

**Original: English****No. ICC-02/05-01/20
Date: 31 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 redacted version of the
Decision on the Prosecution's fifteenth application 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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I. Procedural history

1. On 20 January 2022, Trial Chamber I ('the Chamber') issued its first decision on the Prosecution's application 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.¹
2. On 25 August 2022, following an instruction of the Chamber,² the Prosecution made an application to introduce the prior recorded testimony of P-0976, P-0992 and P-0994 (the 'Application').³
3. On 30 August 2022, the Defence responded to the Application, stating it does not oppose the Application (the 'Response').⁴

II. Analysis

4. The Chamber incorporates by reference the general framework applicable to the assessment of applications for introduction of prior recorded statements pursuant to Rule 68(3) of the Rules.⁵

P-0976

5. P-0976, an *Umdah* [REDACTED], provides evidence on the structure, background and funding of the armed forces allegedly involved in the conflict at the time of the charges, particularly in Mukjar. He also refers to the accused's alleged leadership role. P-0976 also provides evidence on the Sindu operation, including an alleged speech made by the accused giving operational details and Ahmed Harun's visit to Mukjar in February 2004 to distribute weapons for the operation. As regards the

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

² The Chamber informed the parties that it is of the preliminary view that P-0129 could be introduced via Rule 68(3) of the Rules and that the Prosecution may file such an application by 19 August 2022 (responses to be filed by 25 August 2022). See e-mail from the Chamber, 16 August 2022, at 16:19.

³ Prosecution's fifteenth application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0976, P-0992 and P-0994, ICC-02/05-01/20-725-Conf with confidential annex A. A public redacted version was notified on 25 August 2022, ICC-02/05-01/20-725-Red.

⁴ E-mail from the Defence, 30 August 2022, at 15:29.

⁵ First Rule 68(3) Decision, ICC-02/05-01/20-559-Conf, paras 7-17.

crimes allegedly committed in Mukjar, the witness provides evidence about the alleged arrest and detention of displaced men, including community leaders ([REDACTED]). He also refers to the accused's alleged presence at the Mukjar police station at the time of the alleged crimes.⁶

6. In addition to the witness statement, the Prosecution seeks to introduce as associated material sketches, charts and other documents used during the interview with P-0976.⁷

7. The Prosecution requests one hour to conduct a supplementary examination (instead of the 4.5 hours estimated for *viva voce* examination).⁸

8. The Chamber notes the Prosecution's submission that the evidence of P-0976 is corroborative and/or cumulative to that of other witnesses that have testified or are due to testify in respect of alleged crimes in Mukjar.⁹ Noting that the Defence does not object to the Application, the Chamber is satisfied that the introduction of P-0976's prior recorded statement will not be prejudicial to the accused.

P-0992

9. P-0992, [REDACTED], provides evidence on the alleged attacks by the Militia/*Janjaweed* on villages in July and August 2003, which resulted in the displacement of civilians to Mukjar (including P-0992). P-0992 also refers to an alleged rebel attack in Mukjar in 2003. P-0992 refers to the structure of the Militia/*Janjaweed*; the accused's alleged authority; the distribution of weapons; the Sindu operation and Adbullah's Torshein alleged role. P-0992 also refers to his own alleged detention in Mukjar, the accused's alleged presence and participation, as well as the execution of prisoners.¹⁰

10. In addition to the witness statement, the Prosecution seeks to introduce as associated material a chart, a sketch and an image used during the interview.¹¹

⁶ Application, ICC-02/05-01/20-725-Conf, paras 9-14.

⁷ Application, ICC-02/05-01/20-725-Conf, para. 15 and Annex A.

⁸ Application, ICC-02/05-01/20-725-Conf, para. 17.

⁹ Application, ICC-02/05-01/20-725-Conf, para. 35, *referring to* P-0029, P-0129, P-0188, P-0877, P-0885, P-0903, P-0905, P-0919, P-0931, P-0979, P-0984, P-0990, P-1040.

¹⁰ Application, ICC-02/05-01/20-725-Conf, paras 18-22.

¹¹ Application, ICC-02/05-01/20-725-Conf, para. 23 and Annex A.

11. The Prosecution requests one hour to conduct a supplementary examination (instead of the 6 hours estimated for *viva voce* examination).¹²

12. The Chamber notes the Prosecution's submission that the evidence of P-0992 is corroborative and/or cumulative to that of other witnesses that have testified or are due to testify in respect of alleged crimes in Mukjar.¹³ Noting that the Defence does not object to the Application, the Chamber is satisfied that the introduction of P-0992 prior recorded statement will not be prejudicial to the accused.

P-0994

13. P-0994 is a [REDACTED] at the time of the charges. He provides evidence on the alleged attack on Deleig and the accused's alleged presence and participation in the detention, beating and execution of Fur men. He also refers to the accused's identity and background.¹⁴

14. In addition to the witness statement, the Prosecution seeks to introduce as associated material sketches and images used during the interview.¹⁵

15. The Prosecution requests one hour to conduct a supplementary examination (instead of the 4.5 hours estimated for *viva voce* examination).¹⁶

16. The Chamber notes the Prosecution's submission that the evidence of P-0994 is corroborative and/or cumulative to that of other witnesses that have testified or are due to testify in respect of alleged crimes in Deleig.¹⁷ His evidence also corroborates facts agreed upon by the parties in relation to the accused.¹⁸ Noting that the Defence does not object to the Application, the Chamber is satisfied that the introduction of P-0994 prior recorded statement will not be prejudicial to the accused.

¹² Application, ICC-02/05-01/20-725-Conf, paras 24-25.

¹³ Application, ICC-02/05-01/20-725-Conf, para. 35, *referring to* P-0029, P-0129, P-0188, P-0877, P-0885, P-0903, P-0905, P-0919, P-0931, P-0979, P-0984, P-0990, P-1040.

¹⁴ Application, ICC-02/05-01/20-725-Conf, paras 26-31.

¹⁵ Application, ICC-02/05-01/20-725-Conf, para. 32 and Annex A.

¹⁶ Application, ICC-02/05-01/20-725-Conf, paras 33-34.

¹⁷ Application, ICC-02/05-01/20-725-Conf, para. 35, *referring to* P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987.

¹⁸ Application, ICC-02/05-01/20-725-Conf, para. 36, *referring to* Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, 9 November 2021, ICC-02/05-01/20-504-AnxA, facts 11, 13, 14, 15.

17. 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.

18. Accordingly, the Chamber authorises the introduction of the prior recorded testimony of P-0976, P-0992 and P-0994 identified in the Application and its corresponding 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 31 August 2022

At The Hague, the Netherlands