



Original: **English**

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

Date: **27 May 2022**

TRIAL CHAMBER I

Before: Judge Joanna Korner, Presiding Judge
Judge Reine Alapini-Gansou
Judge Althea Violet Alexis-Windsor

SITUATION IN DARFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.*
ALI MUHAMMAD ALI ABD-AL-RAHMAN (“ALI KUSHAYB”)**

Public

Public redacted version of “Prosecution’s eleventh application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0007, P-0012 and P-0718”, 24 May 2022, ICC-02/05-01/20-694-Conf

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Mr Karim A. A. Khan QC
Ms Nazhat Shameem Khan
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci
Mr Iain Edwards

Legal Representatives of the Victims

Ms Natalie von Wistinghausen
Mr Anand Shah

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. Pursuant to articles 64(3)(a), 69(2) and (4) of the Rome Statute, and rule 68(3) of the Rules of Evidence and Procedure (“Rules”), the Prosecution requests Trial Chamber I (“Chamber”) to (i) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of witnesses P-0007, P-0012 and P-0718 (“Three Witnesses”); and (ii) grant the limited time requested for the supplementary examination of each of the Three Witnesses (“Application”).² P-0012 and P-0718 are currently scheduled to testify in [REDACTED] 2022.³

2. As set out below, the Prior Recorded Testimonies of the Three Witnesses are relevant, reliable and probative. P-0007 and P-0012’s statements relate primarily to the charged crimes in Kodoom, Bindisi and surrounding areas on or about 15 and 16 August 2003, and in Mukjar and surrounding areas in February/March 2004. The evidence provided by P-0718 relates primarily to the charged crimes in Deleig and surrounding areas in March 2004.

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

4. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of the Three Witnesses’ in-court testimony from at least 13.5 hours to 3.5 hours, thus saving at least 10 hours of in-court time.⁴

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

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

³ [REDACTED].

⁴ *See also* Chambers Practice Manual (2019), p. i (“The overall question of the expeditiousness of proceedings is one of considerable complexity and the conduct and readiness of all parties and participants to Court proceedings play a crucial role—the commitment to expediency must, in this regard, be a collective one.”); *Katanga* Judgment on the Appeal Against the Decision on Unlawful Detention and Stay of Proceedings, [ICC-01/04-01/07-2259](#) OA10, para. 43, (“The Appeals Chamber observes that expeditiousness is a recurrent theme in the Court’s legal instruments. The Statute and the Rules of Procedure and Evidence place an onus on all those involved in the trial to act in a diligent and expeditious manner in the performance of their obligations. The duty applies to the

II. CLASSIFICATION

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

III. SUBMISSIONS

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

7. The Prosecution seeks limited time to conduct a focussed supplementary examination in relation to each of the Three Witnesses. This time estimate is consistent with the prior jurisprudence of the Court.⁶ Should the request to conduct a supplementary examination be granted, the Prosecution would elicit further focussed *viva voce* evidence on certain issues that require clarification or elaboration, as indicated below. The Prosecution will ensure that the witnesses are not asked to merely repeat information already provided in their Prior Recorded Testimonies.

8. The associated material which the Prosecution seeks to introduce into evidence for each of the Three Witnesses⁷ forms an integral part of their prior recorded testimonies.⁸ These items are also necessary to fully comprehend the accounts of the Three Witnesses, as they discuss the items and, when required, clarify them in their

Chambers of the Court, the parties and participants.[...]”). See also *Ntaganda* Decision on Prosecution application under Rule 68(3), [ICC-01/04-02/06-961](#), para 13. *Gbagbo & Blé Goudé* Decision on Prosecutor’s application under Rules 68(2)(b) and 68(3), [ICC-02/11-01/15-573](#), paras. 25, 42.

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

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

⁷ See Annex A (Part II of A1 to A3). Where applicable, the Prosecution includes in the Annex, the English translations of items referred to in the Associated Material.

⁸ See *Yekatom & Ngaissona* Decision on the Prosecution Requests under Rule 68(3), [ICC-01/14-01/18-907-Red](#), para. 26.

statements. The introduction of this material is supported by Trial Chamber VI's finding in *Ntaganda* that "exhibits associated with a previously recorded testimony are admissible if the witness uses or explains them in the prior recorded testimony, and particularly when these are necessary to read and understand the prior recorded testimony being introduced."⁹

A. Overview of the Prior Recorded Testimonies of Witnesses P-0007, P-0012 and P-0718

(i) Prior Recorded Testimony of Witness of P-0007

9. The Prosecution seeks to submit into evidence P-0007's prior recorded testimony, including the associated material listed in Annex A (A1) to this Application. P-0007's prior recorded testimony comprises a single witness statement, and four associated items that were used and explained by the witness in his interview and relate to information and events discussed therein.

10. P-0007, a Fur civilian, provides testimony on the geography and population of Bindisi prior to August 2003,¹⁰ attacks on other villages,¹¹ and the police forces being removed from Bindisi on 15 July 2015.¹² P-0007 also states that, early on about 15 August 2003, the population in Bindisi was told not to panic when the Militia/*Janjaweed* came to town, as they were solely going to take millet from the Zakat Office.¹³ He also provides evidence in relation to the subsequent attack on Bindisi conducted by Militia/*Janjaweed* and Government of Sudan Forces ("GoS Forces") on or about 15 and 16 August 2003, including acts of murder, rape, pillaging, destruction of property, and the displacement of the population towards Mukjar.¹⁴ P-0007 further provides

⁹ *Ntaganda* Transcript of 20 June 2016, [ICC-01/04-02/06-T-105-Red2-ENG](#), p. 94, l. 2-7. See also, *Ntaganda* Decision on Prosecution application under Rule 68, [ICC-01/04-02/06-1205](#), para.7; *Ntaganda* Decision on Rule 68, [ICC-01/04-02/06-1029](#), para. 23, 35; *Ruto & Sang* Decision on the Admission of Prior Recorded Testimony, [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33.

¹⁰ P-0007, DAR-OTP-0088-0060 at 0063-0064, paras. 9-16.

¹¹ P-0007, DAR-OTP-0088-0060 at 0064-0065, paras. 17-18 and 0070, para. 40.

¹² P-0007, DAR-OTP-0088-0060 at 0065, para. 19.

¹³ P-0007, DAR-OTP-0088-0060 at 0065, para. 20.

¹⁴ P-0007, DAR-OTP-0088-0060 at 0064-0068, paras. 20-32 and 0070-0071, paras. 41-44.

evidence on the persecution of non-Arab tribes and the use of derogatory terms such as *nuba* by the attackers.¹⁵ Lastly, the witness recounts [REDACTED].¹⁶

11. As detailed in the Prosecution's Trial Brief,¹⁷ P-0007's prior recorded testimony relates, *inter alia*, to the charges of intentionally directing an attack against the civilian population, murder, pillaging, destruction of property, rape and persecution committed in Bindisi and surrounding areas on or about 15 and 16 August 2003, as well as to the contextual elements of crimes against humanity.

12. P-0007's associated material comprises: (i) [REDACTED];¹⁸ (ii) [REDACTED];¹⁹ (iii) a hand drawn sketch of Bindisi;²⁰ and (iv) P-0007's name handwritten in Arabic,²¹ which is the only annex the Prosecution will not rely on.

The Prosecution requests one hour for its limited supplementary examination of P-0007

13. The Prosecution seeks one hour to conduct a limited supplementary examination of P-0007 on topics including: (a) the locations of the attack on Bindisi on or about 15 and 16 August 2003; (b) [REDACTED]; (c) his knowledge regarding sexual violence during the Bindisi attack on or about 15 and 16 August 2003; and (d) his knowledge of Mr Abd-Al-Rahman's role in the Bindisi and Mukjar attacks.

14. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0007, if his prior recorded testimony is not introduced through rule 68(3) of the Rules. The introduction of P-0007's prior recorded testimony under rule 68(3) of the Rules, thus, would shorten his in-court testimony by 3.5 hours.

¹⁵ P-0007, DAR-OTP-0088-0060 at 0065, para. 21.

¹⁶ P-0007, DAR-OTP-0088-0060 at 0068-0069, paras. 36-39.

¹⁷ [ICC-02/05-01/20-550-Corr-Red2](#).

¹⁸ P-0007, DAR-OTP-0088-0060 at 0068-0069, paras. 36-39 and 0072, para. 51; DAR-OTP-0088-0077 (Translation at DAR-OTP-0119-0475).

¹⁹ P-0007, DAR-OTP-0088-0060 at 0068-0069, paras. 36, 39 and 0072, para. 51; DAR-OTP-0088-0081 (Translation at DAR-OTP-0119-0480).

²⁰ P-0007, DAR-OTP-0088-0060 at 0066, para. 24 and 0072, para. 50; DAR-OTP-0088-0076 (Translation at DAR-OTP-0219-8861).

²¹ P-0007, DAR-OTP-0088-0060 at 0072, para. 49; DAR-OTP-0088-0075 (Translation at DAR-OTP-0153-1336).

(ii) *Prior Recorded Testimony of Witness P-0012*

15. The Prosecution seeks to submit into evidence P-0012's prior recorded testimony, inclusive of the associated material listed in Annex A (A2) to this Application. P-0012's prior recorded testimony comprises a single witness statement and an additional note containing clarifications made regarding paragraphs of his statement.²²

16. P-0012, a Fur civilian, provides testimony on the town and the population of Bindisi prior to August 2003,²³ as well as the [REDACTED].²⁴ P-0012 further provides evidence on the structure of the Militia/*Janjaweed*,²⁵ and the coordination between the Militia/*Janjaweed* and the Government of Sudan ("GoS"),²⁶ which provided money, weapons and other equipment to the Militia/*Janjaweed* in Wadi Salih and Mukjar Localities.²⁷

17. P-0012 also provides testimony about Mr Abd-Al-Rahman's identity and his position as *agid al-ogada* in the Wadi Salih locality at relevant times.²⁸ The witness further provides details on the physical appearance of Ali Kushayb and his background.²⁹

18. In addition, P-0012 provides evidence about a visit by Ahmed HARUN to Mukjar in August 2003 and a subsequent meeting of high-ranking GoS Officials, including HARUN and TORSHEIN, attended by Mr Abd-Al-Rahman.³⁰ The witness further provides evidence on the attacks on villages surrounding Bindisi and Mukjar

²² DAR-OTP-0136-0009.

²³ P-0012, DAR-OTP-0119-0503 at 0505-0507, paras. 11-15 and 0509, paras. 25-26.

²⁴ P-0012, DAR-OTP-0119-0503 at 0507-0509, paras. 16-24.

²⁵ P-0012, DAR-OTP-0119-0503 at 0509-0513, paras. 27-45.

²⁶ P-0012, DAR-OTP-0119-0503 at 0509-0513, paras. 27-45 and 0527, paras. 110-113.

²⁷ P-0012, DAR-OTP-0119-0503 at 00514-0517, paras. 46-61.

²⁸ P-0012, DAR-OTP-0119-0503 at 0511-0512, paras. 33, 35, 37.

²⁹ P-0012, DAR-OTP-0119-0503 at 0512, para. 38.

³⁰ P-0012, DAR-OTP-0119-0503 at 0517-0519, paras. 62-71.

by GoS Forces and the Militia/*Janjaweed* in August 2003,³¹ and events immediately prior to the attack on Bindisi and surrounding areas on or about 15 and 16 August 2003.³²

19. P-0012 also describes the attack by GoS Forces and Militia/*Janjaweed* on Bindisi and surrounding areas on or about 15 and 16 August 2003, including the crimes of pillaging, destruction of property, murder, persecution and the forced displacement of the population to Mukjar.³³ P-0012 also witnessed a meeting between Mr Abd-Al-Rahman and other *agids* on the morning of 16 August 2003, during the Bindisi attack.³⁴

20. P-0012 further provides testimony on events in Mukjar towards the end of 2003 and early 2004.³⁵ He states that Mr Abd-Al-Rahman led the Militia/*Janjaweed* during the Sindu operation,³⁶ and arrested and detained men in Mukjar after the operation,³⁷ including *Umdah* Yahya Ahmad Zarruq.³⁸ Lastly, P-0012 provides evidence on Mr Abd-Al-Rahman's presence while detainees were removed from Mukjar police station and executed.³⁹

21. As detailed in the Prosecution's Trial Brief,⁴⁰ P-0012's prior recorded testimony relates, *inter alia*, to the charges of murder, pillaging, destruction of property, forcible transfer and persecution in relation to the incident in Bindisi in August 2003; as well as the charges of torture, other inhumane acts, cruel treatment, outrages upon personal dignity, murder and persecution in connection with the incident in Mukjar and surrounding areas in February/March 2004. In addition, P-0012's evidence is also cited in support of the contextual elements of war crimes and crimes against humanity, as well as Mr Abd-Al-Rahman's use of the nickname "Ali Kushayb" and his position of authority as a senior Militia/*Janjaweed* leader cooperating with senior members of the GoS Forces.

³¹ P-0012, DAR-OTP-0119-0503 at 0519-0520, paras. 72-75.

³² P-0012, DAR-OTP-0119-0503 at 0520, para. 76.

³³ P-0012, DAR-OTP-0119-0503 at 0520-0523, paras. 76-87.

³⁴ P-0012, DAR-OTP-0119-0503 at 0521-0522, para. 82.

³⁵ P-0012, DAR-OTP-0119-0503 at 0523-0525, paras. 88-99.

³⁶ P-0012, DAR-OTP-0119-0503 at 0524, paras. 94-96.

³⁷ P-0012, DAR-OTP-0119-0503 at 0525, paras. 97-98.

³⁸ P-0012, DAR-OTP-0119-0503 at 0525, para. 99.

³⁹ P-0012, DAR-OTP-0119-0503 at 0525-0526, paras. 100-104.

⁴⁰ [ICC-02/05-01/20-550-Corr-Red2](#).

The Prosecution requests one and a half hours for its limited supplementary examination of P-0012

22. The Prosecution seeks one and a half hours to conduct a limited supplementary examination of P-0012 on topics including: (a) [REDACTED]; (b) his knowledge of Mr Abd-Al-Rahman's identity and the position of the accused within the Militia/*Janjaweed*; (c) his knowledge of those present during the Bindisi attack; (d) [REDACTED], including Mr Abd-Al-Rahman's presence and conduct, which occurred on about 16 August 2003; and (e) the arrest of *Umdah* Yahya Ahmad Zarruq and the execution of detainees from the Mukjar police station.

23. The Prosecution estimates that it would require 4.5 to 6 hours for direct examination of P-0012, if his prior recorded testimony is not introduced through rule 68(3) of the Rules. The introduction of P-0012's prior recorded testimony under rule 68(3) of the Rules, thus, would shorten his in-court testimony by at least 3 hours.

(iii) *Prior Recorded Testimony of Witness of P-0718*

24. The Prosecution seeks to submit into evidence P-0718's prior recorded testimony, including the associated material listed in Annex A (A3) to this Application. P-0718's prior recorded testimony comprises a single witness statement, and three associated items.

25. P-0718, a Fur civilian, provides testimony on an attack on [REDACTED] and other villages near Deleig by GoS Forces and Militia/*Janjaweed* in November 2003.⁴¹ P-0718 also provides evidence of arrests conducted in Deleig in March 2004, [REDACTED], near the Deleig police station.⁴² [REDACTED].⁴³ [REDACTED],⁴⁴ [REDACTED].⁴⁵

⁴¹ P-0718, DAR-OTP-0209-2004 at 2007-2011, paras. 15-44 and 2018, paras. 94-96.

⁴² P-0718, DAR-OTP-0209-2004 at 2012-2014, paras. 53-66.

⁴³ P-0718, DAR-OTP-0209-2004 at 2014, para. 67.

⁴⁴ P-0718, DAR-OTP-0209-2004 at 2014-2015, paras. 69-72.

⁴⁵ P-0718, DAR-OTP-0209-2004 at 2017-2018, paras. 86-91.

26. P-0718 states that he was carrying a stick, which he states was a sort of status symbol for senior military personnel to signify promotion,⁴⁶ and describes seeing Mr Abd-Al-Rahman again a few days later in Deleig market.⁴⁷

27. As detailed in the Prosecution's Trial Brief,⁴⁸ P-0718's prior recorded testimony relates, *inter alia*, to the charges of torture, other inhumane acts, cruel treatment, outrages upon personal dignity, murder and persecution in connection to the incident in Deleig and surrounding areas in March 2004. In addition, P-0718's evidence is also cited in support of the contextual elements of crimes against humanity.

28. P-0718's associated material comprises: (i) a hand-drawn sketch of [REDACTED];⁴⁹ (ii) a hand-drawn sketch of Deleig;⁵⁰ and (iii) images of hats marked by P-0718 to indicate the style of hat worn by Mr Abd-Al-Rahman when he saw him.⁵¹

The Prosecution requests one hour for its limited supplementary examination of P-0718

29. The Prosecution seeks one hour to conduct a limited supplementary examination of P-0718 on topics including: (a) the attack on [REDACTED] village in November 2003; and (b) the arrests in Deleig, [REDACTED].

30. The Prosecution estimates that it would require 4.5 hours for the direct examination of P-0718, if his prior recorded testimony is not introduced through rule 68(3) of the Rules. The introduction of P-0718's prior recorded testimony under rule 68(3) of the Rules, thus, would shorten his in-court testimony by 3.5 hours.

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

31. P-0007 and P-0012 provide evidence with respect to several central aspects of the Kodoom, Bindisi and surrounding areas incident, which are corroborative of, and

⁴⁶ P-0718, DAR-OTP-0209-2004 at 2014, para. 68.

⁴⁷ P-0718, DAR-OTP-0209-2004 at 2015-2016, paras. 76-83.

⁴⁸ [ICC-02/05-01/20-550-Corr-Red2](#).

⁴⁹ P-0718, DAR-OTP-0209-2004 at 2011, para. 44; DAR-OTP-0209-2021 (Translation at DAR-OTP-0219-8160).

⁵⁰ P-0718, DAR-OTP-0209-2004 at 2015, para. 75; DAR-OTP-0209-2022 (Translation at DAR-OTP-0219-1699).

⁵¹ P-0718, DAR-OTP-0209-2004 at 2017, para. 85; DAR-OTP-0209-2023.

cumulative to,⁵² evidence to be provided by *viva voce* witnesses on: (a) the intentional targeting of civilians;⁵³ (b) the displacement of civilians as a result of the attack;⁵⁴ (c) the murder of civilians in Bindisi;⁵⁵ (d) the burning of civilian property;⁵⁶ (e) the pillaging of goods;⁵⁷ (f) the use of derogatory and degrading language by the attackers;⁵⁸ and (g) the rape of women during the attack.⁵⁹

32. Furthermore, the evidence provided by P-0012 on the Mukjar incident in February/March 2004 is corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses on: (a) the charges of persecution, torture, other inhumane acts, and outrages upon personal dignity regarding the arrest and the conditions of detention of men perceived to be associated with or supportive of rebel armed groups;⁶⁰ and (b) the murder and attempted murder of detainees.⁶¹

⁵² See Bemba Rule 68 AD, [ICC-01/05-01/08-1386](#), para. 78.

⁵³ P-0011, DAR-OTP-0088-0219 at 0228, para. 51; P-0029, DAR-OTP-0094-0119 at 0135, para. 71; P-0878, DAR-OTP-0215-9919 at 9949.

⁵⁴ P-0029, DAR-OTP-0094-0119 at 0133, paras. 60, 62; P-0874, DAR-OTP-0219-7207 at 7211, l. 120-122; P-0878, DAR-OTP-0215-9919 at 9953; P-1021, DAR-OTP-0221-1111 at 1130, l. 614-619; DAR-OTP-0221-1247 at 1255, l. 261-263.

⁵⁵ P-0878, DAR-OTP-0215-9919 at 9953 ; P-0011, DAR-OTP-0088-0219 at 0229, paras. 57, 61 and 0231, paras. 73-74; P-0589, DAR-OTP-0223-0005 at 0020, para. 85-86 and 0023, para. 102; P-0874, DAR-OTP-0219-7129 at 7137-3178, l. 261-282 ; P-0874, DAR-OTP-0219-7129 at 7136-7138, l. 213, 263-288 and 7143-7144, l. 464-498 ; P-0874, DAR-OTP-0219-7129 at 7136-7138, l. 213, 263-288 and 7143-7144, l. 464-498; P-0874, DAR-OTP-0219-7191 at 7195-7200, l. 115-297; P-0878, DAR-OTP-0215-9919 at 9949.

⁵⁶ P-0029, DAR-OTP-0094-0119 at 0135, para. 71; P-0589, DAR-OTP-0223-0005 at 0021-0022, paras. 94-97 ; P-0874, DAR-OTP-0219-7129 at 7137, l. 261-272; P-0878, DAR-OTP-0219-3062 at 3068, para. 26; P-0878, DAR-OTP-0215-9919 at 9949

⁵⁷ P-0029, DAR-OTP-0094-0119 at 0135, para. 71 ; P-0878, DAR-OTP-0215-9919 at 9948 ; P-0878, DAR-OTP-0219-3062 at 3067-3068, para. 26 ; P-0874, DAR-OTP-0219-7164 at 7188, l. 789-805 ; P-0874, DAR-OTP-0219-7164 at 7188-7190, l. 817-879 ; P-0589, DAR-OTP-0223-0005 at 0021-0022, paras. 91, 93, 100 ; P-1021, DAR-OTP-0221-1247 at 1256, l. 286-289.

⁵⁸ P-0011, DAR-OTP-0088-0219 at 0230, para. 66.

⁵⁹ P-0011, DAR-OTP-0088-0219 at 0230-0232, paras. 67-71, 77-78 ; P-0874, DAR-OTP-0219-7230 at 7231, l. 11-35 ; P-0878, DAR-OTP-0219-3062 at 3071, para. 39; P-0921, DAR-OTP-0219-8188 at 8199-8200, l. 347-360; P-1073, DAR-OTP-0224-0426 at 0431-0432, paras. 27-30 ; P-1074, DAR-OTP-0224-0441 at 0447-0448, paras. 34-37.

⁶⁰ P-0029, DAR-OTP-0094-0119 at 0136, para. 73 and 0152, paras. 141-142; P-0129, DAR-OTP-0128-0128 at 0138-0139, paras. 39, 41, 44; P-0129, DAR-OTP-0223-0157 at 0164, paras. 35, 37-39; P-0188, DAR-OTP-0216-0060 at 0074, 0081-0082, paras. 86, 128, 135-136; P-0877, DAR-OTP-0217-0211 at 0223-0224 and 0229, paras. 69, 77-80, 103; P-0903, DAR-OTP-0221-0436 at 0443, 0445 and 0449, paras. 33, 40, 62; P-0905, DAR-OTP-0219-6238 at 6251, l.467-471 and 474-475; P-0919, DAR-OTP-0217-0423 at 0429-0430 and 0437, paras. 27-29, 31, 78; P-0976, DAR-OTP-0222-0526 at 0535, paras. 57-58; P-0984, DAR-OTP-0222-0084 at 0097, paras.73, 78-79; P-0990, DAR-OTP-0223-0217 at 0220-0221, paras. 18, 20-23; P-0992, DAR-OTP-0221-0668 at 0676, para. 43; P-0979, DAR-OTP-0224-0273 at 0289-0292, paras. 97-98, 101-104, 109-113; P-1040, DAR-OTP-0224-0184 at 0192-0195, paras. 42-54.

⁶¹ P-0129, DAR-OTP-0128-0128 at 0144-0145, paras. 56-60; P-0129, DAR-OTP-0223-0157 at 0175, para. 90; P-0188, DAR-OTP-0216-0060 at 0087, para. 170; P-0919, DAR-OTP-0217-0423 at 0434, para. 60; P-0979, DAR-OTP-0224-0273 at 0293-0295, paras. 114-123; P-1040, DAR-OTP-0224-0184 at 0195, paras. 55-56.

33. The evidence provided by P-0718 is corroborative of, and cumulative to, evidence provided by *viva voce* witnesses with respect to several central aspects of the Deleig incident, namely: (a) the surrounding of Deleig, and searches and arrests of Fur males;⁶² and (b) the detention of males outside the Deleig police station.⁶³

34. The evidence provided by the Three Witnesses on the contextual elements of war crimes⁶⁴ and crimes against humanity⁶⁵ is also corroborative of, and cumulative to, the evidence provided by *viva voce* witnesses.

35. On the issue of the Accused's identity, information provided by P-0012 corroborates information agreed upon by the Defence and the Prosecution in relation to Mr Abd-Al-Rahman—that he was a member of the Sudanese Armed Forces until early to middle 1990s, and upon retirement from the Sudanese Armed Forces lived in Garsila, where he also opened a shop, from which he sold medication⁶⁶—thus narrowing the scope of the contested issue of the Accused's identity.

36. In addition to the agreed facts relating to biographical details of the Accused, evidence provided by the Three Witnesses in relation to Mr Abd-Al-Rahman being a

⁶² P-0584, DAR-OTP-0200-1540 at 1564-1567, para. 90, 93-96; P-0027, DAR-OTP-0094-0091 at 0103-0104, paras. 48, 55; P-0671, DAR-OTP-0206-0105 at 0111-0114, para. 24, 26-36; P-0907, DAR-OTP-0220-0668 at 0675-0676, paras. 38, 42; P-0924, DAR-OTP-0218-0455 at 0465, paras. 53-55; P-0973, DAR-OTP-0220-0736 at 0742, paras. 26-28; P-0994, DAR-OTP-0222-0055 at 0064, para. 44; P-0987, DAR-OTP-0221-0416 at 0422-0424, paras. 23, 31, 37.

⁶³ P-0905, DAR-OTP-0219-6266 at 6274, l. 260-263 and 6276, l. 352-355; P-0584, DAR-OTP-0200-1540 at 1566-1567, paras. 96-97, 100; P-0092, DAR-OTP-0112-0175 at 0196, paras. 87-88; P-0671, DAR-OTP-0206-0105 at 0115-0117, paras. 40-42, 46; P-0027, DAR-OTP-0216-0738 at 0741, paras. 14-15; P-0924, DAR-OTP-0218-0455 at 0466-0467, paras. 57, 61-63; P-0994, DAR-OTP-0222-0055 at 0063, paras. 36-39; P-0907, DAR-OTP-0220-0668 at 0676, paras. 42-45; P-0973, DAR-OTP-0220-0736 at 0742-0743, para. 30; P-0987, DAR-OTP-0221-0416 at 0421-0423, paras. 23, 28; P-0931, DAR-OTP-0219-8645 at 8650, l. 150-156 and 8652, l. 220-243.

⁶⁴ P-0029, DAR-OTP-0094-0119 at 0128, para. 36 and 0131, paras. 49-50; P-0027, DAR-OTP-0094-0091 at 0095-0096, paras. 15-17; P-0103, DAR-OTP-0120-0244 at 0246, l. 43-75.

⁶⁵ P-0011, DAR-OTP-0088-0219 at 0228, para. 53; P-0029, DAR-OTP-0094-0119 at 0128, para. 36 and 0131, para. 49 and 0134-0135, paras. 65, 71; P-0547, DAR-OTP-0196-0146 at 0180-0181, para. 114 and 0185-0186, paras. 136-137; P-0878, DAR-OTP-0215-9919 at 9924-9925, 9928; P-0131, DAR-OTP-0158-0879 at 0920-0922, l. 1397-1449; P-1021, DAR-OTP-0221-1134 at 1144-1145, l. 302-339 and 1152-1153, l. 596-604 and 1155-1156, l. 668-677, 685-705.

⁶⁶ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, 9 November 2021, [ICC-02/05-01/20-504-AnxA](#), facts 10, 11 and 15, respectively.

leader of the Militia/*Janjaweed* is similarly corroborative of, and cumulative to, the evidence to be provided by *viva voce* witnesses.⁶⁷

37. The fact that part of P-0012's statement goes to a contested issue, i.e. the Accused's identity, does not preclude its introduction under rule 68(3) of the Rules, particularly as the evidence is not unique, and the Defence will be able to fully examine the witness.⁶⁸

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

38. As detailed above, the Prior Recorded Testimonies that the Prosecution seeks to introduce into evidence pursuant to rule 68(3) of the Rules are relevant, reliable and probative. In addition, the Prior Recorded Testimonies of the Three Witnesses contain sufficient indicia of reliability.⁶⁹ The witnesses have signed their Prior Recorded Testimonies, attesting to the fact that they were voluntarily given and record their best recollection of events.⁷⁰ These Prior Recorded Testimonies also bear the interpreters' signature and certification that each witness heard and understood the translation.⁷¹

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

39. The introduction of the Prior Recorded Testimonies of the Three Witnesses into evidence would not be prejudicial to or inconsistent with the rights of the Accused, since, as required by rule 68(3) of the Rules, the witnesses will be present before the Chamber, their evidence will only be introduced if they do not object to it, and the

⁶⁷ See, for instance, among others, P-0092, DAR-OTP-0112-0175 at 0189, para. 63; P-0129, DAR-OTP-0128-0128 at 0134-0135, paras. 2-25; P-0643, DAR-OTP-0218-0638 at 0641, para. 19; P-0878, DAR-OTP-0215-9919 at 9932; P-0903, DAR-OTP-0221-0436 at 0448, para. 61; P-0907, DAR-OTP-0220-0668 at 0681, para. 77; P-0987, DAR-OTP-0221-0416 at 0422, para. 24.

⁶⁸ *Gbagbo and Blé Goudé* Rule 68 Appeals Decision, [ICC-02/11-01/15-744](#), para. 69.

⁶⁹ *Ntaganda* Rule 68(3) Preliminary Ruling, [ICC-01/04-02/06-1640-Red](#), para. 9.

⁷⁰ P-0007, DAR-OTP-0088-0060 at 0073; P-0012, DAR-OTP-01119-0503 at 0529; P-0718, DAR-OTP-0209-2004 at 2020.

⁷¹ P-0007, DAR-OTP-0088-0060 at 0073-0074; P-0012, DAR-OTP-01119-0503 at 0529; P-0718, DAR-OTP-0209-2004 at 2020.

Defence, along with the victims' representatives and the Chamber, will have an opportunity to fully examine the witness during the proceedings.⁷²

IV. CONCLUSION

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



Karim A. A. Khan QC
Prosecutor

Dated this 27th day of May 2022

At The Hague, The Netherlands

⁷² See [First Rule 68\(3\) Decision](#), paras. 11-12.