

Original: **English**No.: **ICC-02/05-01/20**Date: **19 August 2022****TRIAL CHAMBER I**

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

SITUATION IN DARFUR, SUDAN

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

Public

Public redacted version of “Prosecution’s thirteenth application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0584, P-0671 and P-1018”, 16 August 2022, ICC-02/05-01/20-721-Conf

Source: Office of the Prosecutor

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I. INTRODUCTION

1. Pursuant to articles 64(3)(a), 69(2) and (4) of the Rome Statute, and rule 68(3) of the Rules of Evidence and Procedure (“Rules”), the Prosecution requests Trial Chamber I (“Chamber”) to (i) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of witnesses P-0584, P-0671 and P-1018 (“Three Witnesses”); and (ii) grant the time requested for the supplementary examination of each of the Three Witnesses (“Application”).² P-1018 is currently scheduled to testify on 7 September 2022, while P-0584 and P-0671 have not yet been allocated a date for testimony.

2. The Prior Recorded Testimonies of the Three Witnesses relate primarily to the charged crimes in Deleig and surrounding areas (Counts 22 to 31),³ and are relevant, reliable and probative.

3. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of the in-court testimony of the Three Witnesses from 13.5 hours to 3 hours, thus saving 10.5 hours of in-court time.

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

II. CLASSIFICATION

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this Application and Annex A are classified as confidential, since they contain confidential information

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, without which the testimony would not be understandable, but which the Prosecution does not seek to introduce into evidence, is also included (at III). Hyperlinks to this material are also included. *See* Conduct of Proceedings Directions, [ICC-02/05-01/20-478](#), para. 47.

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

³ *See* Confirmation Decision, [ICC-02/05-01/20-433-Corr](#), paras. 106-114 and p. 63-67, 69-70.

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.⁴

7. The Prosecution seeks one hour 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.⁵ 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.⁶ The Prosecution will ensure that the Three 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 necessary to fully comprehend the accounts of the Three Witnesses, as they discuss the items and, when required, clarify them in their statements.⁹

⁴ First Rule 68(3) Application, [ICC-02/05-01/20-547-Conf](#), paras. 7-10. *See also* First Rule 68(3) Decision, [ICC-02/05-01/20-559-Red](#), paras. 7-17.

⁵ *Lubanga* Prior Recorded Statements Decision, [ICC-01/04-01/06-1603](#), para. 25; *Lubanga* Hearing Transcript, [ICC-01/04-01/06-T-205-Red3-ENG](#), p. 19, l. 11 *et seq*; *Katanga* Prior Recorded Testimony Decision, [ICC-01/04-01/07-2233-Corr](#), paras. 16-17; *Ntaganda* Hearing Transcript, [ICC-01/04-02/06-T-110-Red2-ENG](#), p. 34, l. 8-13; *Gbabgo & Blé Goude* Annex A to Decision Adopting Amended and Supplemented Conduct of Proceedings Directions, [ICC-02/11-01/15-498-AnxA](#), para. 40.

⁶ *See below*, paras. 12, 17, 25.

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.

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](#), paras. 23, 35; *Ruto & Sang* Decision on the Admission of Prior Recorded Testimony, [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33.

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

9. As noted above, the Prior Recorded Testimonies of the Three Witnesses relate primarily to the charged crimes in Deleig and surrounding areas, between about 5 and about 7 March 2004 (Counts 22 to 31).¹⁰ The Three Witnesses are direct eye-witnesses to the Deleig incident. The specific relevance of the evidence provided by the Three Witnesses to the case is summarised in this section.

(i) *Prior recorded testimony of P-0584*

10. P-0584, a Fur civilian [REDACTED], provides evidence regarding attacks on [REDACTED] by Government of Sudan Forces (“GoS Forces”) and Militia/*Janjaweed* in 2003,¹¹ and his subsequent displacement to Deleig. P-0584 also provides evidence about house to house searches, [REDACTED],¹² and the arrest, detention, mistreatment,¹³ and killing¹⁴ of men in Deleig in March 2004. P-0584 also gives evidence regarding Mr Abd-Al-Rahman’s presence, indicia of authority, and role during the Deleig incident, including his killing of *Sheikh Motor*.¹⁵

11. P-0584’s prior recorded testimony¹⁶ comprises one statement,¹⁷ and associated material consisting of: (i) a map shown to P-0584 during the interview;¹⁸ (ii) a sketch drawn by P-0584 of [REDACTED];¹⁹ (iii) a sketch drawn by P-0584 showing the area around [REDACTED] and direction of attack;²⁰ (iv) a CD signed by P-0584 containing photographs [REDACTED];²¹ (v) a sketch drawn by P-0584 of relevant locations in

¹⁰ Given the interconnected nature of the facts and circumstances relevant to establishing the Deleig incident, the Prosecution has not indicated the relevance of the Three Witnesses by reference to specific counts.

¹¹ P-0584, DAR-OTP-0200-1540 at 1550-1554, paras. 34-50.

¹² P-0584, DAR-OTP-0200-1540 at 1564-1566, paras. 90-95.

¹³ P-0584, DAR-OTP-0200-1540 at 1566-1567, paras. 96-102.

¹⁴ P-0584, DAR-OTP-0200-1540 at 1570-1573, paras. 111-126.

¹⁵ P-0584, DAR-OTP-0200-1540 at 1568-1569, paras. 103-110.

¹⁶ See Annex A – A1.

¹⁷ DAR-OTP-0200-1540.

¹⁸ DAR-OTP-0200-1579.

¹⁹ DAR-OTP-0200-1581 (Translation at DAR-OTP-0219-8551).

²⁰ DAR-OTP-0200-1583 (Translation at DAR-OTP-0219-8554).

²¹ DAR-OTP-0200-1586. The CD contains nine photographs of [REDACTED] taken during the interview: DAR-OTP-0200-1612, DAR-OTP-0200-1613, DAR-OTP-0200-1614, DAR-OTP-0200-1615, DAR-OTP-0200-1616, DAR-OTP-0200-1617, DAR-OTP-0200-1618, DAR-OTP-0200-1619, DAR-OTP-0200-1620.

Deleig;²² (vi) sketches drawn by P-0584 of the area surrounding Deleig,²³ and relevant locations near Deleig police station;²⁴ and (vii) an investigation report recording the height of an investigator, which complements information contained in the statement.²⁵

The Prosecution requests one hour for its limited supplementary examination of P-0584

12. The Prosecution seeks one hour to conduct a supplementary examination of P-0584 on topics including: (i) the arrest, detention and mistreatment of males in Deleig in March 2004; (ii) the execution of detainees during the Deleig incident, and (iii) his observations of Mr Abd-Al-Rahman during the Deleig incident.

13. The Prosecution estimates that it would require 4.5 hours for the direct examination of P-0584,²⁶ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

(ii) Prior recorded testimony of P-0671

14. P-0671, a Fur civilian, provides evidence on an attack on [REDACTED] village in November/December 2003 by the Militia/*Janjaweed*,²⁷ and his displacement to Deleig as a result.²⁸ P-0671 states that on or about 5 March 2004, the Militia/*Janjaweed* and GoS Forces encircled Deleig²⁹ and conducted a search and arrest operation, during which [REDACTED] were arrested on the orders of Mr Abd-Al-Rahman.³⁰

15. P-0671 provides direct evidence on the mistreatment of detainees near the Deleig police station.³¹ P-0671 describes seeing Mr Abd-Al-Rahman at the Deleig police

²² DAR-OTP-0200-1588 (Translation at DAR-OTP-0219-1666).

²³ DAR-OTP-0200-1591 at 1592 (Translation at DAR-OTP-0219-1670 at 1672).

²⁴ DAR-OTP-0200-1591 at 1593 (Translation at DAR-OTP-0219-1670 at 1673).

²⁵ DAR-OTP-0201-0019.

²⁶ Annex 1 to the Prosecution's submission of the updated List of Witnesses and List of Evidence, 9 May 2022, [ICC-02/05-01/20-685-Conf-Anx1](#), p. 8.

²⁷ P-0671, DAR-OTP-0206-0105 at 0108-0110, paras. 14-19, 21.

²⁸ P-0671, DAR-OTP-0206-0105 at 0110, para. 20.

²⁹ P-0671, DAR-OTP-0206-0105 at 0111, paras. 24-25.

³⁰ P-0671, DAR-OTP-0206-0105 at 0112-0114, paras. 26-34.

³¹ P-0671, DAR-OTP-0206-0105 at 0115-0116, paras. 40-41, 43.

station beating prisoners and ordering soldiers to do the same.³² P-0671 later learnt that the detainees were placed in vehicles and driven to a dried up riverbed near Tolda Mountain, south of Deleig, to be executed.³³ A number of days later, P-0671 [REDACTED].³⁴ He later learnt that more bodies were found near Fere, northwest of Deleig.³⁵ Subsequently, P-0671 saw Mr Abd-Al-Rahman three to four times in Deleig market in 2004.³⁶

16. P-0671's prior recorded testimony³⁷ comprises one statement,³⁸ and associated material consisting of: (i) illustrations of aircrafts shown to P-0671 to identify the aircraft he saw during the [REDACTED] attack;³⁹ (ii) illustrations of hats shown to P-0671 to identify the types of hat worn by certain persons he saw in Deleig;⁴⁰ (iii) a sketch drawn by P-0671 showing his shelter in Deleig and other relevant positions;⁴¹ (iv) a sketch drawn by P-0671 of relevant locations in Deleig, including the position of prisoners near Deleig police station;⁴² and (v) an investigation report explaining an error in the interpreter's certification in the statement.⁴³

The Prosecution requests one hour for its limited supplementary examination of P-0671

17. The Prosecution seeks one hour to conduct a supplementary examination of P-0671 on topics including: (i) the arrest, detention and mistreatment of males in Deleig in March 2004; (ii) [REDACTED] near Deleig in March 2004; and (iii) his observations of Mr Abd-Al-Rahman during the Deleig incident.

³² P-0671, DAR-OTP-0206-0105 at 0116, para. 44.

³³ P-0671, DAR-OTP-0206-0105 at 0117, para. 48.

³⁴ P-0671, DAR-OTP-0206-0118, paras. 51-54.

³⁵ P-0671, DAR-OTP-0206-0105 at 0119, para. 57.

³⁶ P-0671, DAR-OTP-0206-0105 at 0119-0120, paras. 59-60.

³⁷ See Annex A – A2.

³⁸ DAR-OTP-0206-0105.

³⁹ DAR-OTP-0206-0126 (Translation at DAR-OTP-0219-8154).

⁴⁰ DAR-OTP-0206-0128 (Translation at DAR-OTP-0219-8157).

⁴¹ DAR-OTP-0206-0130 (Translation at DAR-OTP-0129-1693).

⁴² DAR-OTP-0206-0132 (Translation at DAR-OTP-0219-1696).

⁴³ DAR-OTP-0219-5834.

18. The Prosecution estimates that it would require 4.5 hours for the direct examination of P-0671,⁴⁴ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

(iii) *Prior recorded testimony of P-1018*

19. P-1018, a Fur [REDACTED],⁴⁵ provides evidence on an attack on [REDACTED] led by Mr Abd-Al-Rahman on 8 December 2003, and his displacement to Deleig as a result.⁴⁶ P-1018 states that Mr Abd-Al-Rahman and Militia/*Janjaweed* surrounded Deleig,⁴⁷ arrested males, and detained them in a square outside of the police station.⁴⁸ P-1018, who observed these events [REDACTED], states that Mr Abd-Al-Rahman was leading the forces⁴⁹ and that Hamdi, from the Military Intelligence in Garsila, was also present in Deleig.⁵⁰

20. [REDACTED] Mr Abd-Al-Rahman and his forces searched for the Garsila PDF coordinator Jenif [REDACTED] in Deleig.⁵¹ [REDACTED] Jenif being brought in a vehicle and put into prison. [REDACTED] Jenif had been severely beaten in the head, which was covered in blood.⁵²

21. P-1018 also provides evidence on detainees being taken away in vehicles towards Koska area, south of Deleig⁵³ and [REDACTED] that all of the people taken away were executed.⁵⁴ P-1018 also mentions three survivors of the Deleig executions.⁵⁵

22. P-1018 further provides evidence on the detention of *Umdah* Jiddo Khamis and *Umdah* Adam Adam Deguis (also known as Kindiri) at the Deleig police station, as

⁴⁴ Annex 1 to the Prosecution's submission of the updated List of Witnesses and List of Evidence, 9 May 2022, [ICC-02/05-01/20-685-Conf-Anx1](#), p. 8.

⁴⁵ P-1018, DAR-OTP-0220-2941 at 2943, l. 13-14, and DAR-OTP-0220-2946 at 2948, l. 11-12 and 2954-2955, l. 288-331.

⁴⁶ P-1018, DAR-OTP-0220-2946 at 2949, l. 41-48.

⁴⁷ P-1018, DAR-OTP-0220-2946 at 2949, l. 48-52.

⁴⁸ P-1018, DAR-OTP-0220-2946 at 2949-2950, l. 52-61, 87-92.

⁴⁹ P-1018, DAR-OTP-0220-2946 at 2949, l. 52-54.

⁵⁰ P-1018, DAR-OTP-0220-2946 at 2950, l. 92-96.

⁵¹ P-1018, DAR-OTP-0221-2946 at 2949, l. 61-77, and DAR-OTP-0220-2956 at 2967-2968, l. 364-395.

⁵² P-1018, DAR-OTP-0220-2946 at 2949, l. 80-86, and DAR-OTP-0220-2956 at 2967, l. 380-383.

⁵³ P-1018, DAR-OTP-0220-2946 at 2950, l. 97-101

⁵⁴ P-1018, DAR-OTP-0220-2946 at 2950, l. 103-107.

⁵⁵ P-1018, DAR-OTP-0220-2946 at 2950, l. 109-119.

well as on Mr Abd-Al-Rahman transporting *Umdah* Dirbo of Tanako, *Sheikh* Ismael from Garsila and a civilian from Garsila to Deleig, and taking prisoners out of the Deleig police station on a Sunday. P-1018 later heard about the execution of these community leaders in a location near Fere.⁵⁶

23. [REDACTED].⁵⁷ P-1018 also provides evidence about the destruction of mass graves with the involvement of Mr Abd-Al-Rahman.⁵⁸

24. P-1018's prior recorded testimony⁵⁹ comprises four interview transcripts (with English translations),⁶⁰ and associated material consisting of: (i) a photograph of P-1018 holding a signed written declaration attesting to having given a statement to the Prosecution;⁶¹ (ii) a photograph of the signed written declaration;⁶² and (iii) [REDACTED] persons killed during the Deleig incident.⁶³

The Prosecution requests one hour for its limited supplementary examination of P-1018

25. The Prosecution seeks one hour to conduct a supplementary examination of P-1018 on topics including: (i) the arrest, detention and killing of men in Deleig on 5 March 2004, including several community leaders; (ii) the search for, arrest and mistreatment of Jenif on 5 March 2004; (iii) his observations of Mr Abd-Al-Rahman during the Deleig incident; and (iv) [REDACTED] people killed in Deleig [REDACTED].

⁵⁶ P-1018, DAR-OTP-0220-2946 at 2950-2951, l. 128-156, and DAR-OTP-0220-2956 at 2960-2962, l. 91-164.

⁵⁷ P-1018, DAR-OTP-0220-2956 at 2958-2959, l. 13-39 and 2963-2966, l. 197-238, 263-328 and 2968-2970, l. 429-502, and DAR-OTP-0220-2972 at 2974-2981, l. 18-284 and 2984-2985, l. 394-428; DAR-OTP-0219-9003 (Translation at DAR-OTP-0219-3043); DAR-OTP-0219-9004 (Translation at DAR-OTP-0220-3045); DAR-OTP-0219-9005 (Translation at DAR-OTP-0220-3047); DAR-OTP-0219-9002 (Translation at DAR-OTP-0220-3041).

⁵⁸ P-1018, DAR-OTP-0220-2946 at 2952-2954, l. 187-192, 208-284.

⁵⁹ See Annex A – A3.

⁶⁰ DAR-OTP-0222-1180 (Translation at DAR-OTP-0220-2941); DAR-OTP-0222-1183 (Translation at DAR-OTP-0220-2946); DAR-OTP-0222-1190 (Translation at DAR-OTP-0220-2956); DAR-OTP-0222-1202 (Translation at DAR-OTP-0220-2972).

⁶¹ DAR-OTP-0222-1170.

⁶² DAR-OTP-0222-1171 (Translation at DAR-OTP-0221-1738).

⁶³ DAR-OTP-0219-9003 (Translation at DAR-OTP-0220-3043); DAR-OTP-0219-9004 (Translation at DAR-OTP-0220-3045); DAR-OTP-0219-9005 (Translation at DAR-OTP-0220-3047); DAR-OTP-0219-9002 (Translation at DAR-OTP-0220-3041).

26. The Prosecution estimates that it would require 4.5 hours for direct examination of P-1018,⁶⁴ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

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

39. The Three Witnesses provide evidence with respect to several central aspects relevant to the Deleig incident, which are corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses:

- a. the search of Deleig and arrest of Fur males displaced to Deleig from the surrounding areas, between about 5 and about 7 March 2004;⁶⁵
- b. the detention and mistreatment of male Fur civilians in the open area near the Deleig police station on or about 5 March 2004;⁶⁶
- c. the mistreatment of detainees by Mr Abd-Al-Rahman in the open area near Deleig police station on or about 5 March 2004;⁶⁷
- d. the loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times on or about 5 March 2004;⁶⁸
- e. Mr Abd-Al-Rahman's presence during, and supervision of, the process of loading detainees onto vehicles;⁶⁹

⁶⁴ Annex 1 to the Prosecution's submission of the updated List of Witnesses and List of Evidence, 9 May 2022, [ICC-02/05-01/20-685-Conf-Anx1](#), p. 8.

⁶⁵ The evidence of the Three Witnesses is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0907, P-0924, P-0973, P-0987 and P-0994.

⁶⁶ The evidence of the Three Witnesses is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

⁶⁷ The evidence of the Three Witnesses is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0907, P-0924, P-0973 and P-0994.

⁶⁸ The evidence of P-0671 and P-1018 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

⁶⁹ The evidence of P-0584 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

- f. the detention of a group of community leaders in Deleig between about 5 and about 7 March 2004;⁷⁰
- g. the killing of a group of detainees, including several community leaders, in an area outside of Deleig near Fere on or about 7 March 2004;¹²³ and
- h. the arrest and mistreatment of Jenif in Deleig by Mr Abd-Al-Rahman and his men on or about 5 March 2004.¹²⁴

40. The Three Witnesses also provide evidence with respect to the senior leadership position of Mr Abd-Al-Rahman in the Militia/*Janjaweed*, which is corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses.⁷¹

41. Finally, the evidence provided by P-1018 regarding the attack on [REDACTED] is corroborative of, and cumulative to, evidence to be provided by *viva voce* witness P-0905.

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

27. As detailed above, the Prior Recorded Testimonies of the Three Witnesses are relevant to the case,⁷² and their evidence is corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses.⁷³

28. In addition, the Prior Recorded Testimonies of the Three Witnesses contain sufficient indicia of reliability.⁷⁴ The statements of P-0584 and P-0671 include an acknowledgment signed by the witness indicating that the statement (i) was read back

⁷⁰ The evidence of P-1018 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0973, P-0987 and P-0994.

¹²³ The evidence of P-1018 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0643, P-0879, P-0883, P-0907, P-0973, P-0987, P-0924 and P-0994.

¹²⁴ The evidence of P-1018 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0987, P-0994 and P-1018.

⁷¹ These *viva voce* witnesses include P-0029, P-0129, P-0131, P-0589, P-0643, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

⁷² See above, paras. 9-26 (Section A, Overview of the Prior Recorded Testimonies of the Three Witnesses).

⁷³ See above, paras. 39-41. See also Bemba Rule 68 Appeals Judgment, [ICC-01/05-01/08-1386](#), para. 78.

⁷⁴ *Ntaganda* Rule 68(3) Preliminary Ruling, [ICC-01/04-02/06-1640-Red](#), para. 9.

to the witness in their language, (ii) is true to the best of their knowledge and recollection, and (iii) was given voluntarily with the awareness that it may be used in legal proceedings before the Court.⁷⁵ The statements also contains a certification signed by the interpreter who participated in the interview indicating that (i) the interpreter orally translated the statement to the witness into a language the witness speaks and understands, (ii) the witness appeared to have heard and understood the translation, and (iii) the witness signed the statement attesting to the truth of its contents.⁷⁶ P-1018, whose interview was audio recorded, provided a signed written declaration attesting to having participated in the interview voluntarily.⁷⁷

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

29. 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, and the Defence will have an opportunity to examine the witness during the proceedings.⁷⁸

IV. CONCLUSION

30. 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 19th day of August 2022

At The Hague, The Netherlands

⁷⁵ P-0584, DAR-OTP-0200-1540 at 1577; P-0671, DAR-OTP-0206-0105 at 0124.

⁷⁶ P-0584, DAR-OTP-0200-1540 at 1578; P-0671, DAR-OTP-0206-0105 at 0125.

⁷⁷ P-1018, DAR-OTP-0222-1171 (Translation at DAR-OTP-0221-1738). *See also* P-1018, DAR-OTP-0220-2941 at 2944-2945, l. 73-81, and DAR-OTP-0220-2972 at 2987-2988, l. 491-516.

⁷⁸ *See* [First Rule 68\(3\) Decision](#), paras. 11-12.