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

Date: **28 June 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 twelfth application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0028, P-0913 and P-0932”, 23 June 2022, ICC-02/05-01/20-706-Conf

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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-0028, P-0913 and P-0932 (“Three Witnesses”); and (ii) grant the time requested for the supplementary examination of each of the Three Witnesses (“Application”).² The Three Witnesses are currently scheduled to testify between July and November 2022.³

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

3. 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 expedite the proceedings by reducing the length of the Three Witnesses’ testimony from at least 13.5 hours to three hours.⁴

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

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 P-0028 is scheduled to testify on 9-10 November 2022; P-0913 is scheduled to testify from -21-22 July 2022; and P-0932 is scheduled to testify from 20-21 July 2022.

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 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.

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 for 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 set out below.⁷

8. The associated material which the Prosecution seeks to introduce into evidence for each of the Three Witnesses⁸ forms an integral part of their prior recorded testimonies.⁹ 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. 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."¹⁰

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

(i) *Prior Recorded Testimony of Witness P-0028*

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 Goude* Annex A to Decision Adopting Amended and Supplemented Conduct of Proceedings Directions, [ICC-02/11-01/15-498-AnxA](#), para. 40.

⁷ See below paras. 36-40.

⁸ 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.

⁹ See *Yekatom & Ngaissona* Decision on the Prosecution Requests under Rule 68(3), [ICC-01/14-01/18-907-Red](#), para. 26.

¹⁰ *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.

9. The Prosecution seeks to submit into evidence P-0028's prior recorded testimony, including the associated material listed in Annex A (A1) to this Application. P-0028's prior recorded testimony comprises a witness statement and two associated items that were used and explained by the witness in his interview and relate to information and events discussed therein.

10. P-0028, a Fur civilian, provides evidence on the crimes committed during the attack on Mukjar and surrounding areas in August 2003 by Militia/*Janjaweed*, led by Mr Abd-Al-Rahman.¹¹ Additionally, P-0028 provides direct evidence on house-to-house searches and arrests, [REDACTED] and the beatings of men, with the involvement of Mr Abd-Al-Rahman, in Mukjar in August 2003.¹²

11. P-0028 also describes the arrival of Al-Dayf SAMIH and Mr Abd-Al-Rahman, together with Militia/*Janjaweed*, in Mukjar in February/March 2004, prior to the attack on Sindu.¹³ On the day following their arrival, P-0028 saw helicopters landing in Mukjar and the delivery of boxes to the Central Reserve Forces ("CRF") and Police.¹⁴

12. P-0028 is also relevant in relation to the arrest and detention of men, including *Umdahs*, in Mukjar in March 2004.¹⁵ P-0028 states that Mr Abd-Al-Rahman selected 32 prisoners detained at the Mukjar prison and loaded them onto four Land Cruiser vehicles that proceeded in the direction of Garsila.¹⁶ Fifteen minutes later, P-0028 heard several gunshots coming from the same direction and later saw the same vehicles return empty.¹⁷ P-0028 recounts that the following day, women found 31 dead bodies on the road to Garsila, including the corpses of *Umdah* Issa Harun Nour, *Umdah* Yahya Ahmad Zarruq and his two sons.¹⁸ In April 2004 P-0028 discovered body parts in the same area.¹⁹

13. As detailed in the Prosecution's Trial Brief,²⁰ P-0028's prior recorded testimony relates, *inter alia*, to the charges of murder, torture, other inhuman acts, and outrages upon personal dignity committed in Mukjar and surrounding areas in February/March 2004. Additionally, P-0028's evidence is relevant to the contextual elements of crimes against humanity, as well as

¹¹ P-0028, DAR-OTP-0094-0423 at 0433-0434, paras. 36-37, 40.

¹² P-0028, DAR-OTP-0094-0423 at 0434-0435, paras. 46-49, 51.

¹³ P-0028, DAR-OTP-0094-0423 at 0437-0438, paras. 59-60.

¹⁴ P-0028, DAR-OTP-0094-0423 at 0437-0438, paras. 59-60.

¹⁵ P-0028, DAR-OTP-0094-0423 at 0439, paras. 65-66.

¹⁶ P-0028, DAR-OTP-0094-0423 at 0439-0440, paras. 67-68.

¹⁷ P-0028, DAR-OTP-0094-0423 at 0440, para. 68.

¹⁸ P-0028, DAR-OTP-0094-0423 at 0440, para. 69-70.

¹⁹ P-0028, DAR-OTP-0094-0423 at 0441, paras. 75-76.

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

Mr Abd-Al-Rahman's position of authority, essential contribution to the Mukjar incident, and central role in the arming of Militia/*Janjaweed*.

14. P-0028's associated material comprises: (i) a sketch map of Mukjar town;²¹ and (ii) a list [REDACTED] of persons arrested and killed during and after the attack on Sindu.²²

The Prosecution requests one hour for its limited supplementary examination of P-0028

15. The Prosecution seeks one hour to conduct a supplementary examination of P-0028 on topics including: (i) the distribution of weapons in Mukjar in February/March 2004; (ii) the arrest and detention of young men and *Umdahs* in Mukjar in February/March 2004; (iii) the execution of detainees during the Mukjar incident; and (iv) Mr Abd-Al-Rahman's involvement in the Mukjar incident at the relevant time.

16. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0028,²³ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

(ii) *Prior Recorded Testimony of Witness P-0913*

17. The Prosecution seeks to submit into evidence P-0913's prior recorded testimony, inclusive of the associated material listed in Annex A (A2) to this Application. P-0913's prior recorded testimony comprises a witness statement and five associated items that were used and explained by the witness in his interview and relate to information and events discussed therein.

18. P-0913, a fur [REDACTED], provides evidence on the crimes committed during the attack on Kodoom and Bindisi and surrounding areas by CRF and Militia/*Janjaweed*, led by Mr Abd-Al-Rahman, in August 2003,²⁴ including, murder,²⁵ pillaging,²⁶ and destruction of property.²⁷ As described by P-0913, Mr Abd-Al-Rahman and his forces attacked north Bindisi first and the following day, proceeded to south Bindisi.²⁸ Following the attack, P-0913 fled to Mukjar where he hid to avoid being targeted as a Fur young male.²⁹

²¹ DAR-OTP-0094-0445 at 0045.

²² DAR-OTP-0094-0446 at 0046-0468 (English translation at DAR-OTP-0153-1434).

²³ 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. 6.

²⁴ P-0913, DAR-OTP-0218-0021 at 0025-0026, paras. 27-28, 32-33 and 0028-0029, paras. 51-53.

²⁵ P-0913, DAR-OTP-0218-0021 at 0025, para. 27 and 0029, paras. 52-53.

²⁶ P-0913, DAR-OTP-0218-0021 at 0027-0028, paras. 39, 51.

²⁷ P-0913, DAR-OTP-0218-0021 at 0025, para. 27.

²⁸ P-0913, DAR-OTP-0218-0021 at 0026-0027, paras. 37-41.

²⁹ P-0913, DAR-OTP-0218-0021 at 0030, paras. 60-61.

19. P-0913 also provides evidence on a speech by Ahmad Muhammad HARUN (“HARUN”) in Mukjar in February 2004, during which he told Militia/*Janjaweed* they could take all Fur belongings and consider them a war prize,³⁰ and “to completely wipe out the whole area.”³¹

20. P-0913 also describes that shortly after HARUN’s visit, an helicopter loaded with weapons and ammunition landed at the Mukjar police compound.³² [REDACTED].³³

21. P-0913 further provides evidence on the arrest of *Umdah* Yahya Ahmad Zarruq in Mukjar in February/March 2004.³⁴ P-0913 recalls that [REDACTED].³⁵[REDACTED].³⁶

22. Finally, P-0913 saw Mr Abd-Al-Rahman hitting *Umdah* Yahya Ahmed Zarruq with his axe at the Mukjar police station and calling him criminal.³⁷ Shortly after, Militia/*Janjaweed* placed 40 prisoners, including *Umdah* Yahya Ahmed Zarruq, in trucks parked nearby and belonging to Mr Abd-Al-Rahman.³⁸ Once the trucks were loaded, they were driven towards Garsila, while Mr Abd-Al-Rahman shouted “Toro Boro is over, prepare their graves.”³⁹ About 15 minutes later, P-0913 heard continuous gunshots coming from the same direction.⁴⁰

23. As detailed in the Prosecution’s Trial Brief,⁴¹ P-0913’s prior recorded testimony relates, *inter alia*, to the charged crimes of murder and forcible transfer during the attack on Kodoom and Bindisi on or about the 15 and 16 August 2003. P-0913’s evidence is also cited in relation to charged crimes of persecution, murder, torture, other inhumane acts, cruel treatment, and outrages upon personal dignity during the attack on Mukjar in February/March 2004. Finally, P-0913’s evidence is relevant in relation to Mr Abd-Al-Rahman’s authority as a senior Militia/*Janjaweed* leader influencing certain members of the GoS Forces, as well as his individual criminal responsibility in relation to the crimes committed in Mukjar during the relevant time.

³⁰ P-0913, DAR-OTP-0218-0021 at 0032, para. 72.

³¹ *Ibid.*

³² P-0913, DAR-OTP-0218-0021 at 0032, paras. 74-77.

³³ P-0913, DAR-OTP-0218-0021 at 0033, paras. 78-82.

³⁴ P-0913, DAR-OTP-0218-0021 at 0035, paras. 91-92.

³⁵ P-0913, DAR-OTP-0218-0021 at 0035, para. 93.

³⁶ *Ibid.*

³⁷ P-0913, DAR-OTP-0218-0021 at 0035, paras 98-102 and 0037, para. 105.

³⁸ P-0913, DAR-OTP-0218-0021 at 0037, paras. 106-107.

³⁹ P-0913, DAR-OTP-0218-0021 at 0037-0038, para. 110.

⁴⁰ P-0913, DAR-OTP-0218-0021 at 0038, para. 112.

⁴¹ [ICC-02/05-01/20-550-Corr-Red2](#).

24. P-0913's associated material comprises: (i) sketch maps of Bindisi;⁴² (ii) a sketch map of a police camp in Mukjar;⁴³ (iii) a list of detainees taken from the Mukjar police station on trucks and either executed or survived;⁴⁴ (iv) a list of Militia/*Janjaweed* leaders;⁴⁵ and (v) a list of victims of the conflict in the Bindisi area.⁴⁶

The Prosecution requests one hour for its limited supplementary examination of P-0913

25. The Prosecution seeks one hour to conduct a limited supplementary examination of P-0913 on topics including: (i) the targeting Fur young males at the relevant time period; (ii) HARUN's speech in Mukjar in February 2004; (iii) the distribution of weapons in Mukjar in March 2004; (iv) the loading onto vehicles and executions of detainees in Mukjar in March 2004; and (v) Mr Abd-Al-Rahman's authority and individual criminal responsibility in Mukjar at the relevant time.

26. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0913,⁴⁷ if his prior recorded testimony is not introduced through rule 68(3) of the Rules.

(iii) *Prior Recorded Testimony of Witness of P-0932*

27. The Prosecution seeks to submit into evidence P-0932's prior recorded testimony, including the associated material listed in Annex A (A3) to this Application. P-0932's prior recorded testimony comprises a witness statement, and five associated items that were used and explained by the witness in his interview and relate to information and events discussed therein.

28. P-0932, a Fur civilian, provides evidence on the identity of Mr Abd-Al-Rahman, including his nickname "Ali Kushayb" and his ownership of a pharmacy in Garsila.⁴⁸

29. P-0932 provides direct evidence on the crimes committed during the attack on Kodoom by Militia/*Janjaweed*, in the presence of Mr Abd-Al-Rahman.⁴⁹ In particular, P-0932 recalls that on 15 August 2003, two soldiers from the Police forces, including P-0921, arrived in Kodoom and informed villagers that attackers would pass through because headed to Bindisi to collect the crop at the Zakat.⁵⁰ As P-0932 describes, one hour later, Militia/*Janjaweed* attacked

⁴² DAR-OTP-0218-0044 at 0044-0045 (English translation at DAR-OTP-0219-8119).

⁴³ DAR-OTP-0218-0046 at 0046 (English translation at DAR-OTP-0219-8107).

⁴⁴ DAR-OTP-0218-0047 at 0047-0049 (English translation at DAR-OTP-0219-0142).

⁴⁵ DAR-OTP-0218-0050 at 0050-0053 (English translation at DAR-OTP-0219-2168).

⁴⁶ DAR-OTP-0218-0054 at 0054-0056 (English translation at DAR-OTP-0219-2172).

⁴⁷ 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. 4.

⁴⁸ P-0932, DAR-OTP-0222-0602 at 0606-0607, paras. 23-25.

⁴⁹ P-0932, DAR-OTP-0222-0602 at 0610, para. 39.

⁵⁰ P-0932, DAR-OTP-0222-0602 at 0609, para. 32.

Kodoom and committed *inter alia*, the crimes of pillaging,⁵¹ destruction of property,⁵² forcible transfer,⁵³ rape,⁵⁴ and murder.⁵⁵

30. P-0932 further describes a meeting held in Mukjar in August 2003, attended by Militia/*Janjaweed* and GoS officials, including Abdel Raheem Muhammad HUSSEIN (“HUSSEIN”), TORSHEIN, and HARUN.⁵⁶ P-0932 recalls HUSSEIN stating that “[i]f an Arab kills a Fur then we will have killed a Kafir [non-believer]”⁵⁷ and HARUN ordering Militia/*Janjaweed* to deliver the land without a single Fur on it.⁵⁸

31. P-0932 describes being arrested and detained at the Mukjar police station, together with other members of the Fur tribe,⁵⁹ in February/March 2004. [REDACTED].⁶⁰ P-0932 recalls that [REDACTED] detainees were loaded into a vehicle, hit by Mr Abd-Al-Rahman with his axe, and then driven south.⁶¹ Fifteen minutes later, P-0932 heard gunshots.⁶² The following day, the same vehicle returned, was loaded again with detainees and driven towards Garsila, in the presence of Mr Abd-Al-Rahman.⁶³ The same operation was conducted around one week later.⁶⁴ P-0932 later learnt that the detainees were taken to a Wadi in the direction of Garsila and killed.⁶⁵ P-0932 recalls that *Umdah* Yahya Ahmed Zarruq and *Umdah* Adam Husayn Abdelmahmoud (*aka* Doori) were among the detainees transported outside the Mukjar police station and never seen again.⁶⁶

32. As detailed in the Prosecution’s Trial Brief,⁶⁷ P-0932’s prior recorded testimony is relevant to the charged crimes in Kodoom and Bindisi on about the 15 and 16 August 2003, including pillaging, destruction of property, forcible transfer, rape, murder. P-0932’s evidence is also cited in relation to the charged crimes of persecution, torture, other inhuman acts, cruel treatment and outrages upon personal dignity committed in Mukjar in February/March 2004. Finally, P-0932’s evidence is also relevant to the contextual elements of crimes against

⁵¹ P-0932, DAR-OTP-0222-0602 at 0609-0610, paras. 38-41.

⁵² P-0932, DAR-OTP-0222-0602 at 0611, para. 47.

⁵³ P-0932, DAR-OTP-0222-0602 at 0605, para. 15 and 0609-0610, para. 38.

⁵⁴ P-0932, DAR-OTP-0222-0602 at 0611-0612, paras. 49-50.

⁵⁵ P-0932, DAR-OTP-0222-0602 at 0610-0611, paras. 41, 49-51.

⁵⁶ P-0932, DAR-OTP-0222-0602 at 0613, paras. 58-59.

⁵⁷ P-0932, DAR-OTP-0222-0602 at 0613, para. 59.

⁵⁸ P-0932, DAR-OTP-0222-0602 at 0613, para. 61.

⁵⁹ P-0932, DAR-OTP-0222-0602 at 0616, para. 81 and 0619-0620, paras. 97-100, 107.

⁶⁰ P-0932, DAR-OTP-0222-0602 at 0619, paras. 97 and 0621, para. 110.

⁶¹ P-0932, DAR-OTP-0222-0602 at 0619, paras. 101-102.

⁶² P-0932, DAR-OTP-0222-0602 at 0620, para. 103.

⁶³ P-0932, DAR-OTP-0222-0602 at 0620, para. 104.

⁶⁴ P-0932, DAR-OTP-0222-0602 at 0620, para. 105.

⁶⁵ P-0932, DAR-OTP-0222-0602 at 622, paras. 116-117.

⁶⁶ P-0932, DAR-OTP-0222-0602 at 0620-0621, paras. 107-108.

⁶⁷ [ICC-02/05-01/20-550-Corr-Red2](#).

humanity, as well as Mr Abd-Al-Rahman's identity as Ali Kushayb, and the Accused's individual criminal responsibility in relation to the crimes committed in Kodoom and Bindisi and Mukjar at the relevant time.

33. P-0932's associated material comprises: (i) four pictures of injuries suffered by the witness;⁶⁸ and (ii) a list of pictures depicting P-0913's injuries.⁶⁹

The Prosecution requests one hour for its limited supplementary examination of P-0932

34. The Prosecution seeks one hour to conduct a limited supplementary examination of P-0932 on topics including: (i) the attack on Kodoom on about the 15 August 2003; (ii) a preparatory meeting held in Mukjar in 2003, in the presence of HUSSEIN, HARUN and TORSHEIN; (iii) the detention, loading onto vehicles and execution of men and *Umdahs* in Mukjar in February/March 2004; and (iv) Mr Abd-Al-Rahman's identity, as well as individual criminal responsibility in relation to Mukjar incident at the relevant time.

35. The Prosecution estimates that it would require 4.5 hours for the direct examination of P-0932,⁷⁰ 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

36. P-0913 and P-0932 provide evidence with respect to several central aspects of the Kodoom, Bindisi and surrounding areas incident, which are corroborative of, and cumulative to,⁷¹ evidence to be provided by *viva voce* witnesses on: (a) the intentional targeting of civilians;⁷² (b) the displacement of civilians as a result of the attack;⁷³ (c) the murder of civilians

⁶⁸ DAR-OTP-0222-0725 at 0725, DAR-OTP-0222-0726 at 0726, DAR-OTP-0222-0727 at 0727, and DAR-OTP-0222-0728 at 0728.

⁶⁹ DAR-OTP-0222-0729 at 0729.

⁷⁰ 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. 6.

⁷¹ See Bemba Rule 68 AD, [ICC-01/05-01/08-1386](#), para. 78.

⁷² 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.

⁷³ 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.

in Bindisi;⁷⁴ (d) the burning of civilian property;⁷⁵ (e) the pillaging of goods;⁷⁶ and (g) the rape of women during the attack.⁷⁷

37. Furthermore, the evidence provided by the Three Witnesses 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;⁷⁸ and (b) the murder and attempted murder of detainees.⁷⁹

38. The evidence provided by the P-0028 and P-0932 on the contextual elements of crimes against humanity⁸⁰ is also corroborative of, and cumulative to, the evidence provided by *viva voce* witnesses.

⁷⁴ 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.

⁷⁵ 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

⁷⁶ 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.

⁷⁷ 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.

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ P-0092, DAR-OTP-0112-0175 at 0183-0186, paras. 37-50; P-0011, DAR-OTP-0088-0219 at 0222, para. 15; P-0029, DAR-OTP-0094-0119 at 0129, paras. 40-42 and 0145-0147, paras. 115-119 and 0152, para. 141; P-0905, DAR-OTP-0219-6704 at 6728-6729, l. 833-859; P-0643, DAR-OTP-0215-0604 at 0607, l. 95-99 and 0620-0621, l. 561-588; P-0643, DAR-OTP-0218-0638 at 0643-0644, paras. 33, 36, 39, 41, 42; P-0935, DAR-OTP-0218-0705 at 0710-0711, paras. 22-25; P-0926, DAR-OTP-0218-0738 at 0753-0754, paras. 58-62; P-0992, DAR-OTP-0221-0668 at 0675, paras. 36-37; P-0885, DAR-OTP-0222-0996 at 0997-0998, l. 24-37; P-0885, DAR-OTP-0222-1088 at 1089-1095, l. 20-123, 148-227; P-0874, DAR-OTP-0219-7129 at 7142, l. 433-443 and 7151-7153, l. 736-812; P-0874, DAR-OTP-0219-7155 at 7156-7157, l. 19-56; P-1021, DAR-OTP-0221-1134 at 1145-1146, l. 345-392; P-1021, DAR-OTP-0221-1296 at 1317-1321, l. 700-823; P-1021, DAR-OTP-0221-1326 at 1327-1329, l. 21-79; P-0769, DAR-OTP-0212-0018 at 0031, paras. 114-117; P-0769, DAR-OTP-0214-0534 at 0552; P-0027, DAR-

39. On the issue of the Accused's identity, information provided by P-0932 corroborates information agreed upon by the Defence and the Prosecution in relation to Mr Abd-Al-Rahman—that upon retirement from the Sudanese Armed Forces he lived in Garsila, where he also opened a shop, from which he sold medication⁸¹—thus narrowing the scope of the contested issue of the Accused's identity.

40. In addition to the agreed facts relating to Mr Abd-Al-Rahman biographical details, the Three Witnesses provide evidence in relation to Mr Abd-Al-Rahman being a leader of the Militia/*Janjaweed*, which is corroborative of, and cumulative to, the evidence to be provided by *viva voce* witnesses.⁸²

41. The fact that part of P-0932'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.⁸³

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

42. 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.⁸⁴ The witnesses have signed their Prior Recorded Testimonies, attesting to the fact that they were voluntarily given and record their best recollection of events.⁸⁵ These Prior Recorded Testimonies also bear the interpreters' signature and certification that each witness heard and understood the translation.⁸⁶

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

OTP-0094-0091 at 0105, para. 58; P-0547, DAR-OTP-0196-0146 at 0190, para. 152; P-0921, DAR-OTP-0219-8188 at 8202, l. 434-437.

⁸¹ 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 and 15, respectively.

⁸² 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.

⁸³ *Gbagbo and Blé Goudé* Rule 68 Appeals Decision, [ICC-02/11-01/15-744](#), para. 69.

⁸⁴ *Ntaganda* Rule 68(3) Preliminary Ruling, [ICC-01/04-02/06-1640-Red](#), para. 9.

⁸⁵ P-0028, DAR-OTP-0094-0423 at 0444; P-0913, DAR-OTP-0218-0021 at 0043; P-0932, DAR-OTP-0222-0602 at 0625.

⁸⁶ P-0028, DAR-OTP-0094-0423 at 0444; P-0913, DAR-OTP-0218-0021 at 0043; P-0932, DAR-OTP-0222-0602 at 0626.

43. 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 Defence, along with the victims' representatives and the Chamber, will have an opportunity to fully examine the witness during the proceedings.⁸⁷

IV. CONCLUSION

44. 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 28th day of June 2022

At The Hague, The Netherlands

⁸⁷ See [First Rule 68\(3\) Decision](#), paras. 11-12.