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No.: **ICC-02/05-01/20**
Date: **18 February 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
Defence response to Prosecution’s sixth application under rule 68(3) to introduce
into evidence prior recorded testimony of 21 witnesses, ICC-02/05-01/20-580-Conf
(ICC-02/05-01/20-601-Conf)**

Source: Defence for Mr Ali Muhammad Ali Abd-Al-Rahman

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

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1. The Defence for Mr Ali Muhammad Ali Abd-Al-Rahman (“Defence”) responds to the Prosecution’s sixth application under Rule 68(3) of the Rules of Procedure and Evidence (“Rules”) (“Sixth Application”).¹ The Sixth Application is seeking the admission of the evidence of witnesses P-0027, P-0059, P-0060, P-0091, P-0106, P-0119, P-0585, P-0592, P-0607, P-0617, P-0651, P-0697, P-0712, P-0725, P-0726, P-0736, P-0850, P-0894, P-0895, P-0926, and P-0980 (“21 Witnesses”) pursuant to Rule 68(3) of the Rules *in lieu* of their *viva voce* examination-in-chief.

2. With the only caveat of paragraphs 5-6 below, the Defence does not object to the Prosecution’s application with respect to Witnesses P-0712 and P-0725.

3. With regard to the other nineteen witnesses (“19 Witnesses”), the Defence submits that it is essential that each of them testify *viva voce* to ensure that the Trial Chamber obtains the best possible evidence relating to identification of “*Ali Kushayb*” as Mr Abd-Al-Rahman, based on what each of the 19 witnesses independently recall.

4. Pursuant to Regulation 23*bis*(2) of the Regulations of the Court (“RoC”), this Response is classified “Confidential”, mirroring the classification of the Sixth Application. A public redacted version will be filed shortly thereafter.

Adoption by reference of additional earlier submissions

5. The Defence adopts by reference, for the record and to preserve Mr Abd-Al-Rahman’s appeal rights, the general observations made with respect to the protection of the relevant witnesses’ statements in its response to the Prosecution’s First Application made pursuant to Rule 68(3) of the Rules on 5 January 2022;² it is submitted that the same considerations apply to the 21 Witnesses.

6. Furthermore, and while noting the Trial Chamber’s rejection of similar objections concerning the admissibility of the prior evidence of Witness P-0954 in its decision dated 8 February 2022³, the Defence adopts by reference, for the record and to preserve Mr Abd-Al-Rahman’s appeal rights, its submissions on the absence of a

¹ ICC-02/05-01/20-580-Conf; public redacted version [ICC-02/05-01/20-580-Red](#).

² ICC-02/05-01/20-549-Conf; public redacted version [ICC-02/05-01/20-549-Red](#), par. 14-15.

³ [ICC-02/05-01/20-588-Red](#), paras 9-17.

valid Article 4(2) special agreement between the Court and non-States Parties, including Sudan,⁴ where some of 21 Witnesses may have been interviewed. The information about the place of interview is not always disclosed to the Defence, but is available to the Chamber, which is thus in possession of all relevant information to assess the impact of this second caveat.

The Sixth Response

7. Before turning to an analysis of the Sixth Application with respect to each of the remaining 19 Witnesses individually, the Defence adopts by reference all of its earlier submissions on the use of Rule 68(3), common to all of the witnesses.⁵ These pertain *inter alia* to the form of the prior recorded testimony of the 19 Witnesses, the number of days over which the witnesses were interviewed, and the absence of information about any warnings given cautioning the witnesses against discussing their accounts with third parties during the process.

8. In particular, the Defence draws specific attention, recalling its previous submissions, to the impact of the vulnerability of certain witnesses on the prior evidence collected which the Prosecution asks should stand as their evidence-in-chief.⁶ The Defence notes that Witnesses P-0059, P-0060, P-0106, P-0585, P-0592, P-0607, P-0617, P-0697, P-0736, and P-0894 state that they either did not complete their primary education, or otherwise only received very rudimentary education,⁷ and recalls that a lack of formal education is a manifestation of vulnerability. As a result, the Defence submits that the prior evidence collected from these ten witnesses carries a greater risk of presenting an altered account of the events, as opposed to accounts which would be elicited in court through a traditional examination-in-chief.

9. With regard to its overarching arguments related to evidence of the alleged identity and individual criminal responsibility of Mr Abd-Al-Rahman, the Defence takes note of the Trial Chamber's finding in its 8 February 2022 decision that "*the*

⁴ ICC-02/05-01/20-481-Conf; public redacted version [ICC-02/05-01/20-481-Red](#); ICC-02/05-01/20-485-Conf; public redacted version [ICC-02/05-01/20-485-Red](#); ICC-02/05-01/20-568-Conf, paras. 9-11.

⁵ ICC-02/05-01/20-T-022-CONF-ENG, p. 11, lines 21-25 to p. 21, line 15 (public redacted version not yet available). [ICC-02/05-01/20-576-Red](#), paras 7-11.

⁶ ICC-02/05-01/20-T-022-CONF-ENG, p. 16, line 7-23 (public redacted version not yet available).

⁷ [REDACTED].

Rome Statute [...] and Rule 68(3) of the Rules clearly foresee the introduction of prior recorded testimony for fact witnesses and on issues concerning the acts and conducts of the accused⁸. The Defence acknowledges this finding but urges the Trial Chamber to exercise its discretionary power when assessing on a case-by-case basis requests for introduction of evidence pursuant to Rule 68(3)⁹ and more particularly, evidence pertaining to the hotly contested issue that is the identification of Mr Abd-Al-Rahman as “*Ali Kushayb*”. In this respect, the Defence notes that in its Decision dated 8 February 2022, the Trial Chamber rejected the Prosecution’s request in part and deemed it preferable to hear the evidence of two witnesses (P-0843 and P-0954) *viva voce* on the ground that they provided “unique” evidence due to their particularly close interaction with “*Ali Kushayb*”.¹⁰

10. The burden of proving the connection between Mr Abd-Al-Rahman and the alias “*Ali Kushayb*” bears on the Prosecution. The Defence notes the Trial Chamber’s position that the issue of the alias “*is not, as suggested by the Defence, ‘the heart of the Prosecution case’, as reflected in the Trial Brief submitted before the Chamber.*”¹¹ But it is the heart and the first and foremost aspect of the Defence’s case. If the Prosecution fails to establish the link between Mr Abd-Al-Rahman and “*Ali Kushayb*” beyond reasonable doubt, Mr Abd-Al-Rahman will be entitled to an acquittal on all charges. The Defence must be allowed full and unrestricted opportunity to examine and challenge evidence of the alias. This requires that all witnesses called by the Prosecution to prove that link shall be examined-in-chief *viva voce*, without giving the possibility to the Prosecution to rely on their former written statements collected in conditions which cannot be verified and raise all sorts of caution. This applies to all 19 Witnesses.

⁸ [ICC-02/05-01/20-588-Red](#), par. 8.

⁹ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the “Prosecution’s consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution’s application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088”, [ICC-02/11-01/15-950-Red](#), 6 June 2017, par. 90.

¹⁰ [ICC-02/05-01/20-588-Red](#), paras 72, 78.

¹¹ Decision on the Prosecution’s second and third requests to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-588-Conf; public redacted version [ICC-02/05-01/20-588-Red](#), 8 February 2022, para. 58.

P-0027

11. The Defence requests P-0027 to be called to testify *viva voce* for the following reasons. The nature and content of P-0027's three prior witness statements and associated items, identified in Annex A1 of the Request, relates *inter alia* to the alleged position and identity of a man the witness understood to be "Ali Koshib" and his alleged role in the events of relevance to the uncharged attacks on Baya and Arawala,¹² and on the Delieg charges.¹³ The witness [REDACTED];¹⁴ [REDACTED].¹⁵ [REDACTED]¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸

P-0059

12. The Defence requests P-0059 to be called to testify *viva voce* for the following reasons. The nature and content of P-0059's single prior witness statement and associated items, identified in Annex A2 of the Request, relates *inter alia* to the alleged position of a man the witness heard was "Ali Kosheb".¹⁹ He understood that [REDACTED]²⁰ [REDACTED].²¹ [REDACTED].²² [REDACTED].²³ Further the saving of time the Prosecution purports to make by not examining P-0059 is extremely limited²⁴ and insufficient to found a claim that considerations of expediency outweigh the Defence's interest in requiring the witness to testify entirely *viva voce*.²⁵

P-0060

13. The Defence requests P-0060 to be called to testify *viva voce* for the following reasons. The nature and content of P-0060's single prior witness statement and associated items, identified in Annex A3 of the Request, relates *inter alia* to the

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ Application, para. 18.

²⁵ *Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Decision on the "Prosecution's application to conditionally admit the prior recorded statements and related documents of Witnesses P-0108, P-0433, P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 68(3) and for testimony by means of video-link technology for Witnesses P-0436, P-0402, P-0438, P-0459 and P-0109 under rule 67(1)", ICC-02/11-01/15-870, 7 April 2017, para. 15.

[REDACTED].²⁶ P-0060 describes the purported involvement of “*Ali Koshib*” in weapons distribution and Janjaweed training activities as long ago as 2001.²⁷ The Prosecution does not attempt to show that this evidence is corroborative of the expected testimony of other witnesses who are due to provide *viva voce* evidence. P-0060 provides prior recorded testimony of *Ali Koshib*’s presence at and participation in the attack on Deleig,²⁸ [REDACTED].²⁹ [REDACTED];³⁰ [REDACTED]³¹

P-0091

14. The Defence requests P-0091 to be called to testify *viva voce* for the following reasons. The nature and content of P-0091’s single prior witness statement and associated items, identified in Annex A4 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as “*Ali Kosheib*”,³² [REDACTED],³³ on his position as “*Agid Al Oquada*”,³⁴ and the distribution of weapons.³⁵ [REDACTED].³⁶ [REDACTED].³⁷ [REDACTED]³⁸ [REDACTED].³⁹

15. The Defence further submits that there are features of witness P-0091’s account that, on their face, provide grounds to doubt his credibility. [REDACTED]⁴⁰ [REDACTED] The Defence submits that this story is, at the very least, unlikely and requires his full examination-in-chief.

P-0106

16. The Defence requests P-0106 to be called to testify *viva voce* for the following reasons. The nature and content of P-0106’s single prior witness statement and associated items, identified in Annex A5 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as “*Ali*

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

Kushayb".⁴¹ He describes his understanding that "*Ali Kushayb*" was the leader of the Janjaweed, [REDACTED]⁴² "*Ali Kushayb*" was purportedly involved in weapons distribution.⁴³ P-0106 describes Janjaweed attacks on Bendisi and Arawalla, as well as Mara and Sindu,⁴⁴ [REDACTED].⁴⁵ [REDACTED].⁴⁶ [REDACTED].⁴⁷ Further, the saving of time the Prosecution purports to make by not examining P-0106 is extremely limited⁴⁸ and insufficient to found a claim that considerations of expediency outweigh the Defence's interest in requiring the witness to testify entirely *viva voce*.⁴⁹

P-0119

17. The Defence requests P-0119 to be called to testify *viva voce* for the following reasons. The nature and content of P-0119's single prior witness statement and associated items, identified in Annex A6 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as "*Ali Kushayb*", the Janjaweed leader in Garsila.⁵⁰ P-0119 describes the purported involvement of "*Ali Kushayb*" in the arrest and detention of [REDACTED] men in [REDACTED] Delieg.⁵¹ P-0119 provides evidence of the implication of "*Ali Kushayb/Kosheyb*" in the subsequent executions of these detainees.⁵² [REDACTED].⁵³ The links between the GoS and the Janjaweed, including in respect of funding, is an important and complex matter in issue between the Defence and the Prosecution. At the very least it is a matter to which the Prosecution is put to strict proof. [REDACTED]⁵⁴ [REDACTED]⁵⁵ [REDACTED]⁵⁶ Further, the saving of time the

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ Application, para. 30.

⁴⁹ Op. cit., ICC-02/11-01/15-870, 7 April 2017, para. 15

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

Prosecution purports to make by not examining P-0109 is extremely limited⁵⁷ and insufficient to found a claim that considerations of expediency outweigh the Defence's interest in requiring the witness to testify entirely *viva voce*.⁵⁸

P-0585

18. The Defence requests P-0585 to be called to testify *viva voce* for the following reasons. The nature and content of P-0585's single prior witness statement and associated items, identified in Annex A7 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as "*Ali Kushayb*", the "*Aqid Ogada*" responsible for military operations of the Arab tribes in the Garsila region.⁵⁹ [REDACTED]⁶⁰ [REDACTED]⁶¹ [REDACTED]⁶² [REDACTED]⁶³ [REDACTED]⁶⁴ [REDACTED]⁶⁵ [REDACTED].⁶⁶ Further, the saving of time the Prosecution purports to make by not examining P-0585 is extremely limited⁶⁷ and insufficient to found a claim that considerations of expediency outweigh the Defence's interest in requiring the witness to testify entirely *viva voce*.⁶⁸

P-0592

19. The Defence requests P-0592 to be called to testify *viva voce* for the following reasons. The nature and content of P-0592's single prior witness statement and associated items, identified in Annex A8 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as "*Ali Kushayb*". The witness states that "*Ali Kushayb*" was the head of the Janjaweed,⁶⁹ [REDACTED]⁷⁰ [REDACTED]⁷¹ [REDACTED]⁷² [REDACTED]⁷³

⁵⁷ Application, para. 34.

⁵⁸ Op. cit., ICC-02/11-01/15-870, 7 April 2017, para. 15

⁵⁹ [REDACTED].

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ Application, para. 38.

⁶⁸ Op. cit., ICC-02/11-01/15-870, 7 April 2017, para. 15

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

P-0607

20. The Defence requests P-0607 to be called to testify *viva voce* for the following reasons. The nature and content of P-0607's single prior witness statement and associated items, identified in Annex A9 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as "*Ali Kushayb*."⁷⁴ The witness describes seeing the arrest of men in Deleig and of "*Ali Kushayb*" purportedly inspecting "*each new batch of detainees as they approached the police station.*"⁷⁵ The witness describes how "*Ali Kushayb*" walked on the backs of the detainees,⁷⁶ and that groups of detainees were loaded into vehicles and driven away.⁷⁷ [REDACTED].⁷⁸ His knowledge of the man he calls "*Ali Kushayb*" would appear to be limited. Further, the saving of time the Prosecution purports to make by not examining P-0607 is extremely limited⁷⁹ and insufficient to found a claim that considerations of expediency outweigh the Defence's interest in requiring the witness to testify entirely *viva voce*.⁸⁰

P-0617

21. The Defence requests P-0617 to be called to testify *viva voce* for the following reasons. The nature and content of P-0617's single prior witness statement and associated items, identified in Annex A10 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as "*Ali Kushayb*."⁸¹ The witness provides unique evidence that "*Ali Kushayb*" [REDACTED]⁸² [REDACTED] The witness provides evidence that "*Ali Kushayb*" "*ran the show*" in Deleig,⁸³ and of the arrest, detention and mistreatment of men in Deleig.⁸⁴ [REDACTED]⁸⁵ Further, the saving of time the Prosecution purports to make by not

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ Application, para. 46.

⁸⁰ Op. cit., ICC-02/11-01/15-870, 7 April 2017, para. 15

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

examining P-0617 is extremely limited⁸⁶ and insufficient to found a claim that considerations of expediency outweigh the Defence's interest in requiring the witness to testify entirely *viva voce*.⁸⁷

P-0651

22. The Defence requests P-0651 to be called to testify *viva voce* for the following reasons. The nature and content of P-0651's single prior witness statement and associated items, identified in Annex A11 of the Request, relates *inter alia* to the alleged position and identity of a man the witness purports to know as "*Ali Kushayb*."⁸⁸ [REDACTED]⁸⁹ He also provides evidence of the involvement of "*Ali Kushayb*" in the (uncharged) attacks on Fere village,⁹⁰ Taringa village,⁹¹ [REDACTED].⁹² P-0651 gives evidence of the arrest, detention and mistreatment of men in Deleig.⁹³ [REDACTED]⁹⁴ Further, the saving of time the Prosecution purports to make by not examining P-0651 is extremely limited⁹⁵ and insufficient to found a claim that considerations of expediency outweigh the Defence's interest in requiring the witness to testify entirely *viva voce*.⁹⁶

P-0697

23. The Defence requests P-0697 to be called to testify *viva voce* for the following reasons. The nature and content of P-0697's prior statement relates in most relevant part to t[REDACTED]. [REDACTED]⁹⁷ [REDACTED]⁹⁸ [REDACTED]⁹⁹ The Defence notes that [REDACTED] contains discrepancies about the role attributed to "*Ali Kushayb*" during the aforementioned arrests.¹⁰⁰ [REDACTED]¹⁰¹ [REDACTED] cast

⁸⁶ Application, para. 50.

⁸⁷ Op. cit., ICC-02/11-01/15-870, 7 April 2017, para. 15

⁸⁸ [REDACTED].

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ Application, para. 54.

⁹⁶ Op. cit., ICC-02/11-01/15-870, 7 April 2017, para. 15

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

doubts on the probative value of the witness' prior statement. Finally, the Defence notes that [REDACTED]¹⁰² [REDACTED].

P-0726

24. The Defence requests P-0726 to be called to testify *viva voce* for the following reasons. The nature and content of P-0726's prior statement relates in most relevant part to the identity, physical appearance, position of authority and individual criminal responsibility of a man referred by the witness as "*Ali Kushayb*". P-0726's knowledge about the identity and the overall position of authority, including, *vis à vis* the Janjaweed and the police forces, of the person known to him as "*Ali Kushayb*" [REDACTED]¹⁰³ [REDACTED]¹⁰⁴ Finally, P-0726 provides details about the physical appearance of the man known to him as "*Ali Kushayb*" on the basis of his encounters with that man in and around Deleig [REDACTED].¹⁰⁵

P-0736

25. The Defence requests P-0736 to be called to testify *viva voce* for the following reasons. The prior statement of P-0736 pertains in most relevant part to the identity, background, position of authority and individual criminal responsibility of a man referred by the witness as "*Ali Kushayb*". P-0736 purports to provide details about the physical description of a man known to him as "*Ali Kushayb*", owner of a veterinary pharmacy in Garsila in 2000. [REDACTED].¹⁰⁶ [REDACTED].¹⁰⁷ P-0736's evidence on the position of authority *vis à vis* the Janjaweed of the man known as "*Ali Kushayb*" and his purported role in facilitating the collect of salary by Janjaweed from his pharmacy [REDACTED].¹⁰⁸ [REDACTED].¹⁰⁹

P-0850

26. The Defence requests P-0850 to be called to testify *viva voce* for the following reasons. The prior statement of P-0850 pertains in most relevant part to the identity,

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED].

¹⁰⁵ [REDACTED].

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

¹⁰⁸ [REDACTED].

¹⁰⁹ [REDACTED].

background, and individual criminal responsibility of a man referred by the witness as “*Ali Kushayb*”, and in particular in relation to the Deleig crime-base. P-0850 purports to provide details about the physical description, age, social status, and background of a man known to him as “*Ali Kushayb*” [REDACTED].¹¹⁰ [REDACTED].¹¹¹ [REDACTED].¹¹² [REDACTED]¹¹³ There is an unexplained discrepancy [REDACTED]¹¹⁴ and his prior statement. [REDACTED],¹¹⁵ which casts serious doubts on the reliability of P-0850’s prior statement with regard to the role of the man known to him as “*Ali Kushayb*” in the alleged Deleig events.

P-0894

27. The Defence requests P-0894 to be called to testify *viva voce* for the following reasons. The nature and content of P-0894’s prior statement relates in most part to the identity, background, and position of authority *vis à vis* the Janjaweed of a man known to the witness as “*Ali Kushayb*”. In particular, P-0894 purports to provides information on his physical description and identifies him as the owner of a veterinary pharmacy in Garsila, whom he allegedly met there [REDACTED].¹¹⁶ [REDACTED].¹¹⁷ P-0894 also purports, on the basis of hearsay evidence, to describe the role played by the man known to him as “*Ali Kushayb*” in providing weapons to Arab tribes.¹¹⁸ The witness further claims that the man known to him as “*Ali Kushayb*” was in command of Janjaweed during an attack against Tanako [REDACTED].¹¹⁹ With regard to the latter, the Defence first points out that this attack falls outside of the charges as far as the responsibility of Mr. Abd-Al-Rahman is concerned and objects to the admission into evidence through Rule 68(3) of the Rules of material purporting to pertain to the individual criminal responsibility of Mr. Abd-Al-Rahman for crimes falling outside the scope of the charges. Moreover, the

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

Defence notes [REDACTED].¹²⁰ [REDACTED]¹²¹ This unexplained discrepancy in disclosed material casts serious doubts on the reliability of P-0894's prior statement.

P-0895

28. The Defence requests P-0895 to be called to testify *viva voce* for the following reasons. P-0895's prior statement relates in most relevant part to the identity, [REDACTED], background, position of authority *vis à vis* the Janjaweed, and individual criminal responsibility of a man known to the witness as "*Ali Kushayb*". The Defence submits that the evidence of P-0895 is particularly unique in so far as the witness, [REDACTED]¹²². [REDACTED].¹²³ [REDACTED].¹²⁴ [REDACTED].¹²⁵ [REDACTED]¹²⁶ The witness also purports to provide information about the position of authority *vis à vis* the Janjaweed of the man known to him as "*Ali Kushayb*" and the nature of his relationship with the Government of Sudan during his presence in Garsila [REDACTED].¹²⁷ [REDACTED]¹²⁸ [REDACTED]¹²⁹ Finally, the Defence notes that the witness was asked to clarify a discrepancy [REDACTED]¹³⁰ [REDACTED].¹³¹ The existence of discrepancies on the key aspect of identification results in casting doubt on the reliability of the evidence of P-0895.

P-0926

29. The Defence requests P-0926 to be called to testify *viva voce* for the following reasons. P-0926's prior statement relates in most relevant part to the identity, background, position of authority *vis à vis* the Janjaweed, and individual criminal responsibility related to the Deleig charges of a man known to the witness as "*Ali Mohamed Abdoul Rahman*" and under the alias "*Ali Kushayb*".¹³² The Defence submits that the evidence of P-0926 is particularly unique in so far as the witness,

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

¹²² [REDACTED].

¹²³ [REDACTED].

¹²⁴ [REDACTED].

¹²⁵ [REDACTED].

¹²⁶ [REDACTED].

¹²⁷ [REDACTED].

¹²⁸ [REDACTED].

¹²⁹ [REDACTED].

¹³⁰ [REDACTED].

¹³¹ [REDACTED].

¹³² [REDACTED].

[REDACTED]. [REDACTED]¹³³ [REDACTED]¹³⁴ [REDACTED]¹³⁵ [REDACTED]¹³⁶ [REDACTED].¹³⁷ The Defence further submits that the Prosecution's submission that the admission of the prior statement of P-0926 pursuant to Rule 68(3) of the Rules is necessary to prevent her potential re-traumatisation [REDACTED] is devoid of merit since [REDACTED] is not charged in the case¹³⁸ and does not need to be addressed at all during her examination-in-chief.

P-0980

30. The Defence requests P-0980 to be called to testify *viva voce* for the following reasons. The nature and content of P-0980's prior statement relates in most relevant part to the identity, position of authority *vis à vis* the Janjaweed and individual criminal responsibility for the Deleig charges of a man known to the witness as "Ali Kushayb". P-0980 provides details about his identity on the basis of information heard from individuals [REDACTED].¹³⁹ [REDACTED].¹⁴⁰ [REDACTED].¹⁴¹ P-0980 purports to provide information on the position of authority of the man known to him as "Ali Kushayb" and claims he "issued orders to the militias and soldiers" [REDACTED].¹⁴² The Defence notes that there is a discrepancy between [REDACTED]¹⁴³ and his prior statement¹⁴⁴ as to the involvement of "Ali Kushayb" in [REDACTED].

THEREFORE, THE DEFENCE does not object to the admission into evidence pursuant to Rule 68(3) of the Rules of the Prior Evidence of Witnesses P-0712 and P-0725, and **HEREBY PRAYS THE CHAMBER TO DISMISS** the Sixth Application with regard to the admission of the Prior Evidence of the other 19 Witnesses **AND FIND** that they should testify *viva voce*.

¹³³ [REDACTED].

¹³⁴ [REDACTED].

¹³⁵ [REDACTED].

¹³⁶ [REDACTED].

¹³⁷ [REDACTED].

¹³⁸ [REDACTED].

¹³⁹ [REDACTED].

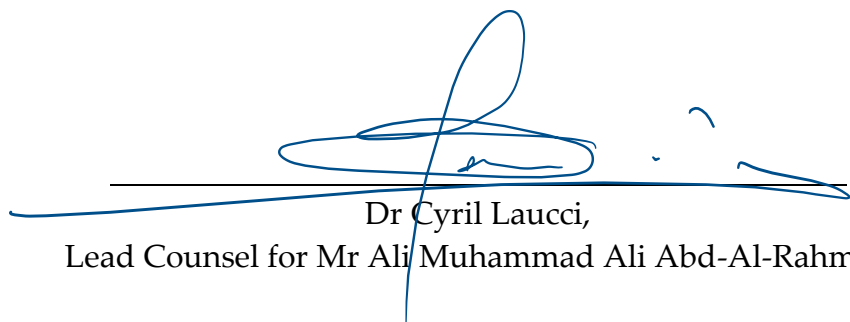
¹⁴⁰ [REDACTED].

¹⁴¹ [REDACTED].

¹⁴² [REDACTED].

¹⁴³ [REDACTED].

¹⁴⁴ [REDACTED].



Dr Cyril Laucci,
Lead Counsel for Mr Ali Muhammad Ali Abd-Al-Rahman

Dated this 18th day of February 2022 at The Hague, The Netherlands