Koshib' in the Government of Sudan operation in Deleig.⁶² The Defence notes P-0060's description of the purported involvement of 'Ali Koshib' in weapons distribution and Militia/*Janjaweed* training activities in 2001,⁶³ and observes that the Prosecution does not attempt to show that this evidence is corroborative of the expected testimony of other witnesses who are due to provide *viva voce* evidence.⁶⁴

37. The Chamber notes the Prosecution's submission that the evidence of P-0060 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the alleged search and arrest of Fur men displaced to Deleig from the surrounding areas;⁶⁵ the alleged detention and mistreatment of Fur civilian men in the open area near Deleig police station;⁶⁶ the alleged loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the alleged repeating of this process multiple times;⁶⁷ the alleged presence of the accused during and purported supervision of the process of

⁵⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 19.

⁵⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 20 and Annex A.

⁶⁰ Sixth Request, ICC-02/05-01/20-580-Conf, paras 21-22.

⁶¹ Response, ICC-02/05-01/20-601-Conf, para. 13, *referring to* DAR-OTP-0097-0328, para. 22.

⁶² Response, ICC-02/05-01/20-601-Conf, para. 13, *referring to* DAR-OTP-0097-0328, paras 19-22, 53-56.

⁶³ Response, ICC-02/05-01/20-601-Conf, para. 13, *referring to* DAR-OTP-0097-0328, paras 19-22.

⁶⁴ Response, ICC-02/05-01/20-601-Conf, para. 13.

⁶⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

⁶⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

⁶⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

loading detainees onto vehicles;⁶⁸ the alleged sighting of a group of community leaders in a convoy with the accused in Deleig;⁶⁹ and the alleged identity of the accused.⁷⁰

38. As regards the acts and conduct of the accused, and in addition to the conclusions set out previously by the Chamber,⁷¹ the Chamber notes the Prosecution's submission that P-0060's evidence in relation to the accused's alleged involvement and authority in the Government of Sudan operation in Deleig is corroborative of and cumulative to other witnesses who will testify entirely *viva voce*.⁷² The Chamber also notes the Prosecution's submission that P-0060's evidence on the alleged position and identity of the accused is corroborative of and cumulative to other witnesses who will testify entirely *viva voce*.⁷³

39. As regards P-0060's evidence on the purported involvement of 'Ali Koshib' in weapons distribution and Militia/*Janjaweed* training activities in 2001,⁷⁴ the Chamber notes that P-0060's account, [REDACTED], constitutes a small part of the expected body of evidence on the accused's alleged role and cooperation with the Government of Sudan, particularly in relation to the distribution of weapons.⁷⁵

40. The Chamber is satisfied that the introduction of P-0060's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have adequate opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused. Specifically, the Defence will also have the opportunity to question the witness on the witness's evidence as regards the presence, authority and participation of 'Ali

⁶⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

⁶⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0907, P-0973, P-0987 and P-0994.

⁷⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

⁷¹ See First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 20-25; Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para. 7;

⁷² Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0879, P-0907, P-0924, P-0973 and P-0994.

⁷³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 98, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

⁷⁴ Response, ICC-02/05-01/20-601-Conf, para. 13, referring to DAR-OTP-0097-0328, paras 19-28.

⁷⁵ See Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, referring to P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021. See also Prosecution's submission of the List of Witnesses and the List of Evidence, 5 January 2022, ICC-02/05-01/20-551-Conf-Exp-Anx2.

Koshib' in the Government of Sudan operation in Deleig and his alleged role in the distribution of weapons.

P-0091

41. P-0091, who [REDACTED], provides testimony regarding the accused's alleged senior leadership in the Militia/*Janjaweed* and collaboration with Government of Sudan officials, including Ja'afar Abd-Al-Hakam.⁷⁶

42. Together with the witness statement, the Prosecution seeks the submission of a sketch drawn by P-0091.⁷⁷

43. The Prosecution requests one hour to conduct a supplementary examination (instead of the 4.5 hours estimated for *viva voce* examination).⁷⁸

44. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity of 'Ali Kosheib',⁷⁹ his alleged involvement in attacks on Bindisi and Arawalla,⁸⁰ his alleged position as 'Agid Al Oquada',⁸¹ his alleged involvement in the distribution of weapons,⁸² and his alleged involvement in the arrest and killing of approximately 123 detainees mainly from the Fur tribe and the IDP population.⁸³ The Defence also questions the credibility of P-0091, specifically referring to a part of his testimony where he recounts the content of [REDACTED].⁸⁴

45. The Chamber notes the Prosecution's submission that the evidence of P-0091 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the alleged detention and mistreatment of Fur civilian men in the open area near the

⁷⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 23.

⁷⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 22 and Annex A.

⁷⁸ Sixth Request, ICC-02/05-01/20-580-Conf, paras 25-26.

⁷⁹ Response, ICC-02/05-01/20-601-Conf, para. 14, *referring to* DAR-OTP-0112-0142, paras 39-45, 51-52, 61, 80-85, 91-92, 102-104.

⁸⁰ Response, ICC-02/05-01/20-601-Conf, para. 14, *referring to* DAR-OTP-0112-0142, para. 39.

⁸¹ Response, ICC-02/05-01/20-601-Conf, para. 14, *referring to* DAR-OTP-0112-0142, paras 41-43, 61.

⁸² Response, ICC-02/05-01/20-601-Conf, para. 14, *referring to* DAR-OTP-0112-0142, paras 51, 61, 82.

⁸³ Response, ICC-02/05-01/20-601-Conf, para. 14, *referring to* DAR-OTP-0112-0142, para. 102.

⁸⁴ Response, ICC-02/05-01/20-601-Conf, para. 15, *referring to* DAR-OTP-0112-0142, paras 40-44.

Deleig police station;⁸⁵ and the alleged leadership position of the accused in the Militia/*Janjaweed*.⁸⁶

46. As regards the acts and conduct of the accused, and in addition to the conclusions set out previously by the Chamber,⁸⁷ the Chamber notes that P-0091's evidence on the alleged involvement of 'Ali Kosheib' in the distribution of weapons,⁸⁸ and his alleged involvement in the arrest and killing of approximately 123 detainees mainly from the Fur tribe and the IDP population,⁸⁹ are corroborative of and cumulative to other witnesses who will testify entirely *viva voce*.

47. As regards P-0091's testimony on the content of three documents mistakenly left behind by [REDACTED].⁹⁰ The Chamber notes P-0091's evidence in this regard. However, the Defence will have sufficient opportunity to question the witness on this issue identified as core to its case, as little else in the statement appears to be in dispute.

48. The Chamber is satisfied that the introduction of P-0091's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination.

P-0106

49. P-0106, a Fur cattle herder and farmer, provides evidence relating to alleged incidents in Deleig and surrounding areas; particularly in relation to the charges of murder, torture, outrages upon personal dignity, cruel treatment, and other inhumane acts.⁹¹ P-0106 also provides information on the contextual elements of the crimes.⁹²

⁸⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

⁸⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

⁸⁷ See First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 20-25; Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para. 7.

⁸⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, referring to P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

⁸⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0994 and P-1018.

⁹⁰ Response, ICC-02/05-01/20-601-Conf, para. 15, referring to DAR-OTP-0112-0142, paras 40-44.

⁹¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 27.

⁹² Sixth Request, ICC-02/05-01/20-580-Conf, para. 27.

50. As regards the accused, the witness's evidence refers to his alleged actions in Deleig, and his alleged role in the distribution of weapons and other military equipment to the Militia/*Janjaweed*.⁹³

51. The Prosecution does not seek the submission of any associated material with the witness statement.⁹⁴

52. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).⁹⁵

53. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity and position of the Ali Kushayb,⁹⁶ his physical description,⁹⁷ his alleged leadership in the Militia/*Janjaweed*, his recruitment by Ja'far Abd-al-Hakam in the Militia/*Janjaweed*,⁹⁸ his alleged involvement in the distribution of weapons,⁹⁹ and his alleged involvement in the detention, mistreatment and murder of detainees in Deleig.¹⁰⁰

54. The Chamber notes the agreed facts relating to the background of the accused,¹⁰¹ and the Prosecution's submissions that these facts are corroborated by P-0106.¹⁰²

55. As regards the alleged incidents in Deleig, the Chamber notes the Prosecution's submission that the evidence of P-0106 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the alleged search and arrest of Fur males displaced to Deleig from the surrounding areas;¹⁰³ the alleged use of derogatory language towards the Fur during the Government of Sudan operation in Deleig;¹⁰⁴ the alleged detention and mistreatment of male Fur civilians in the open area near Deleig

⁹³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 27.

⁹⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 28.

⁹⁵ Sixth Request, ICC-02/05-01/20-580-Conf, paras 29-30.

⁹⁶ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, paras 24-28, 31-33, 45.

⁹⁷ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, para. 27.

⁹⁸ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, paras 25-26, 45.

⁹⁹ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, paras 31-33.

¹⁰⁰ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, paras 70-77.

¹⁰¹ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, 2 November 2021, ICC-02/05-01/20-504-AnxA (hereinafter: 'Annex A to the 3rd Joint Submission on Agreed facts').

¹⁰² Sixth Request, ICC-02/05-01/20-580-Conf, para. 98, *referring to* DAR-OTP-0097-0328 at 0334, para. 22.

¹⁰³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹⁰⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0718, P-0905, P-0924, P-0973 and P-0987.

police station;¹⁰⁵ and the alleged loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times.¹⁰⁶ The Chamber notes that P-0106's evidence in this regard is not unique or otherwise particularly significant in the body of the expected evidence on this incident.

56. As regards the parts of the witness statement related to the alleged Militia/*Janjaweed* attack on Bindisi, Mara and Arawala,¹⁰⁷ the Chamber notes these are based on hearsay and contextual information rather than P-0106 directly having witnessed these attacks. The Chamber notes that, [REDACTED] as referred to by the Defence,¹⁰⁸ the event itself is not directly linked to the charges and only appears to provide context to the allegations that there was a search and arrests of Fur men displaced to Deleig and Mukjar from the surrounding areas. Accordingly, the evidence is not at the core of the Prosecution's case. The relevance and evidentiary weight of these parts of the witness statement will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

57. As regards the acts and conduct of the accused, the Chamber recalls its conclusions in previous decisions.¹⁰⁹ The Chamber notes the Prosecution's submission that the evidence of P-0106 on the accused's alleged presence during and supervision of the process of loading detainees onto vehicles in Deleig, stated in paragraphs 70 to 77 of the witness statement —referred to by the Defence—,¹¹⁰ is corroborative of and cumulative to other witnesses who will testify entirely *viva voce*.¹¹¹ The Chamber notes that the evidence of P-0106 on the accused's alleged involvement in the recruitment, training, arming, funding and distribution of other resources to the Militia/*Janjaweed* by the Government of Sudan,¹¹² is corroborative of and cumulative to other witnesses

¹⁰⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

¹⁰⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹⁰⁷ Response, ICC-02/05-01/20-601-Conf, para. 16, referring to DAR-OTP-0116-1005, paras 34-39, 51-59.

¹⁰⁸ Response, ICC-02/05-01/20-601-Conf, para. 16, referring to DAR-OTP-0116-1005, paras 60-67.

¹⁰⁹ See First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 20-25; Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para. 7.

¹¹⁰ Response, ICC-02/05-01/20-601-Conf, para. 16, referring to DAR-OTP-0116-1005, paras 70-77.

¹¹¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹¹² Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, referring to P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

who will testify entirely *viva voce*. Furthermore, paragraphs 31 to 33 of the witness statement referred to by the Defence,¹¹³ which provides evidence on Ali Kushayb's alleged involvement in the distribution of weapons to Arab tribes, is based on hearsay,¹¹⁴ is not unique, and the evidentiary weight of this assertion will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

58. The Chamber also notes the Prosecution's submission that the evidence of P-0106 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the identity and background of the accused,¹¹⁵ and his alleged leadership position in the Militia/*Janjaweed*.¹¹⁶ Although, in paragraph 24 referred to by the Defence, P-0106 purportedly claims [REDACTED],¹¹⁷ the witness did not seem to have any direct interaction with Ali Kushayb and does not provide any information which might be considered unique. Parts of P-0106's evidence on the identity and background of Ali Kushayb cited by the Defence in its Response,¹¹⁸ such as his physical description, his retirement from the military, and his post-retirement work as a 'medicine trader' in Garsila are not unique and corroborate witnesses who will testify entirely *viva voce* on the identity and background of Ali Kushayb.¹¹⁹

59. As regards the alleged position of Ali Kushayb in the Militia/*Janjaweed*, parts of P-0106's evidence referred to by the Defence,¹²⁰ such as his appointment as the head of the Militia/*Janjaweed* and his relationship with Ja'far Abd-al-Hakam, is corroborative of and cumulative to other witnesses who will testify entirely *viva voce*.¹²¹

¹¹³ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, paras 31-33.

¹¹⁴ DAR-OTP-0116-1005, paras 31-33.

¹¹⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

¹¹⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

¹¹⁷ DAR-OTP-0116-1005, para. 24.

¹¹⁸ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, paras 24-25, 27.

¹¹⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

¹²⁰ Response, ICC-02/05-01/20-601-Conf, para. 16, *referring to* DAR-OTP-0116-1005, paras 26-27, 45.

¹²¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

60. The Chamber is satisfied that the introduction of P-0106's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have adequate opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0106, the witness's evidence as regards the alleged involvement of Ali Kushayb in the Government of Sudan operation in Deleig.

P-0119

61. P-0119, a Fur [REDACTED], provides evidence relating to alleged incidents in Deleig and surrounding areas, and on the contextual elements of the crimes, particularly: (i) the background of the armed conflict in Darfur; (ii) armed groups involved; and (iii) Government of Sudan allegedly equipping and funding the Militia/*Janjaweed* [REDACTED].¹²²

62. As regards the accused, the P-0119's evidence refers to his identity and background, and his alleged involvement in the executions of civilians in Deleig.¹²³

63. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, a military identification card, [REDACTED] and a copy of a letter.¹²⁴

64. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).¹²⁵

65. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity and position of Ali Kushayb;¹²⁶ his alleged involvement in the arrest and detention of men in villages surrounding [REDACTED] and Deleig;¹²⁷ his alleged involvement in the execution of detainees;¹²⁸ the alleged links between the Government of Sudan and the

¹²² Sixth Request, ICC-02/05-01/20-580-Conf, para. 31.

¹²³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 31.

¹²⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 32 and Annex A.

¹²⁵ Sixth Request, ICC-02/05-01/20-580-Conf, paras 33-34.

¹²⁶ Response, ICC-02/05-01/20-601-Conf, para. 17, *referring to* DAR-OTP-0124-0196, para. 108.

¹²⁷ Response, ICC-02/05-01/20-601-Conf, para. 17, *referring to* DAR-OTP-0124-0196, para. 52.

¹²⁸ Response, ICC-02/05-01/20-601-Conf, para. 17, *referring to* DAR-OTP-0124-0196, paras 109-112, 118.

Militia/*Janjaweed*;¹²⁹ as well as P-0119's familiarity and purported interactions with Ali Kushayb.¹³⁰ The Defence further argues that P-0119's evidence provides [REDACTED].¹³¹

66. The Chamber notes the Prosecution's submission that the evidence of P-0119 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the involvement of the accused in the recruitment, training, arming, funding and distribution of other resources to the Militia/*Janjaweed* by the Government of Sudan.¹³²

67. As regards the identity and position of Ali Kushayb, the Chamber notes the Prosecution's submissions that P-0119's evidence is corroborative of and cumulative to other witnesses who will testify entirely *viva voce*.¹³³

68. The Chamber further notes that P-0119's evidence as regards Ali Kushayb's acts and conduct in Deleig referred to by the Defence is mostly hearsay and of limited significance *vis-à-vis* the body of evidence expected during trial.¹³⁴ In any event, the evidentiary weight of any indirect evidence of the witness will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

69. As regards the purported unique character of P-0119's evidence on [REDACTED],¹³⁵ the Chamber notes that P-0119's evidence on this issue [REDACTED] ([REDACTED] at the time of the charges).¹³⁶

70. As regards P-0119's alleged direct interaction with Ali Kushayb, although P-0119 –in paragraph 121 referred to by the Defence– [REDACTED], his evidence as regards Ali Kushayb is neither unique nor significant, and is corroborative of and cumulative

¹²⁹ Response, ICC-02/05-01/20-601-Conf, para. 17, referring to DAR-OTP-0124-0196, paras 94-95, 97-99.

¹³⁰ Response, ICC-02/05-01/20-601-Conf, para. 17, referring to DAR-OTP-0124-0196, para. 121.

¹³¹ Response, ICC-02/05-01/20-601-Conf, para. 17, referring to DAR-OTP-0124-0196, paras 94-95, 97-99.

¹³² Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, referring to P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

¹³³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0117, P-0129, P-0131, P-0589, P-0643, P-0718, P-0769, P-0874, P-0878, P-0879, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990, P-0994 and P-1021.

¹³⁴ Response, ICC-02/05-01/20-601-Conf, para. 17. See DAR-OTP-0124-0196, paras 104-121.

¹³⁵ Response, ICC-02/05-01/20-601-Conf, para. 17, referring to DAR-OTP-0124-0196, paras 94-95, 97-99.

¹³⁶ DAR-OTP-0124-0196, paras 94-95, 97-99.

to the evidence of other witnesses who will testify entirely *viva voce* on the identity and background of Ali Kushayb in much greater detail.¹³⁷

71. The Chamber is satisfied that the introduction of P-0119's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have ample opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0119, the witness's evidence as regards the funding of the Militia/*Janjaweed* and other Government of Sudan forces [REDACTED].

P-0585

72. P-0585, a Fur civilian, provides evidence on alleged incidents in Deleig, particularly relating to the charges of murder.

73. As regards the accused, the witness's evidence refers to his identity, his alleged senior leadership in the Militia/*Janjaweed*, and his alleged presence, authority and actions during the operation and execution of civilians in Deleig.¹³⁸

74. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, a map and five sketches used during the interview.¹³⁹

75. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).¹⁴⁰

76. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the purported identity, description, background and position of Ali Kushayb,¹⁴¹ his role in the Militia/*Janjaweed*,¹⁴² hearsay evidence that Ali Kushayb allegedly supervised the

¹³⁷ DAR-OTP-0124-0196, para. 121; *See* Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994. The Prosecution does not rely on this paragraph of P-0119's statement in the aforesaid footnotes in its Trial Brief (*see* preceding footnote).

¹³⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 35.

¹³⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 36 and Annex A.

¹⁴⁰ Sixth Request, ICC-02/05-01/20-580-Conf, paras 37-38.

¹⁴¹ Response, ICC-02/05-01/20-601-Conf, para. 18, *referring to* DAR-OTP-0201-0037, paras 26, 46-47, 51, 114-115, 118-120.

¹⁴² Response, ICC-02/05-01/20-601-Conf, para. 18, *referring to* DAR-OTP-0201-0037, paras 58-61, 74.

execution of detainees in Deleig;¹⁴³ and P-0585's purported interactions with Ali Kushayb before the conflict in Darfur.¹⁴⁴

77. The Chamber notes the agreed facts relating to the background of the accused,¹⁴⁵ and that these facts are supported by the evidence of P-0585.¹⁴⁶ The Chamber notes the Prosecution's submission that the evidence of P-0585 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the alleged use of derogatory language towards the Fur during the Government of Sudan operation in Deleig;¹⁴⁷ the alleged detention and mistreatment of Fur civilian men in the open area near Deleig police station;¹⁴⁸ the alleged sighting of a group of community leaders in a convoy with the accused in Deleig;¹⁴⁹ the purported identity and background of the accused;¹⁵⁰ the alleged leadership position of the accused in the Militia/*Janjaweed*;¹⁵¹ and the alleged involvement of the accused in the recruitment, training, arming, funding and distribution of other resources to the Militia/*Janjaweed* by the Government of Sudan.¹⁵²

78. Evidence relating to P-0585's purported personal interactions with Ali Kushayb is corroborative and cumulative to that of other witnesses who will testify entirely *viva voce* on the identity and background of Ali Kushayb,¹⁵³ and supportive of the facts relating to the background of the accused already agreed by the Parties.¹⁵⁴ Nonetheless, P-0585's evidence in this regard is sufficiently detailed and unique in relation to the

¹⁴³ Response, ICC-02/05-01/20-601-Conf, para. 18, *referring to* DAR-OTP-0201-0037, para. 91.

¹⁴⁴ Response, ICC-02/05-01/20-601-Conf, para. 18, *referring to* DAR-OTP-0201-0037, para. 114.

¹⁴⁵ Annex A to the 3rd Joint Submission on Agreed facts, ICC-02/05-01/20-504-AnxA.

¹⁴⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 98, *referring to* DAR-OTP-0201-0037 at 0065, paras 114-115.

¹⁴⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0718, P-0905, P-0924, P-0973 and P-0987.

¹⁴⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

¹⁴⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0907, P-0973, P-0987 and P-0994.

¹⁵⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

¹⁵¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

¹⁵² Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, *referring to* P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

¹⁵³ DAR-OTP-0124-0196-R02, para. 121; *See* Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

¹⁵⁴ Annex A to the 3rd Joint Submission on Agreed facts, ICC-02/05-01/20-504-AnxA.

body of evidence expected during trial.¹⁵⁵ For example, in paragraphs 58 to 61 referred to by the Defence, P-0585 states that he saw ‘Kushayb’ many times.¹⁵⁶

79. Bearing in mind the indirect nature of some of the evidence provided by P-0585, insofar as relevant, the evidentiary weight of any assertion will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

80. Although the factors discussed above are not, *per se*, an obstacle to authorising the introduction of evidence under Rule 68(3) of the Rules, in the instant case, P-0585’s evidence emanating from his purported encounters and interactions with Ali Kushayb is sufficiently detailed and unique. Accordingly, the Chamber, in this particular circumstance, determines that it is preferable that the entirety of P-0585’s evidence is heard *viva voce*.

P-0592

81. P-0592, a Fur civilian, provides evidence on alleged incidents in Deleig in relation to the charges of murder, persecution and outrages upon personal dignity and the contextual elements of the crimes.¹⁵⁷

82. As regards the accused, the witness’s evidence refers to his physical description and his alleged leadership in the Militia/*Janjaweed*.¹⁵⁸

83. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, a map and a drawn outline of a compound used during the interview.¹⁵⁹

84. The Prosecution requests one hour to conduct a supplementary examination (instead of the 4.5 hours estimated for *viva voce* examination).¹⁶⁰

¹⁵⁵ See for example DAR-OTP-0201-0037, para. 74, 84-88, 114-120.

¹⁵⁶ Response, ICC-02/05-01/20-601-Conf, para. 18, referring to DAR-OTP-0201-0037, paras 58-61.

¹⁵⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 39.

¹⁵⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 39.

¹⁵⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 40 and Annex A.

¹⁶⁰ Sixth Request, ICC-02/05-01/20-580-Conf, paras 41-42.

85. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer the identity, description and senior position of Ali Kushayb in the Militia/*Janjaweed*.¹⁶¹

86. The Chamber notes the Prosecution's submission that the evidence of P-0592 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the alleged search and arrest of Fur men displaced to Deleig from the surrounding areas;¹⁶² the alleged use of derogatory language towards the Fur during the Government of Sudan operation in Deleig;¹⁶³ the survival of several persons who were allegedly taken to execution sites;¹⁶⁴ and the alleged detention of a group of community leaders in Deleig.¹⁶⁵ As regards the accused's alleged leadership position in the Militia/*Janjaweed*, the Chamber notes the Prosecution's submission that P-0592's evidence is also corroborative and cumulative.¹⁶⁶

87. The Chamber notes the Defence's observation that the evidence provided by P-0592 is mostly general knowledge and hearsay.¹⁶⁷ The Chamber further notes, as referred to by the Defence, that P-0592 mentions seeing Ali Kushayb once 8 months after the attack on Deleig, which is outside the period of the charged crimes and therefore has limited significance.¹⁶⁸ Moreover, P-0592 states in his statement that he did not see Ali Kushayb on the day of the attack in Deleig.¹⁶⁹ Thus, P-0592's evidence does not directly bear upon the core of the case for the Prosecution. The evidentiary weight of any assertion will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

88. The Chamber is satisfied that the introduction of P-0592's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules

¹⁶¹ Response, ICC-02/05-01/20-601-Conf, para. 19, *referring to* DAR-OTP-0209-0825, paras 24-27, 106-108.

¹⁶² Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹⁶³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0718, P-0905, P-0924, P-0973 and P-0987.

¹⁶⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0907, P-0924 and P-0987.

¹⁶⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0973, P-0987 and P-0994.

¹⁶⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

¹⁶⁷ Response, ICC-02/05-01/20-601-Conf, para. 19, *referring to* DAR-OTP-0209-0825, paras 24-27.

¹⁶⁸ Response, ICC-02/05-01/20-601-Conf, para. 19, *referring to* DAR-OTP-0209-0825, paras 107-108.

¹⁶⁹ DAR-OTP-0209-0825, para. 106.

allows for cross-examination. The Defence will have adequate opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and any other part of P-0592's evidence relevant to the Defence case.

P-0607

89. P-0607, a Fur civilian, provides evidence on the alleged incidents in Deleig, particularly in relation to charges of persecution, torture and cruel treatment; and the contextual elements of the crimes.¹⁷⁰

90. As regards the accused, the witness's evidence refers to his alleged actions near Deleig police station during the period of the charged crimes, his alleged senior leadership in the Militia/*Janjaweed*, and his alleged authority during the Government of Sudan operation in Deleig.¹⁷¹

91. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, two sketches and a map drawn by P-0607.¹⁷²

92. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).¹⁷³

93. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3), noting parts of the statement which refer the alleged identity and position of Ali Kushayb;¹⁷⁴ his alleged inspection of detained men at Deleig police station;¹⁷⁵ Ali Kushayb allegedly walking on the backs of detainees;¹⁷⁶ the alleged loading of groups of detainees into vehicles;¹⁷⁷ as well as Ali Kushayb's alleged role as head of the Militia/*Janjaweed*.¹⁷⁸

94. As regards the alleged incidents in Deleig, the Chamber notes the Prosecution's submission that the evidence of P-0607 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the alleged search and arrest of

¹⁷⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 43.

¹⁷¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 43.

¹⁷² Sixth Request, ICC-02/05-01/20-580-Conf, para. 44 and Annex A.

¹⁷³ Sixth Request, ICC-02/05-01/20-580-Conf, paras 45-46.

¹⁷⁴ Response, ICC-02/05-01/20-601-Conf, para. 20, *referring to* DAR-OTP-0203-0164, paras 47-57.

¹⁷⁵ Response, ICC-02/05-01/20-601-Conf, para. 20, *referring to* DAR-OTP-0203-0164, para. 50.

¹⁷⁶ Response, ICC-02/05-01/20-601-Conf, para. 20, *referring to* DAR-OTP-0203-0164, para. 78.

¹⁷⁷ Response, ICC-02/05-01/20-601-Conf, para. 20, *referring to* DAR-OTP-0203-0164, paras 53-55.

¹⁷⁸ Response, ICC-02/05-01/20-601-Conf, para. 20, *referring to* DAR-OTP-0203-0164, para. 60.

Fur males displaced to Deleig from the surrounding areas;¹⁷⁹ the alleged detention and mistreatment of male Fur civilians in the open area near Deleig police station;¹⁸⁰ and the alleged loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times.¹⁸¹ The Chamber further notes that the evidence of P-0607 on the alleged incidents in Deleig is lacking in specificity about the events at Deleig police station where [REDACTED] and could therefore not fully see what was happening.¹⁸²

95. As regards the accused, the Chamber notes the Prosecution's submission that the evidence of P-0607 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the alleged leadership position of the accused in the Militia/*Janjaweed*,¹⁸³ and the alleged mistreatment of detainees by the accused in the open area near Deleig police station.¹⁸⁴ The Chamber notes, as submitted by the Defence, that P-0607's knowledge of Ali Kushayb appears to be limited.¹⁸⁵ Furthermore, the Chamber notes that in paragraphs 47 to 57 and 60, referred to by the Defence, P-0607 prefaces his evidence by stating that at the time of the encounter he did not know Ali Kushayb, he had never seen or heard of Ali Kushayb before, did not see Ali Kushayb again after this encounter, he could not give an accurate description of Ali Kushayb, and only heard about Ali Kushayb's alleged leadership position in the Militia/*Janjaweed* from others.¹⁸⁶ The evidentiary weight of evidence of the witness will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

96. The Chamber is satisfied that the introduction of P-0607's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules

¹⁷⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹⁸⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

¹⁸¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹⁸² DAR-OTP-0203-0164, paras 48-57.

¹⁸³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

¹⁸⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0879, P-0907, P-0924, P-0973 and P-0994.

¹⁸⁵ Response, ICC-02/05-01/20-601-Conf, para. 20, referring to DAR-OTP-0203-0164, para. 60.

¹⁸⁶ DAR-OTP-0203-0164, paras 47, 60.

allows for cross-examination. The Defence will have ample opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0607, the witness's evidence as regards the alleged events and actions of Ali Kushayb in Deleig.

P-0617

97. P-0617, a Fur civilian, provides evidence on the alleged incidents in Deleig, particularly in relation to the charges of murder, persecution, and cruel treatment and contextual elements of the crimes.¹⁸⁷

98. As regards the accused, the witness's evidence refers to his identity, his senior leadership in the Militia/*Janjaweed*, and his alleged presence and role during the alleged incidents in Deleig.¹⁸⁸

99. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, five maps drawn by P-0617.¹⁸⁹

100. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).¹⁹⁰

101. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity and position of Ali Kushayb,¹⁹¹ the building of his reputation as a potential militia leader,¹⁹² and his actions and authority during the Government of Sudan operation in Deleig.¹⁹³

102. The Chamber notes the Prosecution's submission that the evidence of P-0617 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the alleged detention and mistreatment of male Fur civilians in the open area near Deleig police station;¹⁹⁴ the alleged mistreatment of detainees by the accused in the

¹⁸⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 47.

¹⁸⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 47.

¹⁸⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 48 and Annex A.

¹⁹⁰ Sixth Request, ICC-02/05-01/20-580-Conf, paras 49-50.

¹⁹¹ Response, ICC-02/05-01/20-601-Conf, para. 21, *referring to* DAR-OTP-0202-1496, paras 81-83, 96-98.

¹⁹² Response, ICC-02/05-01/20-601-Conf, para. 21, *referring to* DAR-OTP-0202-1496, para. 96.

¹⁹³ Response, ICC-02/05-01/20-601-Conf, para. 21, *referring to* DAR-OTP-0202-1496, paras 83, 79-85.

¹⁹⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

open area near Deleig police station;¹⁹⁵ the alleged loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times;¹⁹⁶ the alleged killing of a group of detainees in an area outside of Deleig near Fere;¹⁹⁷ and the alleged senior leadership position of the accused in the Militia/*Janjaweed*.¹⁹⁸

103. The Chamber notes that parts of the witness statement referred to by the Defence are not unique, as regards the alleged identity and position of Ali Kushayb,¹⁹⁹ and his alleged actions and authority during the Government of Sudan operation in Deleig.²⁰⁰ The Chamber notes that the evidence in this regard is mostly hearsay as it emanates from what P-0617 learnt from others allegedly detained and thus limited to his position as a civilian living in Deleig at the time of the alleged incident.²⁰¹

104. The Chamber is satisfied that the introduction of P-0617's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have sufficient opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0617, the witness's evidence as regards the building of Ali Kushayb's reputation as a potential militia leader, and Ali Kushayb's actions and authority during the Government of Sudan operation in Deleig.

P-0651

105. P-0651, a Fur civilian, provides evidence on the alleged Militia/*Janjaweed* attacks on areas surrounding Deleig as well as the alleged incidents in Deleig, particularly in relation to the charges of murder and persecution.²⁰²

¹⁹⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0879, P-0907, P-0924, P-0973 and P-0994.

¹⁹⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹⁹⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0994 and P-1018.

¹⁹⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

¹⁹⁹ DAR-OTP-0202-1496, paras 79-85, 96-98.

²⁰⁰ Response, ICC-02/05-01/20-601-Conf, para. 21, referring to DAR-OTP-0202-1496, paras 79-85.

²⁰¹ See DAR-OTP-0202-1496, para. 83.

²⁰² Sixth Request, ICC-02/05-01/20-580-Conf, para. 51.

106. As regards the accused, the witness's evidence indirectly refers to his presence in Deleig and surrounding areas.²⁰³

107. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, three sketches drawn by P-0651.²⁰⁴

108. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).²⁰⁵

109. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3), noting parts of the statement which refer to the identity and position of Ali Kushayb;²⁰⁶ Ali Kushayb's involvement in the attacks around Mukjar and Bindisi,²⁰⁷ and on Fere,²⁰⁸ Taringa²⁰⁹ and Burbur;²¹⁰ the alleged arrest, detention and mistreatment of men in Deleig;²¹¹ and Ali Kushayb's alleged involvement in the loading of men into vehicles at Deleig police station bound for execution sites.²¹²

110. The Chamber notes the Prosecution's submission that the evidence of P-0651 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the search and arrest of Fur males displaced to Deleig from the surrounding areas;²¹³ the detention and mistreatment of male Fur civilians in the open area near Deleig police station;²¹⁴ the loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times;²¹⁵ the killing of a group of detainees in an area outside of Deleig near Fere;²¹⁶ and the attack on Taringa.²¹⁷

²⁰³ See DAR-OTP-0205-0015 at paras 20, 22, 25-27, 29, 32, 45, 48, 53, 62-66, 70-73.

²⁰⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 52 and Annex A.

²⁰⁵ Sixth Request, ICC-02/05-01/20-580-Conf, paras 53-54.

²⁰⁶ Response, ICC-02/05-01/20-601-Conf, referring to DAR-OTP-0205-0015, paras 20-22, 25-29, 47-48.

²⁰⁷ Response, ICC-02/05-01/20-601-Conf, para. 22, referring to DAR-OTP-0205-0015, para. 20.

²⁰⁸ Response, ICC-02/05-01/20-601-Conf, para. 22, referring to DAR-OTP-0205-0015, paras 21-22.

²⁰⁹ Response, ICC-02/05-01/20-601-Conf, para. 22, referring to DAR-OTP-0205-0015, paras 28-30.

²¹⁰ Response, ICC-02/05-01/20-601-Conf, para. 22, referring to DAR-OTP-0205-0015, paras 31-33.

²¹¹ Response, ICC-02/05-01/20-601-Conf, para. 22, referring to DAR-OTP-0205-0015, paras 43, 47-53.

²¹² Response, ICC-02/05-01/20-601-Conf, para. 22, referring to DAR-OTP-0205-0015, paras 50-53.

²¹³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

²¹⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

²¹⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

²¹⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0994 and P-1018.

²¹⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 101, referring to P-0718.

111. The Chamber also notes that the witness does not provide direct evidence on Ali Kushayb's alleged involvement in the attacks around Mukjar and Bindisi,²¹⁸ nor his presence during the alleged incidents in Deleig.²¹⁹ In fact, the Chamber notes that P-0651 provides no direct evidence on the accused's alleged presence or actions relating to the charges. His evidence in this regard is mostly hearsay and limited to his position as a civilian and a teenager at the time of the alleged events.²²⁰ Bearing in mind the indirect nature of the evidence provided by P-0651, insofar as relevant, the evidentiary weight of any assertion will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

112. The Chamber is satisfied that the introduction of P-0651's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have ample opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0651, the witness's evidence as regards Ali Kushayb's involvement in the attacks around Mukjar and Bindisi, and the presence of Ali Kushayb during the alleged incidents in Deleig.

P-0697

113. P-0697, a Fur civilian, provides evidence on the identity and background of the accused; the contextual elements of the crimes; the alleged Government of Sudan operation in Deleig, including by arming the Militia/*Janjaweed*, and particularly relating to the charges of murder and persecution.²²¹

114. As regards the accused, the witness's evidence refers to his identity, physical description and ownership of a pharmacy in Garsila; as well as his alleged presence during the search and arrest of men in Deleig in March 2004.²²²

115. Together with the witness statement, the Prosecution seeks the submission of a chart used during the interview.²²³

²¹⁸ Response, ICC-02/05-01/20-601-Conf, para. 22, *referring to* DAR-OTP-0205-0015, para. 20.

²¹⁹ Response, ICC-02/05-01/20-601-Conf, para. 22, *referring to* DAR-OTP-0205-0015, paras 43, 47-53.

²²⁰ DAR-OTP-0205-0015, para. 41.

²²¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 55.

²²² Sixth Request, ICC-02/05-01/20-580-Conf, para. 55.

²²³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 56 and Annex A.

116. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).²²⁴

117. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity, physical description, background, alleged position and individual criminal responsibility of Ali Kushayb.²²⁵ [REDACTED],²²⁶ and [REDACTED].²²⁷

118. The Chamber notes the Prosecution's submission that the evidence of P-0697 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the search and arrest of Fur men displaced to Deleig from the surrounding areas;²²⁸ as well as the attack on Taringa.²²⁹ The Chamber also notes that the evidence of P-0697 is corroborative of and cumulative to other witnesses who will testify entirely *viva voce* on the identity and background of Ali Kushayb.²³⁰

119. As regards [REDACTED].²³¹ Furthermore, as regards [REDACTED],²³² [REDACTED].²³³

120. The Chamber is satisfied that the introduction of P-0697's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have adequate opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0697, the witness's evidence as regards his [REDACTED].

²²⁴ Sixth Request, ICC-02/05-01/20-580-Conf, paras 57-58.

²²⁵ Response, ICC-02/05-01/20-601-Conf, para. 23.

²²⁶ Response, ICC-02/05-01/20-601-Conf, para. 23, referring to DAR-OTP-0209-0155, para. 65.

²²⁷ Response, ICC-02/05-01/20-601-Conf, para. 23, referring to DAR-OTP-0209-0155, para. 19.

²²⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

²²⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 101, referring to P-0718.

²³⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

²³¹ DAR-OTP-0209-0155, para. 65.

²³² Response, ICC-02/05-01/20-601-Conf, para. 23, referring to DAR-OTP-0209-0155, para. 19.

²³³ DAR-OTP-0209-0155, para. 19.

P-0712

121. P-0712, a Fur civilian, provides evidence on the alleged incidents in Deleig and surrounding areas, particularly relating to the charges of murder and persecution.²³⁴

122. As regards the accused, the witness's evidence refers to his identity and his alleged leadership position in the Militia/*Janjaweed*.²³⁵

123. Together with the witness statement, the Prosecution seeks the submission of associated material, namely a chart used during the interview.²³⁶

124. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).²³⁷

125. The Chamber notes the Defence's agreement to introduce this prior recorded testimony pursuant to Rule 68(3) of the Rules.²³⁸ It also notes the Prosecution's submissions as to the corroborative and cumulative evidence to be provided by other witnesses who will testify entirely *viva voce*.²³⁹

126. The Chamber is satisfied that the introduction of P-0712's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination.

P-0725

127. P-0725, a Fur civilian, provides evidence on the alleged incidents in Deleig and surrounding areas, particularly relating to the charges of murder and persecution.²⁴⁰

128. As regards the accused, the witness's evidence refers to his senior leadership in the Militia/*Janjaweed*.²⁴¹

²³⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 59.

²³⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 59.

²³⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 60 and Annex A.

²³⁷ Sixth Request, ICC-02/05-01/20-580-Conf, paras 61-62.

²³⁸ Response, ICC-02/05-01/20-601-Conf, para. 2. The Defence notes that this is subject to its general objections raised above for all witness statements.

²³⁹ Sixth Request, ICC-02/05-01/20-580-Conf, paras 96-97, 101.

²⁴⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 63.

²⁴¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 63.

129. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, a headdress board, a witness colour chart and two sketches.²⁴²

130. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).²⁴³

131. The Chamber notes the Defence's agreement to introduce this prior recorded testimony pursuant to Rule 68(3) of the Rules.²⁴⁴ It also notes the Prosecution's submissions as to the corroborative and cumulative evidence to be provided by other witnesses who will testify entirely *viva voce*.²⁴⁵

132. The Chamber is satisfied that the introduction of P-0725's prior recorded testimony will not occasion any prejudice to the accused.

P-0726

133. P-0726, a Fur civilian, provides evidence on the alleged incidents in Deleig and surrounding areas, particularly relating to the charges of murder and persecution.²⁴⁶

134. As regards the accused, the witness's evidence refers to his physical appearance, the vehicle he used, his alleged presence and authority in Deleig during the period of the charged crimes.²⁴⁷

135. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, two sketches drawn by P-0726 and a headdress board.²⁴⁸

136. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).²⁴⁹

137. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the accused.²⁵⁰

²⁴² Sixth Request, ICC-02/05-01/20-580-Conf, para. 64 and Annex A.

²⁴³ Sixth Request, ICC-02/05-01/20-580-Conf, paras 65-66.

²⁴⁴ Response, ICC-02/05-01/20-601-Conf, para. 2. The Defence's agreement is subject to its general objections to all witness statements.

²⁴⁵ Sixth Request, ICC-02/05-01/20-580-Conf, paras 96-97.

²⁴⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 67.

²⁴⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 67.

²⁴⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 68 and Annex A.

²⁴⁹ Sixth Request, ICC-02/05-01/20-580-Conf, paras 69-70.

²⁵⁰ Response, ICC-02/05-01/20-601-Conf, para. 24, referring to DAR-OTP-0210-0346, paras 71, 78.

The Defence notes that the witness's knowledge about the identity and position of authority of Ali Kushayb [REDACTED] and '[REDACTED] during encounters with that man'.²⁵¹ The Defence submits that the information about Ali Kushayb's alleged presence at Deleig police station [REDACTED].²⁵² The Defence also observes that the witness's evidence on the physical appearance of Ali Kushayb is based [REDACTED].²⁵³

138. As regards the alleged incidents in Deleig, the Chamber notes the Prosecution's submission that the evidence of P-0726 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the search and arrest of Fur men displaced to Deleig from the surrounding areas;²⁵⁴ the survival of several persons who were taken to execution sites;²⁵⁵ the killing of a group of detainees in an area outside of Deleig near Fere;²⁵⁶ and the attacks on Forgo.²⁵⁷

139. As regards the accused, the Chamber notes the Prosecution's submission that the evidence of P-0726 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the accused's identity and physical appearance,²⁵⁸ his alleged position of authority,²⁵⁹ and individual criminal responsibility.²⁶⁰ The Chamber notes in particular that in paragraph 71 of the statement referred to by the Defence,²⁶¹ P-0726 recognises that his knowledge about Ali Kushayb's alleged authority in the Militia/*Janjaweed* and during the alleged incidents in Deleig is based on what others told him.²⁶² The Chamber further notes that in paragraphs 76 to 79 of the witness

²⁵¹ Response, ICC-02/05-01/20-601-Conf, para. 24, referring to DAR-OTP-0210-0346, paras 71, 78.

²⁵² Response, ICC-02/05-01/20-601-Conf, para. 24, referring to DAR-OTP-0210-0346, para. 71.

²⁵³ Response, ICC-02/05-01/20-601-Conf, para. 24, referring to DAR-OTP-0210-0346, paras 76-79.

²⁵⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

²⁵⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0907, P-0924 and P-0987.

²⁵⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0994 and P-1018.

²⁵⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 101, referring to P-0907.

²⁵⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

²⁵⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

²⁶⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

²⁶¹ Response, ICC-02/05-01/20-601-Conf, para. 24, referring to DAR-OTP-0210-0346, para. 71.

²⁶² DAR-OTP-0210-0346, para. 71.

statement referred to by the Defence,²⁶³ P-0726 recalls seeing Ali Kushayb in and around Deleig on multiple occasions but acknowledges that he cannot give a specific description of Ali Kushayb.²⁶⁴ Bearing in mind the indirect nature of some of the evidence provided by P-0726, insofar as relevant, the evidentiary weight of any assertion will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

140. The Chamber is satisfied that the introduction of P-0726's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will still have sufficient opportunity to question the witness on issues identified as core to its case, particularly the identity and alleged individual criminal responsibility of the accused.

P-0736

141. P-0736, a Fur civilian, provides evidence on the alleged incidents in Deleig and surrounding areas, particularly relating to the charges of murder and persecution.²⁶⁵

142. As regards the accused, the witness's evidence refers to the physical description of the accused, his ownership of a pharmacy in Garsila and his senior leadership and role in the Militia/*Janjaweed*.²⁶⁶

143. Together with the witness statement, the Prosecution seeks the submission of associated material, namely, two maps drawn by P-0736, a witness colour chart and a headdress board.²⁶⁷

144. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).²⁶⁸

145. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to identity, background, position of authority and individual criminal responsibility of Ali

²⁶³ Response, ICC-02/05-01/20-601-Conf, para. 24, referring to DAR-OTP-0210-0346, para. 71.

²⁶⁴ DAR-OTP-0210-0346, paras 76-79.

²⁶⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 71.

²⁶⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 71.

²⁶⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 72 and Annex A.

²⁶⁸ Sixth Request, ICC-02/05-01/20-580-Conf, paras 73-74.

Kushayb.²⁶⁹ The Defence notes the witness's testimony regarding Ali Kushayb's ownership of a veterinary pharmacy in Garsila,²⁷⁰ [REDACTED],²⁷¹ [REDACTED],²⁷² on the alleged leadership position and role of Ali Kushayb in the Militia/*Janjaweed*,²⁷³ and [REDACTED].²⁷⁴

146. As regards the alleged incidents in Deleig, the Chamber notes the Prosecution's submission that the evidence of P-0736 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the detention and mistreatment of Fur civilian men in the open area near Deleig police station;²⁷⁵ and the loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times.²⁷⁶

147. As regards the accused, the Chamber notes that the evidence of P-0736 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the identity and physical appearance,²⁷⁷ position of authority,²⁷⁸ and individual criminal responsibility of Ali Kushayb.²⁷⁹ The Chamber further notes that P-0736 acknowledges that his evidence on the alleged position of Ali Kushayb in the Militia/*Janjaweed* is based on what he heard from others.²⁸⁰ P-0736 acknowledges that his encounters with Ali Kushayb were brief and the evidence emanating therefrom, such as Ali Kushayb's ownership of a veterinary pharmacy in Garsila and Ali Kushayb using a government vehicle, is neither unique nor significant, as the witness never

²⁶⁹ Response, ICC-02/05-01/20-601-Conf, para. 25.

²⁷⁰ Response, ICC-02/05-01/20-601-Conf, para. 25.

²⁷¹ Response, ICC-02/05-01/20-601-Conf, para. 25, referring to DAR-OTP-0210-0248, para. 28.

²⁷² Response, ICC-02/05-01/20-601-Conf, para. 25, referring to DAR-OTP-0210-0248, paras 27, 29-30, 45.

²⁷³ Response, ICC-02/05-01/20-601-Conf, para. 25, referring to DAR-OTP-0210-0248, paras 19, 29-30, 45.

²⁷⁴ Response, ICC-02/05-01/20-601-Conf, para. 25, referring to DAR-OTP-0210-0248, paras 57-58.

²⁷⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

²⁷⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

²⁷⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

²⁷⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

²⁷⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

²⁸⁰ DAR-OTP-0210-0248, para. 27.

interacted directly with him.²⁸¹ P-0736's evidence on Ali Kushayb's alleged role in the distribution of salary to the Militia/*Janjaweed*, is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the involvement of the accused in the recruitment, training, arming, funding and distribution of other resources to the Militia/*Janjaweed* by the Government of Sudan.²⁸² Furthermore, P-0736's evidence on Ali Kushayb allegedly escorting an individual to Deleig police station,²⁸³ although specific to this witness, lacks context and is not particularly significant in the expected body of evidence on the accused's alleged role and authority during the Government of Sudan operation in Deleig.²⁸⁴ In fact, P-0736 admits he could not see the premises from where he was sitting but based his account on 'common knowledge amongst all villagers'.²⁸⁵

148. Furthermore, bearing in mind the indirect nature of some of the evidence provided by P-0736, insofar as relevant, the evidentiary weight of any assertion will be considered by the Chamber in its assessment in the context of the judgment under Article 74 of the Statute.

149. The Chamber is satisfied that the introduction of P-0736's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have ample opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0736, the witness's evidence and his basis of knowledge as regards Ali Kushayb's alleged leadership position and role in the Militia/*Janjaweed* as well as his alleged encounters with Ali Kushayb.

²⁸¹ DAR-OTP-0210-0248, paras 27-28.

²⁸² Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, *referring to* P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

²⁸³ Response, ICC-02/05-01/20-601-Conf, para. 25, *referring to* DAR-OTP-0210-0248, paras 57-58.

²⁸⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

²⁸⁵ DAR-OTP-0210-0248, para. 57.

P-0850

150. P-0850, a Fur civilian, provides evidence on the alleged incidents in Deleig and surrounding areas, particularly relating to the charges of murder, persecution and outrages upon personal dignity.²⁸⁶

151. As regards the accused, the witness's evidence refers to his identity, physical description and that he sold medicine for animals.²⁸⁷

152. Together with the witness statement, the Prosecution seeks the submission of associated material, namely a headdress board.²⁸⁸

153. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).²⁸⁹

154. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to Ali Kushayb and his role in the alleged incidents in Deleig.²⁹⁰ The Defence observes that witness's testimony is unclear as to how he became familiar with the name Ali Kushayb.²⁹¹ The Defence notes parts of P-0850's evidence where he [REDACTED];²⁹² [REDACTED];²⁹³ [REDACTED].²⁹⁴

155. As regards the identity and background of the accused, the Chamber notes the agreed facts relating to the background of the accused,²⁹⁵ and that these facts are supported by P-0850.²⁹⁶ The Chamber further notes that P-0850's evidence on the identity and background of Ali Kushayb as referred to by the Defence,²⁹⁷ is not unique nor detailed, and is corroborative of and cumulative to other witnesses who will testify

²⁸⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 75.

²⁸⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 75.

²⁸⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 76 and Annex A.

²⁸⁹ Sixth Request, ICC-02/05-01/20-580-Conf, paras 77-78.

²⁹⁰ Response, ICC-02/05-01/20-601-Conf, para. 26.

²⁹¹ Response, ICC-02/05-01/20-601-Conf, para. 26, *referring to* DAR-OTP-0216-0002, paras 18-20, 77.

²⁹² Response, ICC-02/05-01/20-601-Conf, para. 26, *referring to* DAR-OTP-0216-0002, paras 18-20.

²⁹³ Response, ICC-02/05-01/20-601-Conf, para. 26, *referring to* DAR-OTP-0216-0002, paras 75-81.

²⁹⁴ Response, ICC-02/05-01/20-601-Conf, para. 26, *referring to* DAR-OTP-0216-0002, paras 79-81.

²⁹⁵ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, ICC-02/05-01/20-504-AnxA.

²⁹⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 98.

²⁹⁷ Response, ICC-02/05-01/20-601-Conf, para. 26, *referring to* DAR-OTP-0216-0002, paras 18-20, 77.

entirely *viva voce* on the identity, physical appearance and background of the accused.²⁹⁸ P-0850, in fact, accepts he never had a conversation with Ali Kushayb.²⁹⁹

156. As regards the alleged incidents in Deleig, the Chamber notes the Prosecution's submission that the evidence of P-0850 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the search and arrest of Fur men displaced to Deleig from the surrounding areas;³⁰⁰ the use of derogatory language towards the Fur during the Government of Sudan operation in Deleig;³⁰¹ the survival of several persons who were taken to execution sites;³⁰² and the killing of a group of detainees in an area outside of Deleig near Fere.³⁰³

157. As regards the accused, the Chamber notes that the evidence of P-0850 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the individual criminal responsibility of Ali Kushayb.³⁰⁴ P-0850's evidence on [REDACTED], is not unique nor significant, that of a bystander, and are corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the presence of Ali Kushayb in Deleig during the period of the charged crimes.³⁰⁵ In fact, P-0850 accepts that much of the information related to the context of what he saw was based [REDACTED], as she was with him at the time.³⁰⁶

158. The Chamber notes that in paragraph 85 of P-0850's statement referred to by the Defence, he provided clarifications about a prior phone call conversation that he had with investigators, recorded in a screening note.³⁰⁷ The Chamber notes that clarifications made by P-0850 relate to minor parts of his evidence on the alleged attack

²⁹⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

²⁹⁹ DAR-OTP-0216-0002, para. 20.

³⁰⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

³⁰¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0718, P-0905, P-0924, P-0973 and P-0987.

³⁰² Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0907, P-0924 and P-0987.

³⁰³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0994 and P-1018.

³⁰⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

³⁰⁵ DAR-OTP-0216-0002, paras 75-81. See also Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

³⁰⁶ DAR-OTP-0216-0002, para. 78.

³⁰⁷ DAR-OTP-0214-0528, p. 3.

on [REDACTED].³⁰⁸ His evidence is also not unique or otherwise particularly significant in the body of the expected evidence on the contextual elements of the crimes.³⁰⁹

159. The Chamber is satisfied that the introduction of P-0850's prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have adequate opportunity to question the witness on issues identified as core to its case, particularly the identity of the accused, and in relation to P-0850, the witness's evidence as regards his two sightings of Ali Kushayb and connected events, and the information contained in the aforesaid screening note.

P-0894

160. P-0894, a Fur civilian, provides evidence relating to the Government of Sudan Forces' alleged attack on Tanako.³¹⁰

161. As regards the accused, the witness's evidence refers to his physical description, his ownership of a pharmacy in Garsila, and his alleged role during the attack on Tanako.³¹¹

162. Together with the witness statement, the Prosecution seeks the submission of associated material, namely [REDACTED].³¹²

163. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).³¹³

164. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity, physical description, background and alleged position of authority of Ali Kushayb. The Defence notes parts of P-0894's prior recorded testimony where P-0894

³⁰⁸ DAR-OTP-0216-0002, para. 85.

³⁰⁹ See for example DAR-OTP-0088-0306; DAR-OTP-0088-0129; DAR-OTP-0088-0150; DAR-OTP-0215-7164; DAR-OTP-0200-1540; DAR-OTP-0206-0105; DAR-OTP-0209-2004.

³¹⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 79.

³¹¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 79.

³¹² Sixth Request, ICC-02/05-01/20-580-Conf, para. 80 and Annex A.

³¹³ Sixth Request, ICC-02/05-01/20-580-Conf, paras 81-82.

[REDACTED];³¹⁴ [REDACTED];³¹⁵ and heard that Ali Kushayb was providing weapons to the Arab tribes.³¹⁶ The Defence also observes [REDACTED].³¹⁷ The Defence further claims that P-0894's evidence on Ali Kushayb leading an attack by the Militia/*Janjaweed* on Tanako falls outside the scope of the charges.³¹⁸

165. The Chamber notes the agreed facts relating to the background of the accused,³¹⁹ and that these facts are supported by P-0894.³²⁰ The Chamber also notes the Prosecution's submission that the evidence of P-0894 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the identity and background of the accused.³²¹ The Chamber further notes that the evidence of P-0894 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the alleged authority of Ali Kushayb in the Militia/*Janjaweed*.³²²

166. The Chamber notes that P-0894 allegedly had close interactions with Ali Kushayb on multiple occasions between 2000 and 2002 in Garsila,³²³ which forms the basis of his evidence on the identity and description of Ali Kushayb. P-0894 also provides hearsay evidence on Ali Kushayb's alleged role in the provision of weapons to Arab tribes, although this information is corroborative of the testimonies of witnesses who will testify entirely *viva voce*.³²⁴

³¹⁴ Response, ICC-02/05-01/20-601-Conf, para. 27, referring to DAR-OTP-0217-0103, paras 56-57, 88-93.

³¹⁵ Response, ICC-02/05-01/20-601-Conf, para. 27, referring to DAR-OTP-0217-0103, para. 90.

³¹⁶ Response, ICC-02/05-01/20-601-Conf, para. 27, referring to DAR-OTP-0217-0103, para. 21.

³¹⁷ Response, ICC-02/05-01/20-601-Conf, para. 27, referring to DAR-OTP-0215-4620.

³¹⁸ Response, ICC-02/05-01/20-601-Conf, para. 27, referring to DAR-OTP-0217-0103, paras 57-87.

³¹⁹ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, ICC-02/05-01/20-504-AnxA.

³²⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 98.

³²¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

³²² Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

³²³ See DAR-OTP-0217-0103, paras 88-93.

³²⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, referring to P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

167. Although [REDACTED],³²⁵ which appears to refer to the same individual. In fact, the Chamber notes that the name ‘Ali Kushayb’ has been used in the witness statement in connection to the same alleged events described in the screening note.³²⁶

168. As regards P-0894’s evidence on the alleged attack on Tanako, although outside the scope of the charges, the Chamber notes that this evidence may still be relevant for the purpose of indirectly establishing the accused’s individual criminal responsibility for the alleged incidents in Deleig. Furthermore, the Chamber notes that P-0894’s evidence, as regards accused’s individual criminal responsibility, corroborates the testimony of witnesses who will testify entirely *viva voce* and provide direct evidence on the accused’s individual criminal responsibility for the alleged incidents in Deleig.³²⁷ The Chamber notes P-0894’s evidence as regard’s Ali Kushayb allegedly beating women and raping a woman in Tanako, although not within the scope of the charges, is unique and, as stated above, may be of relevance to establish the accused’s individual criminal responsibility.³²⁸ The Chamber will assess the relevance of this aspect of P-0894’s testimony in the context of the judgment under Article 74 of the Statute.

169. Although the factors discussed above are not, *per se*, an obstacle to authorising the introduction of evidence under Rule 68(3) of the Rules, in the instant case, P-0894’s evidence on Ali Kushayb’s alleged actions during and alleged involvement in the attack on Tanako,³²⁹ and purported description of Ali Kushayb based their multiple encounters,³³⁰ are direct, sufficiently detailed and unique. Accordingly, the Chamber, in this particular circumstance, determines that it is preferable that the entirety of P-0894’s evidence is heard *viva voce*.

P-0895

170. P-0895, a Fur civilian, provides evidence on the contextual elements of the crimes.³³¹

³²⁵ See DAR-OTP-0215-4620.

³²⁶ See DAR-OTP-0217-0103.

³²⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

³²⁸ DAR-OTP-0217-0103, paras 66-78.

³²⁹ See DAR-OTP-0217-0103, paras 56-81.

³³⁰ See DAR-OTP-0217-0103, paras 88-93.

³³¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 83.

171. As regards the accused, the witness's evidence refers to his background, including his place of residence and pharmacy in Garsila; his senior leadership in the Militia/*Janjaweed* and his role in the Central Reserve Forces; and his actions in Garsila and Deleig during the period of the charges crimes.³³²

172. Together with the witness statement, the Prosecution seeks the submission of associated material, namely one document related to the witness's remote interview.³³³

173. The Prosecution requests one hour to conduct a supplementary examination (instead of the 4.5 hours estimated for *viva voce* examination).³³⁴

174. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity, family, background, and position of authority of Ali Kushayb.³³⁵ The Defence submits that the evidence of P-0895 is unique since the witness [REDACTED];³³⁶ and provides information on Ali Kushayb's identity, physical description, tribal affiliation, and family;³³⁷ Ali Kushayb's military service, background and opening of a veterinary pharmacy post-retirement;³³⁸ hearsay information about Ali Kushayb being shot in the arm during an incident in Nyala market;³³⁹ Ali Kushayb's position of authority in the Militia/*Janjaweed* and relationship with the Government of Sudan;³⁴⁰ hearsay information about Ali Kushayb beating and killing a Fur man in Deleig in 2004;³⁴¹ and hearsay information about Ali Kushayb's involvement in the transportation of men detained in Garsila, their alleged killing in Deleig in 2004, and the murder of 83 persons in Mukjar.³⁴²

³³² Sixth Request, ICC-02/05-01/20-580-Conf, para. 83.

³³³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 84 and Annex A.

³³⁴ Sixth Request, ICC-02/05-01/20-580-Conf, paras 85-86.

³³⁵ Response, ICC-02/05-01/20-601-Conf, para. 28.

³³⁶ Response, ICC-02/05-01/20-601-Conf, para. 28, *referring to* DAR-OTP-0215-7164, paras 49, 51, 54.

³³⁷ Response, ICC-02/05-01/20-601-Conf, para. 28, *referring to* DAR-OTP-0215-7164, paras 13, 49-56, 57-62.

³³⁸ Response, ICC-02/05-01/20-601-Conf, para. 28, *referring to* DAR-OTP-0215-7164, paras 45, 47-50, 52-62.

³³⁹ Response, ICC-02/05-01/20-601-Conf, para. 28, *referring to* DAR-OTP-0215-7164.

³⁴⁰ Response, ICC-02/05-01/20-601-Conf, para. 28, *referring to* DAR-OTP-0215-7164, paras 45, 47-50, 52-62.

³⁴¹ Response, ICC-02/05-01/20-601-Conf, para. 28, *referring to* DAR-OTP-0215-7164, para. 63.

³⁴² Response, ICC-02/05-01/20-601-Conf, para. 28, *referring to* DAR-OTP-0215-7164, paras 63-64.

175. The Chamber notes the agreed facts relating to the background of the accused,³⁴³ and that these facts are supported by P-0895.³⁴⁴ The Chamber also notes the Prosecution's submission that the evidence of P-0895 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the alleged arrest of civilians in Garsila by the accused and his men;³⁴⁵ the alleged killing of a group of detainees in an area outside of Deleig near Fere.³⁴⁶

176. As regards the acts and conduct of the accused, and in addition to the conclusions set out previously by the Chamber,³⁴⁷ the Chamber notes the Prosecution's submission that the evidence of P-0895 on the alleged leadership position of the accused in the Militia/*Janjaweed*,³⁴⁸ and his alleged recruitment, training, arming, funding and distribution of other resources to the Militia/*Janjaweed* by the Government of Sudan,³⁴⁹ is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce*.

177. Although parts of P-0895's evidence on the identity and background of the accused are corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce*,³⁵⁰ P-0895 does seem to provide information that is detailed and sufficiently unique in character relating to Ali Kushayb's pharmacy in Garsila;³⁵¹ his purported military background;³⁵² and his alleged identity, physical description, tribal affiliation and family;³⁵³ owing to his [REDACTED].³⁵⁴

³⁴³ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, ICC-02/05-01/20-504-AnxA.

³⁴⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 98.

³⁴⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0643, P-0973, P-0987, P-0994 and P-0883.

³⁴⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0994 and P-1018.

³⁴⁷ *See* First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 20-25; Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para. 7.

³⁴⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

³⁴⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, *referring to* P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

³⁵⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

³⁵¹ DAR-OTP-0215-7164, paras 57-62.

³⁵² DAR-OTP-0215-7164, paras 45, 47-50, 52, 57.

³⁵³ DAR-OTP-0215-7164, paras 13, 49-56, 57-63.

³⁵⁴ DAR-OTP-0215-7164, paras 49, 51, 54.

178. The aforesaid factors are not, *per se*, an obstacle to authorising the introduction of evidence under Rule 68(3) of the Rules, in the instant case, P-0895's evidence appears to be in this aspect unique and different to that of other witnesses expected to testify about the accused and his identity. Accordingly, the Chamber, in this particular circumstance, determines that it is preferable that the entirety of P-0895's evidence is heard *viva voce*.

P-0926

179. P-0926, a Fur civilian [REDACTED], provides evidence relating to the contextual elements of the crimes.³⁵⁵

180. As regards the accused, the witness's evidence refers to his identity and background; his alleged leadership in the Militia/*Janjaweed*; cooperation with the Government of Sudan; and role in the execution of two civilians and the Garsila Popular Defence Forces coordinator in and around Deleig.³⁵⁶

181. The Prosecution submits that it also seeks introduction of P-0926's prior recorded testimony pursuant to Rule 68(3) of the Rules to prevent potential re-traumatisation of the witness, who is a victim of rape (although not within the scope of the charges).³⁵⁷

182. Together with the witness statement, the Prosecution seeks the submission of associated material, namely a sketch drawn by P-0926.³⁵⁸

183. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).³⁵⁹

184. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity, background, position of authority of the accused in the Militia/*Janjaweed*, and his individual criminal responsibility.³⁶⁰ The Defence notes that P-0926 [REDACTED] Garsila in 2002.³⁶¹

³⁵⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 87.

³⁵⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 87.

³⁵⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 88, *referring to* DAR-OTP-0218-0738, paras 79-86.

³⁵⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 89 and Annex A.

³⁵⁹ Sixth Request, ICC-02/05-01/20-580-Conf, paras 90-91.

³⁶⁰ Response, ICC-02/05-01/20-601-Conf, para. 29, *referring to* DAR-OTP-0218-0738, paras 16-25, 29.

³⁶¹ Response, ICC-02/05-01/20-601-Conf, para. 29, *referring to* DAR-OTP-0218-0738, para. 16.

185. The Defence submits that P-0926's description of Ali Kushayb's role and actions as the leader of the Militia/*Janjaweed* is essentially based on hearsay information.³⁶² The Defence notes that P-0926's evidence relating to the alleged responsibility of Ali Kushayb for the attack on Sindu is based on hearsay and overheard conversation of Ali Kushayb,³⁶³ and evidence on Ali Kushayb's role in the murder or persons detained in Garsila is based on hearsay.³⁶⁴

186. The Chamber notes the agreed facts relating to the background of the accused,³⁶⁵ and that these facts are supported by P-0926.³⁶⁶

187. As regards the alleged incidents in Deleig, the Chamber notes the Prosecution's submission that the evidence of P-0926 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on: the arrest of civilians in Garsila by the accused and his men;³⁶⁷ the killing of a group of detainees in an area outside of Deleig near Fere;³⁶⁸ the identity and background of the accused;³⁶⁹ the senior leadership position of the accused in the Militia/*Janjaweed*.³⁷⁰

188. As regards the identity and background of the accused, the Chamber notes the Prosecution's submission that the evidence of P-0926 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the identity and background of the accused.³⁷¹ The Chamber further notes that in paragraphs 16 to

³⁶² Response, ICC-02/05-01/20-601-Conf, para. 29, referring to DAR-OTP-0218-0738, paras 20, 26-37.

³⁶³ Response, ICC-02/05-01/20-601-Conf, para. 29, referring to DAR-OTP-0218-0738, paras 45-49.

³⁶⁴ Response, ICC-02/05-01/20-601-Conf, para. 29, referring to DAR-OTP-0218-0738, paras 65-78.

³⁶⁵ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, ICC-02/05-01/20-504-AnxA.

³⁶⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 98.

³⁶⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0643, P-0973, P-0987, P-0994 and P-0883.

³⁶⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0994 and P-1018.

³⁶⁹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

³⁷⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

³⁷¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, referring to P-0012, P-0117, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

35, as referred to by the Defence, P-0926 provides detailed information about the identity and background of Ali Kushayb [REDACTED].³⁷²

189. As regards the acts and conduct of the accused, and in addition to the conclusions set out previously by the Chamber,³⁷³ the Chamber notes the Prosecution's submission that the evidence of P-0926 on the involvement of the accused in the recruitment, training, arming, funding and distribution of other resources to the Militia/*Janjaweed* by the Government of Sudan,³⁷⁴ is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce*. The Chamber notes that P-0926 on one occasion saw and heard Ali Kushayb instructing the Militia/*Janjaweed* [REDACTED].³⁷⁵ This evidence seems unique and significant. Other than the aforesaid evidence, the Chamber notes that P-0926's evidence on Ali Kushayb's role in the Militia/*Janjaweed* and the distribution of weapons to the Militia/*Janjaweed* is essentially based on hearsay.³⁷⁶ Furthermore, P-0926's evidence on the attack on Sindu allegedly led by Ali Kushayb is based on an overheard conversation.³⁷⁷

190. As regards the alleged arrests in Garsila prior to the alleged events at Deleig, the Chamber notes that, with the exception of witnessing the alleged arrest of two individuals by Ali Kushayb,³⁷⁸ the witness's evidence is based on hearsay information and assumption.³⁷⁹

191. The Chamber notes that P-0926 was raped [REDACTED].³⁸⁰ The Prosecution submits that these acts are uncharged in this case and that the introduction of P-0926's evidence under Rule 68(3) of the Rules would prevent the potential re-traumatisation of the witness if she had to repeat her full account in the courtroom.³⁸¹ The Defence submits that this argument is devoid of merit since her rape is not charged in the present

³⁷² DAR-OTP-0218-0738, paras 16-25.

³⁷³ See First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 20-25; Third Rule 68(3) Decision, ICC-02/05-01/20-602-Conf, para. 7.

³⁷⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, referring to P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

³⁷⁵ DAR-OTP-0218-0738, para. 47.

³⁷⁶ DAR-OTP-0218-0738, paras 20, 26-37.

³⁷⁷ DAR-OTP-0218-0738, paras 45-49.

³⁷⁸ See DAR-OTP-0218-0738, paras 65-67.

³⁷⁹ DAR-OTP-0218-0738, paras 65-78.

³⁸⁰ DAR-OTP-0218-0738, paras 55, 79-96.

³⁸¹ Sixth Request, ICC-02/05-01/20-580-Conf, para. 88.

case and it does not need to be addressed at all during P-0926's examination-in-chief.³⁸² The Chamber recalls that it may authorise introduction of witness statement under Rule 68(3) of the Rules if it could prevent potential re-traumatisation of a vulnerable witness.³⁸³

192. Although the factors discussed above are not, *per se*, an obstacle to authorising the introduction of evidence under Rule 68(3) of the Rules, in the instant case, P-0926's evidence on the identity of the accused and the alleged arrests in Garsila prior to the alleged events at Deleig appear to be sufficiently detailed and unique.

193. As regards the issue of re-traumatisation, there is no reason why P-0926 should be asked to recount the event of her rape nor be made to rehearse the full content of the prior statement in court, given the fact that her rape does not form part of the charges. Accordingly, the Chamber, in this particular circumstance, is satisfied that her evidence should be heard *viva voce*.

P-0980

194. P-0980, a Fur civilian, provides evidence on the alleged incidents in Deleig and surrounding areas, particularly in relation to the charges of murder, torture and persecution.³⁸⁴

195. As regards the accused, the witness's evidence refers to him allegedly beating detainees while they were lying face down in front of Deleig police station and directly killing two of them.³⁸⁵

196. Together with the witness statement, the Prosecution seeks the submission of associated material, namely a document showing illustrations of different types of aircraft, a document showing Sudanese military ranks and insignia, and a sketch drawn by P-0980.³⁸⁶

197. The Prosecution requests one hour to conduct a supplementary examination (instead of the three hours estimated for *viva voce* examination).³⁸⁷

³⁸² Response, ICC-02/05-01/20-601-Conf, para. 29.

³⁸³ First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, para. 15.

³⁸⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 92.

³⁸⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 92.

³⁸⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 93 and Annex A.

³⁸⁷ Sixth Request, ICC-02/05-01/20-580-Conf, paras 94-95.

198. The Defence objects to the introduction of this prior recorded testimony pursuant to Rule 68(3) of the Rules, noting parts of the statement which refer to the identity, background, position of authority in the Militia/*Janjaweed*, and individual criminal responsibility of Ali Kushayb for the charged crimes in Deleig. The Defence refers to P-0980's evidence on individuals being referred to as belonging/working for Ali Kushayb,³⁸⁸ Ali Kushayb beating two detainees at Deleig police station on 5 March 2004,³⁸⁹ Ali Kushayb's conversation with Ahmad Harun in Deleig after the said beatings,³⁹⁰ and issuance of orders by Ali Kushayb following his discussion with Ahmad Harun.³⁹¹ The Defence also notes the clarification provided by P-0980 in relation to information contained in a screening note.³⁹²

199. The Chamber notes the Prosecution's submission that the evidence of P-0980 is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the search and arrest of Fur men displaced to Deleig from the surrounding areas;³⁹³ the detention and mistreatment of Fur civilian men in the open area near Deleig police station;³⁹⁴ the mistreatment of detainees by the accused in the open area near Deleig police station;³⁹⁵ the loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times;³⁹⁶ the survival of several persons who were taken to execution sites;³⁹⁷ and the sighting of a group of community leaders in a convoy with the accused in Deleig;³⁹⁸

200. The Chamber notes that P-0980's evidence on the alleged incidents in Deleig is not unique or otherwise particularly significant in the body of the expected evidence on this incident. As such, P-0980's evidence on Ali Kushayb allegedly beating two

³⁸⁸ Response, ICC-02/05-01/20-601-Conf, para. 30, referring to DAR-OTP-0221-0553, para. 24.

³⁸⁹ Response, ICC-02/05-01/20-601-Conf, para. 30, referring to DAR-OTP-0221-0553, paras 17-18, 21, 24, 28.

³⁹⁰ Response, ICC-02/05-01/20-601-Conf, para. 30, referring to DAR-OTP-0221-0553, paras 25-27.

³⁹¹ Response, ICC-02/05-01/20-601-Conf, para. 30, referring to DAR-OTP-0221-0553, para. 27.

³⁹² Response, ICC-02/05-01/20-601-Conf, para. 30, referring to DAR-OTP-0221-0553, para. 24. See DAR-OTP-0219-4793, p. 3.

³⁹³ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

³⁹⁴ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

³⁹⁵ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0671, P-0879, P-0907, P-0924, P-0973 and P-0994.

³⁹⁶ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

³⁹⁷ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0584, P-0907, P-0924 and P-0987.

³⁹⁸ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, referring to P-0907, P-0973, P-0987 and P-0994.

detainees at Deleig police station,³⁹⁹ –highlighted by the Defence in its Response– is also not unique, and is corroborative of and cumulative to that of other witnesses who will testify entirely *viva voce* on the mistreatment of detainees by the accused in the open area near Deleig police station.⁴⁰⁰

201. As regards P-0980’s evidence on Ali Kushayb’s alleged conversation with Ahmad Harun in Deleig after the abovementioned beatings and Ali Kushayb issuing orders to the Militia/*Janjaweed* and soldiers following this conversation,⁴⁰¹ the Chamber notes that P-0980’s evidence is direct. However, the Chamber also notes P-0984’s evidence is cumulative to that of other witnesses and not particularly significant in light of the larger body of evidence on the accused’s senior leadership position in the Militia/*Janjaweed*,⁴⁰² and his cooperation with the Government of Sudan.⁴⁰³ Specifically, the Chamber notes that because of his status [REDACTED].⁴⁰⁴

202. The Chamber is satisfied that the introduction of P-0980’s prior recorded testimony will not occasion any prejudice to the accused since Rule 68(3) of the Rules allows for cross-examination. The Defence will have ample opportunity to question the witness on issues identified as core to its case, particularly in relation to P-0980, the witness’s evidence as regards the accused’s alleged actions at Deleig police station.

D. Timing and scope of supplementary examination and cross-examination

203. As regards the timing of supplementary examination, and bearing in mind the object and purpose of Rule 68(3) of the Rules, the Prosecution must streamline its examination in order to complete the formalities under this provision and conduct any supplementary questioning of each witness within the estimated hour requested.

³⁹⁹ DAR-OTP-0221-0553, para. 24.

⁴⁰⁰ Sixth Request, ICC-02/05-01/20-580-Conf, para. 96, *referring to* P-0584, P-0671, P-0879, P-0907, P-0924, P-0973 and P-0994.

⁴⁰¹ DAR-OTP-0221-0553, paras 25-27.

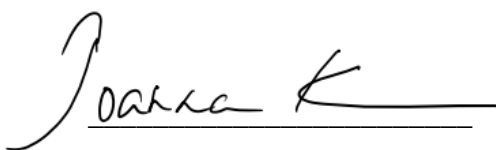
⁴⁰² Sixth Request, ICC-02/05-01/20-580-Conf, para. 97, *referring to* P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

⁴⁰³ *See* Sixth Request, ICC-02/05-01/20-580-Conf, para. 100, *referring to* P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

⁴⁰⁴ DAR-OTP-0221-0553, para. 27.

204. As anticipated in the Directions on the conduct of proceedings,⁴⁰⁵ the Chamber will issue, in due course, a decision on the overall length and timing of the presentation of evidence by the Prosecution, and consequently the overall length and timing for the Defence's cross-examination of witnesses to be called by the Prosecution.

205. For the reasons above, and given the nature and content of the witness statements and associated material, the Chamber rejects the request in respect of P-0027, P-0585, P-0894, P-0895 and P-0926, and authorises the introduction of the prior recorded testimonies of witnesses: P-0059, P-0060, P-0091, P-0106, P-0119, P-0592, P-0607, P-0617, P-0651, P-0697, P-0712, P-0725, P-0726, P-0736, P-0850 and P-0980, identified in the Sixth Request and its 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 16 March 2022

At The Hague, The Netherlands

⁴⁰⁵ Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 22.