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

Date: **17 March 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 ninth application under rule 68(3) to introduce into evidence prior recorded testimony of witnesses P-0041, P-0675, P-0720, P-0892 and P-0916", 15 March 2022, ICC-02/05-01/20-629-Conf**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. Pursuant to article 69(2) and (4) of the Rome Statute, and rule 68(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests that Trial Chamber I (“Chamber”): (i) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)<sup>1</sup> of witnesses P-0041, P-0675, P-0720, P-0892 and P-0916 (“Five Witnesses”); and (ii) grant the time requested in the paragraphs below for supplementary *viva voce* questioning of each witness.<sup>2</sup>

2. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of the Five Witnesses’ in-court testimony from 22.5 hours to 5, thus saving 17.5 hours of court time.<sup>3</sup>

3. As set out below, the Prior Recorded Testimonies of the Five Witnesses are relevant, reliable and probative. The Prior Recorded Testimonies of the Five Witnesses relate primarily to the incident in Mukjar and surrounding areas in February-March 2004 and events that preceded it.<sup>4</sup> In particular, they provide evidence on, *inter alia*, specific events relating to charged crimes, such as torture (Counts 12-13), other inhumane acts (Count 14), cruel treatment (Count 15), outrages upon personal dignity (Count 16), murder and attempted murder (Counts 17-20) and persecution (Count 21).

4. Should the request to conduct a supplementary examination be granted, the Prosecution would elicit further focussed *viva voce* evidence of certain issues that

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<sup>1</sup> Annex A (A1 to A5) lists the prior recorded testimonies of the Five 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* Directions on the Conduct of Proceedings, 4 October 2021, [ICC-02/05-01/20-478](#), para. 47.

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

<sup>3</sup> Article 64 (3)(a), the Chamber shall, “[c]onfer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious conduct of proceedings.” *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](#), 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.

<sup>4</sup> Confirmation Decision, [ICC-02/05-01/20-433-Corr](#), paras. 104-105, 117.

require clarification or elaboration as set out below. The Prosecution will ensure that the Five Witnesses are not asked merely to repeat information already provided in their Prior Recorded Testimonies.

5. The introduction into evidence of the Prior Recorded Testimonies is not prejudicial to or inconsistent with the rights of the Accused, as the Five Witnesses will be available, *inter alia*, for cross examination by the Defence and any further questioning by the Chamber.

## II. CLASSIFICATION

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

## III. SUBMISSIONS

7. 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 at paragraphs 7 to 9 of its first application under rule 68(3).<sup>5</sup>

8. The associated material which the Prosecution seeks to introduce into evidence for each of the Five Witnesses<sup>6</sup> forms an integral part of their prior recorded testimonies.<sup>7</sup> These items are also necessary to fully comprehend the accounts of the Five 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

<sup>5</sup> 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-Red](#), paras. 7-9.

<sup>6</sup> See Annex A (Part II of A1 to A5). Where applicable, the Prosecution includes in the Annex, the English translations of items referred to in the Associated Material.

<sup>7</sup> See *Yekatom & Ngaissona* Decision on the Prosecution Requests under Rule 68(3), [ICC-01/14-01/18-907-Red](#), para. 26.

testimony being introduced.”<sup>8</sup> Similarly, Trial Chamber I found that “in principle, such material must also be introduced in order to ensure full understanding of the submitted testimony”.<sup>9</sup>

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

(i) *Prior Recorded Testimony of Witness of P-0041*

9. The Prosecution seeks to submit into evidence P-0041’s prior recorded testimony, inclusive of the associated material listed in Annex A (A1) to this Application. P-0041’s prior recorded testimony comprises two witness statements and nine associated items that relate to information and events discussed in the statements.

10. P-0041, [REDACTED], provides information on the various Sudanese governmental forces (“GoS Forces”) active in Mukjar in 2003,<sup>10</sup> as well as on tribal,<sup>11</sup> civil<sup>12</sup> and Militia/*Janjaweed*<sup>13</sup> administration and leaders in Darfur. P-0041 describes [REDACTED],<sup>14</sup> and the 2003 attack on Mukjar police station by rebel armed groups.<sup>15</sup> P-0041 describes a meeting in Mukjar at the end of 2003 or beginning of 2004 in preparation for the Sindu operation that was attended by high-ranking GoS Officials and Militia/*Janjaweed* leaders,<sup>16</sup> including Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Abd-Al-Rahman”) and Ahmad Harun (“Harun”).<sup>17</sup> The witness provides details about [REDACTED]<sup>18</sup> and members of the Militia/*Janjaweed* calling for the elimination

<sup>8</sup> *Ntaganda* Transcript of 20 June 2016, [ICC-01/04-02/06-T-105-Red-ENG](#) ET, 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.

<sup>9</sup> First Decision on the Prosecution’s request to introduce prior recorded testimonies under Rule 68(3), ICC-02/05-01/20-559-Red, para. 17.

<sup>10</sup> P-0041, DAR-OTP-0206-0033 at 0038-0039, paras. 17-22 and at 0041, para. 29.

<sup>11</sup> P-0041, DAR-OTP-0206-0033 at 0037, paras. 14-15.

<sup>12</sup> P-0041, DAR-OTP-0206-0033 at 0037-0038, para. 16.

<sup>13</sup> P-0041, DAR-OTP-0206-0033 at 0040-0041, paras. 23-28.

<sup>14</sup> P-0041, DAR-OTP-0206-0033 at 0043, paras. 38-39.

<sup>15</sup> P-0041, DAR-OTP-0206-0033 at 0044, paras. 40-42.

<sup>16</sup> P-0041, DAR-OTP-0096-0002 at 0004, paras. 7-8; DAR-OTP-0206-0033 at 0043-0044, paras. 43-45 and at 0053, para. 81.

<sup>17</sup> P-0041, DAR-OTP-0096-0002 at 0004, para. 7 and at 0006, para. 13; DAR-OTP-0206-0033 at 0045-0046, paras. 44-45, 47, 52.

<sup>18</sup> P-0041, DAR-OTP-0096-0002 at 0005-0006, paras. 9-12; DAR-OTP-0206-0033 at 0044-0046, paras. 43, 46, 48-51.

of the Fur and the looting of their property after the meeting.<sup>19</sup> P-0041 describes a series of attacks by GoS Forces and Militia/*Janjaweed* in the Sindu region and villages surrounding Mukjar in early 2004,<sup>20</sup> his inability to return to Mukjar because of checkpoints<sup>21</sup> and provides a list of victims in West Darfur in 2003-2004.<sup>22</sup>

11. P-0041's prior recorded testimony relates, *inter alia*, to the contextual elements of both crimes against humanity and the crime of persecution, the contextualisation of crimes committed in Mukjar, as well as to Mr Abd-Al-Rahman's identity as Ali Kushayb and his individual criminal responsibility.

12. P-0041's associated material comprises (i) [REDACTED];<sup>23</sup> (ii) [REDACTED];<sup>24</sup> (iii) [REDACTED];<sup>25</sup> (iv) [REDACTED];<sup>26</sup> (v) a sketch map of Mukjar town drawn by the witness;<sup>27</sup> (vi) a sketch map of Mukjar locality drawn by the witness;<sup>28</sup> (vii) P-0041's [REDACTED];<sup>29</sup> (viii) a list of victims of incidents occurring between 2003-2004 in Garsila, Mukjar, Deleig, Bindisi and Um Dukhun;<sup>30</sup> and (ix) an investigation report about contact with the witness to clarify some notes on the victims' list he provided.<sup>31</sup> Although this note is not explained by the witness in the statement, it provides clarifications to the information contained in one of the materials provided by the witness and is necessary to understand the prior recorded testimony.

<sup>19</sup> P-0041, DAR-OTP-0206-0033 at 0047, para. 53.

<sup>20</sup> P-0041, DAR-OTP-0206-0033 at 0048-0052, paras. 58-75.

<sup>21</sup> P-0041, DAR-OTP-0206-0033 at 0047, para. 56.

<sup>22</sup> P-0041, DAR-OTP-0206-0033 at 0037, para. 14 and at 0054; DAR-OTP-0206-0060 (English translation at DAR-OTP-0221-0935).

<sup>23</sup> P-0041, DAR-OTP-0096-0002 at 0005, para. 9; DAR-OTP-0206-0033 at 0045-0046, para. 48; DAR-OTP-0096-0009.

<sup>24</sup> P-0041, DAR-OTP-0096-0002 at 0005, para. 10; DAR-OTP-0206-0033 at 0046, para. 49; DAR-OTP-0096-0010.

<sup>25</sup> P-0041, DAR-OTP-0096-0002 at 0005-0006, para. 11; DAR-OTP-0206-0033 at 0046, para. 50; DAR-OTP-0096-0011.

<sup>26</sup> P-0041, DAR-OTP-0096-0002 at 0006, para. 12; DAR-OTP-0206-0033 at 0046, para. 51; DAR-OTP-0096-0012.

<sup>27</sup> P-0041, DAR-OTP-0206-0033 at 0054; DAR-OTP-0206-0057 (English translation at DAR-OTP-0219-1374).

<sup>28</sup> P-0041, DAR-OTP-0206-0033 at 0054; DAR-OTP-0206-0058.

<sup>29</sup> P-0041, DAR-OTP-0206-0033 at 0052, para. 77 and at 0054; DAR-OTP-0206-0059.

<sup>30</sup> P-0041, DAR-OTP-0206-0033 at 0037, para. 14 and at 0054; DAR-OTP-0206-0060 (English translation at DAR-OTP-0221-0935).

<sup>31</sup> P-0041, DAR-OTP-0209-0110.

*The Prosecution requests one hour for its limited supplementary examination of P-0041*

13. The Prosecution seeks approximately one hour to conduct a streamlined supplementary examination of P-0041, pursuant to rule 68(3) of the Rules and the prior jurisprudence of this Court,<sup>32</sup> on topics including: (a) the presence of Mr Abd-Al-Rahman during the 2003 meeting of high-ranking officials in Mukjar; (b) further information on the photographs provided by the witness; (c) [REDACTED];<sup>33</sup> and (d) information about the Militia/*Janjaweed* leader the witness identifies as Ali Kushayb.

14. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0041, if his prior recorded testimony is not introduced through rule 68(3).<sup>34</sup> The introduction of P-0041's prior recorded testimony under rule 68(3) of the Rules would shorten the in-court testimony of this witness by 3.5 hours.

(ii) *Prior Recorded Testimony of Witness of P-0675*

15. The Prosecution seeks to submit into evidence P-0675's prior recorded testimony, inclusive of the associated material listed in Annex A (A2) to this Application. P-0675's prior recorded testimony comprises a single witness statement, that refers to 16 associated items that were used and explained by the witness in his interview and relate to information and events discussed in the statement.

16. P-0675, a [REDACTED] from Tendy, provides information on local community leaders.<sup>35</sup> He describes three attacks on Tendy between August 2003 and February 2004<sup>36</sup> by GoS Forces and the Militia/*Janjaweed*, which displaced him to Mukjar in February/March 2004.<sup>37</sup> P-0675 provides information on GoS Forces and Militia/*Janjaweed* arresting Fur males, perceived as being associated with or supporting

<sup>32</sup> *Lubanga* Decision on the admission of the prior recorded statements, [ICC-01/04-01/06-1603](#), para. 25; *Lubanga* Transcript of 7 July 2009, [ICC-01/04-01/06-T-205-Red3-ENG](#), p. 19, l. 11 *et seq*; *Katanga* Decision on Request to admit prior recorded testimony, ICC-01/04-01/07-2233-Corr, paras.16-17; *Ntaganda* Transcript of hearing, [ICC-01/04-02/06-T-110-Red2-ENG](#), p. 34, l. 8-13; *Gbagbo & Blé Goude* Annex A to Decision on amended and supplemented directions on the conduct of the proceedings, [ICC-02/11-01/15-498-AnxA](#), para. 40.

<sup>33</sup> P-0041, DAR-OTP-0206-0033 at 0043, para. 39.

<sup>34</sup> [REDACTED].

<sup>35</sup> P-0675, DAR-OTP-0206-0173 at 0176-0177, para. 12.

<sup>36</sup> P-0675, DAR-OTP-0206-0173 at 0178-0184, paras. 20-38 and at 0191-0195, paras. 65-78.

<sup>37</sup> P-0675, DAR-OTP-0206-0173 at 0195-0196, paras. 81-83.

rebel armed groups.<sup>38</sup> P-0675 describes [REDACTED] at Mukjar police station, [REDACTED] detainees were kept in decrepit conditions and subjected to interrogation and torture.<sup>39</sup> P-0675 also mentions hearing that Mr Abd-Al-Rahman hit detainees at the police station.<sup>40</sup> The witness describes a speech made by Harun to GoS Forces and Militia/*Janjaweed* in Mukjar in February/March 2004, in which he congratulated the amassed fighters for doing a good job “chasing away the rebels and cleaning the area”.<sup>41</sup> P-0675 further provides testimony on the execution of some of the detainees<sup>42</sup> and visiting the locations of mass graves.<sup>43</sup>

17. P-0675’s prior recorded testimony is relevant to, *inter alia*, the charges of torture, other inhumane acts, cruel treatment, outrages upon personal dignity, murder, attempted murder and persecution, as well as to the contextual elements of crimes against humanity.

18. P-0675’s associated material comprises: (i) a consent form for the Office of the Prosecutor to access his asylum application;<sup>44</sup> (ii) an overview satellite image of Mukjar and surrounding villages;<sup>45</sup> (iii) nine satellite images identifying surrounding villages near Mukjar and locations therein;<sup>46</sup> (iv) three satellite images of Mukjar used by the witness to identify locations mentioned in his statement;<sup>47</sup> (v) a satellite image used by the witness to identify the locations where detainees from Mukjar police station were executed;<sup>48</sup> and (vi) a compilation of all satellite images used and explained by the witness.<sup>49</sup>

<sup>38</sup> P-0675, DAR-OTP-0206-0173 at 0196-0198, paras. 84-87, 90.

<sup>39</sup> P-0675, DAR-OTP-0206-0173 at 0197-0199, paras. 88-95.

<sup>40</sup> P-0675, DAR-OTP-0206-0173 at 0203, para. 108.

<sup>41</sup> P-0675, DAR-OTP-0206-0173 at 0201-0203, paras. 102-107.

<sup>42</sup> P-0675, DAR-OTP-0206-0173 at 0203-0208, paras. 108-118, 123-124.

<sup>43</sup> P-0675, DAR-OTP-0206-0173 at 0208-0210, paras. 125-129.

<sup>44</sup> P-0675, DAR-OTP-0206-0173 at 0178, para. 17 and at 0212; DAR-OTP-0206-0216.

<sup>45</sup> P-0675, DAR-OTP-0206-0173 at 0178, para. 19 and at 0212; DAR-OTP-0206-0217.

<sup>46</sup> P-0675, DAR-OTP-0206-0173 at 0178-0182, paras. 20, 25-26, 28-29, 33 and at 0185-0187, paras. 43, 45, 49-50 and at 0191-0196, paras. 65, 67, 70-73, 75-79, 81-82 and at 0212; DAR-OTP-0206-0218 to DAR-OTP-0206-0226.

<sup>47</sup> P-0675, DAR-OTP-0206-0173 at 0196-0202, paras. 84, 88-89, 95, 99, 101-102, 104 and at 0204, para. 111 and at 0212; DAR-OTP-0206-0227 to DAR-OTP-0226-0229.

<sup>48</sup> P-0675, DAR-OTP-0206-0173 at 0208-0210, paras. 125-128 and at 0212; DAR-OTP-0206-0230.

<sup>49</sup> P-0675, DAR-OTP-0206-0232.



*The Prosecution requests one hour for its limited supplementary examination of P-0675*

19. The Prosecution seeks approximately one hour to conduct a streamlined supplementary examination of P-0675, pursuant to rule 68(3) of the Rules and the prior jurisprudence of this Court,<sup>50</sup> on topics including: (a) [REDACTED]; (b) [REDACTED]; (c) [REDACTED]; (d) further clarification on the locations of mass graves visited by the witness; and (e) information on the identity of Mr Abd-Al-Rahman, known as Ali Kushayb.

20. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0675, if his prior recorded testimony is not introduced through rule 68(3).<sup>51</sup> The introduction of P-0675's prior recorded testimony under rule 68(3) of the Rules would shorten the in-court testimony of this witness by 3.5 hours.

(iii) *Prior Recorded Testimony of Witness of P-0720*

21. The Prosecution seeks to submit into evidence P-0720's prior recorded testimony, inclusive of the associated material listed in Annex A (A3) to this Application. P-0720's prior recorded testimony comprises a single witness statement, that refers to seven associated items that were used and explained by the witness in his interview and relate to information and events discussed in the statement.

22. P-0720, a Fur civilian from Mukjar, provides information on Mukjar's administrative structure<sup>52</sup> and tribal administration,<sup>53</sup> the security situation in early 2003,<sup>54</sup> an attack by rebel armed groups on Mukjar police station in July/August 2003<sup>55</sup> and the aftermath of this attack.<sup>56</sup> P-0720 provides information on the Sindu operation in which Mr Abd-Al-Rahman participated<sup>57</sup> and the resulting influx of displaced

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<sup>50</sup> See fn. 32.

<sup>51</sup> [REDACTED].

<sup>52</sup> P-0720, DAR-OTP-0210-0291 at 0294-0295, paras. 25-29.

<sup>53</sup> P-0720, DAR-OTP-0210-0291 at 0295-0296, paras. 30-35.

<sup>54</sup> P-0720, DAR-OTP-0210-0291 at 0296-0298, paras. 34-49.

<sup>55</sup> P-0720, DAR-OTP-0210-0291 at 0299, paras. 53-55.

<sup>56</sup> P-0720, DAR-OTP-0210-0291 at 0299-0304, paras. 56-82.

<sup>57</sup> P-0720, DAR-OTP-0210-0291 at 0304, paras. 83-86 and at 0306-0307, paras. 97, 102.

persons to Mukjar.<sup>58</sup> P-0720 describes the establishment of checkpoints around Mukjar by GoS Forces and Militia/*Janjaweed*,<sup>59</sup> the detention of Fur males in Mukar in February/March 2004,<sup>60</sup> some of whom were later executed,<sup>61</sup> and the participation of Mr Abd-Al-Rahman in these episodes.<sup>62</sup> P-0720 also describes Mr Abd-Al-Rahman arresting [REDACTED] in his presence and taking him to Mukjar police station. He also describes hearing that [REDACTED] was among those detainees later executed outside Mukjar.<sup>63</sup>

23. P-0720's prior recorded testimony is relevant to, *inter alia*, the charges of torture, other inhumane acts, cruel treatment, outrages upon personal dignity,<sup>64</sup> as well as to Mr Abd-Al-Rahman's individual criminal responsibility.<sup>65</sup>

24. P-0720's associated material comprises: (i) a sketch map of Mukjar and surrounding villages, used by the witness during the interview to locate his family's compounds (annex A to the statement);<sup>66</sup> (ii) two school certificates from P-0720;<sup>67</sup> (iii) a version of annex A containing the interpreter's translations;<sup>68</sup> (iv) a sketch map of the Mukjar locality compound;<sup>69</sup> (v) a sketch map of Mukjar town in which the witness identified the location of GoS Forces and Militia/*Janjaweed*;<sup>70</sup> and (vi) a sketch map of

<sup>58</sup> P-0720, DAR-OTP-0210-0291 at 0304-0307, paras. 87-88, 100-101.

<sup>59</sup> P-0720, DAR-OTP-0210-0291 at 0305, para. 89.

<sup>60</sup> P-0720, DAR-OTP-0210-0291 at 0303, paras. 78-79 and at 0305-0307, paras. 89-96, 103-105.

<sup>61</sup> P-0720, DAR-OTP-0210-0291 at 0307-0308, paras. 105, 108-110.

<sup>62</sup> P-0720, DAR-OTP-0210-0291 at 0307-0308, paras. 103-104, 106-107, 110.

<sup>63</sup> P-0720, DAR-OTP-0210-0291 at 0307, paras. 103-105.

<sup>64</sup> P-0720, DAR-OTP-0210-0291 at 0303, paras. 78-79 and at 0305-0306, paras. 89-96.

<sup>65</sup> P-0720, DAR-OTP-0210-0291 at 0307, para. 105.

<sup>66</sup> P-0720, DAR-OTP-0210-0291 at 0293, para. 15 and at 0309; DAR-OTP-0210-0312 (English translation at DAR-OTP-0210-0312).

<sup>67</sup> P-0720, DAR-OTP-0210-0291 at 0293, para. 17, and at 0298, para. 46, and at 0309; DAR-OTP-0210-0313 (English translation at DAR-OTP-0219-1378); DAR-OTP-0210-0314 (English translation at DAR-OTP-0219-1380).

<sup>68</sup> P-0720, DAR-OTP-0210-0291 at 0294-0295, paras. 25, 28, and at 0309; DAR-OTP-0210-0315 (English translation at DAR-OTP-0219-1382).

<sup>69</sup> P-0720, DAR-OTP-0210-0291 at 0301-0302, paras. 71, 76, and at 0309; DAR-OTP-0210-0316 (English translation at DAR-OTP-0219-1384).

<sup>70</sup> P-0720, DAR-OTP-0210-0291 at 0299, para. 56, and at 0302, para. 74, and at 0304, para. 88, and at 0309; DAR-OTP-0210-0317 (English translation at DAR-OTP-0219-1386).

Mukjar town in which the witness identified the location where internally displaced persons settled in.<sup>71</sup>

*The Prosecution requests one hour for its limited supplementary examination of P-0720*

25. The Prosecution seeks approximately one hour to conduct a streamlined supplementary examination of P-0720, pursuant to rule 68(3) of the Rules and the prior jurisprudence of this Court,<sup>72</sup> on topics including: (a) the arrest of [REDACTED] and information about his subsequent death; (b) further information on the arrests of *umdah* Yahya Zarrouq; and (c) the identity of Mr Abd-Al-Rahman, known as Ali Kushayb.

26. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0720, if his prior recorded testimony is not introduced through rule 68(3).<sup>73</sup> The introduction of P-0720's prior recorded testimony under rule 68(3) of the Rules would shorten the in-court testimony of this witness by 3.5 hours.

(iv) *Prior Recorded Testimony of Witness of P-0892*

27. The Prosecution seeks to submit into evidence P-0892's prior recorded testimony, inclusive of the associated material listed in Annex A (A4) to this Application. P-0892's prior recorded testimony comprises a single witness statement, that refers to two associated items that were used and explained by the witness in his interview and relate to information and events discussed in the statement.

28. P-0892, a Fur civilian from Arada, provides testimony on attacks on Arada by GoS Forces and Militia/*Janjaweed* in August 2003<sup>74</sup> and in February 2004,<sup>75</sup> which resulted in the displacement of people, including the witness, to Mukjar.<sup>76</sup> P-0892

<sup>71</sup> P-0720, DAR-OTP-0210-0291 at 0303-0304, para. 82, and at 0309; DAR-OTP-0210-0318 (English translation at DAR-OTP-0219-1388).

<sup>72</sup> See fn. 32.

<sup>73</sup> [REDACTED].

<sup>74</sup> P-0892, DAR-OTP-0217-0384 at 0389-0390, paras. 22-31.

<sup>75</sup> P-0892, DAR-OTP-0217-0384 at 0390-0391, paras. 32-36.

<sup>76</sup> P-0892, DAR-OTP-0217-0384 at 0391-0392, paras. 37-40.

describes the establishment of checkpoints around Mukjar by GoS Forces<sup>77</sup> and Militia/*Janjaweed*<sup>78</sup> and the gathering of displaced persons, including P-0892, at the locality building, where they were beaten, sworn at and their belongings looted, under orders of Mr Abd-Al-Rahman.<sup>79</sup> P-0892 further provides evidence on GoS Forces and Militia/*Janjaweed* conducting house-to-house searches in Mukjar and bringing displaced persons, [REDACTED], to Mukjar police station,<sup>80</sup> where they were kept in inhumane conditions and tortured.<sup>81</sup> P-0892 also provides evidence on Harun visiting the detention facility around March 2004,<sup>82</sup> the execution of detainees<sup>83</sup> and the discovery of bodies in a creek near the future UNAMID base around March/April 2004.<sup>84</sup> Lastly, P-0892 also provides information about Mr Abd-Al-Rahman's identity and his nickname Ali Kushayb.<sup>85</sup>

29. P-0892's prior recorded testimony is relevant to, *inter alia*, the charges of torture, other inhumane acts, cruel treatment, outrages upon personal dignity, murder, attempted murder and persecution.

30. P-0892's associated material comprises: (i) a headdress board in which the witness identifies the head covering worn by Militia/*Janjaweed*<sup>86</sup> and (ii) a colour chart in which the witness identifies the colour of military uniform worn by Militia/*Janjaweed*.<sup>87</sup>

*The Prosecution requests one hour for its limited supplementary examination of P-0892*

31. The Prosecution seeks approximately one hour to conduct a streamlined supplementary examination of P-0892, pursuant to rule 68(3) of the Rules and the prior

<sup>77</sup> P-0892, DAR-OTP-0217-0384 at 0392-0394, paras. 43-51.

<sup>78</sup> P-0892, DAR-OTP-0217-0384 at 0392, paras. 41-42 and at 0398-0399, paras. 65, 73.

<sup>79</sup> P-0892, DAR-OTP-0217-0384 at 0395-0397, paras. 52-61.

<sup>80</sup> P-0892, DAR-OTP-0217-0384 at 0397-0400, paras. 63-66, 68-69, 76-78 and at 0403, para. 92.

<sup>81</sup> P-0892, DAR-OTP-0217-0384 at 0398-0401, paras. 67, 70, 81-82.

<sup>82</sup> P-0892, DAR-OTP-0217-0384 at 0397, para. 62.

<sup>83</sup> P-0892, DAR-OTP-0217-0384 at 0397-0401, paras. 63-64, 69-82.

<sup>84</sup> P-0892, DAR-OTP-0217-0384 at 0397, paras. 63-64 and at 0399, para. 71 and at 0402, paras. 89-91.

<sup>85</sup> P-0892, DAR-OTP-0217-0384 at 0391, paras. 34-35 and at 0395-0396, paras. 53-54, 59-60 and at 0402, para. 88.

<sup>86</sup> P-0892, DAR-OTP-0217-0384 at 0389, para 24 and at 0404; DAR-OTP-0217-0406.

<sup>87</sup> P-0892, DAR-OTP-0217-0384 at 0389, para 25 and at 0404; DAR-OTP-0217-0407.

jurisprudence of this Court,<sup>88</sup> on topics including: (a) information on persons detained at Mukjar police station, [REDACTED]; (b) the location of the mass graves found near Mukjar; and (c) information on the identity of Mr Abd-Al-Rahman, known as Ali Kushayb.

32. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0892, if his prior recorded testimony is not introduced through rule 68(3).<sup>89</sup> The introduction of P-0892's prior recorded testimony under rule 68(3) of the Rules would shorten the in-court testimony of this witness by 3.5 hours.

(v) *Prior Recorded Testimony of Witness of P-0916*

33. The Prosecution seeks to submit into evidence P-0916's prior recorded testimony, inclusive of the associated material listed in Annex A (A5) to this Application. P-0916's prior recorded testimony comprises a single witness statement, that refers to six associated items that were used and explained by the witness in his interview and relate to information and events discussed in the statement.

34. P-0916, [REDACTED], provides testimony on the background of the Darfur conflict,<sup>90</sup> rebel attacks on Mukjar in July<sup>91</sup> and August 2003,<sup>92</sup> and the subsequent increased presence of GoS Forces in Mukjar,<sup>93</sup> as well as the arrest of males between August and October 2003.<sup>94</sup> P-0916 provides evidence on Mr Abd-Al-Rahman's background and role as a Militia/*Janjaweed* leader<sup>95</sup> and his presence in Mukjar in August 2003,<sup>96</sup> where he attended a meeting with Harun and other high ranking officials,<sup>97</sup> before moving to attack Mukjar and other villages,<sup>98</sup> including Kodoom,

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<sup>88</sup> See fn. 32.

<sup>89</sup> [REDACTED].

<sup>90</sup> P-0916, DAR-OTP-0224-0023 at 0025-0026, paras. 6-10.

<sup>91</sup> P-0916, DAR-OTP-0224-0023 at 0026-0027, paras. 11-13.

<sup>92</sup> P-0916, DAR-OTP-0224-0023 at 0027-0028, paras. 19-20.

<sup>93</sup> P-0916, DAR-OTP-0224-0023 at 0027-0028, paras. 14-18, 21-22.

<sup>94</sup> P-0916, DAR-OTP-0224-0023 at 0028-0031, paras. 23-31.

<sup>95</sup> P-0916, DAR-OTP-0224-0023 at 0032-0033, paras. 37-38.

<sup>96</sup> P-0916, DAR-OTP-0224-0023 at 0032-0033, paras. 36,

<sup>97</sup> P-0916, DAR-OTP-0224-0023 at 0033, paras. 39-40.

<sup>98</sup> P-0916, DAR-OTP-0224-0023 at 0033, paras. 41-44.

Bindisi and surrounding villages,<sup>99</sup> resulting in civilians being displaced to Mukjar.<sup>100</sup> P-0916 provides evidence on another rebel attack on Mukjar in February 2004<sup>101</sup> and Mr Abd-Al-Rahman's arrival to Mukjar with Militia/*Janjaweed* at the same time.<sup>102</sup> The witness also provides information about meetings of high-ranking officials in Mukjar, including Harun and Mr Abd-Al-Rahman, which took place at the end of February 2004,<sup>103</sup> prior to the Sindu operation in which Mr Abd-Al-Rahman participated.<sup>104</sup> P-0916 describes how the detention of civilians purported to be allies or supporters of rebel groups in Mukjar, especially civilian leaders (*Umdah's*), increased in the days following the March 2004 Sindu operation, with the establishment of checkpoints around Mukjar.<sup>105</sup> The witness further provides evidence about the execution of detainees.<sup>106</sup> Lastly, P-0916 provides evidence on the difficulty of reporting sexual violence during the charged period<sup>107</sup> and also information regarding Mr Abd-Al-Rahman's identity.<sup>108</sup>

35. P-0916's prior recorded testimony is relevant to, *inter alia*, the charges of murder, attempted murder and persecution, as well as to Mr Abd-Al-Rahman's individual criminal responsibility.

36. P-0916's associated material comprises: (i) a chart used by the witness to identify the colour of military uniforms;<sup>109</sup> (ii) a chart used to identify the headdress worn by Militia/*Janjaweed*;<sup>110</sup> (iii) a sketch of Mukjar town drawn by the witness during the interview;<sup>111</sup> (iv) a chart used to identify planes which conducted recognition missions in the Sindu area in February 2004;<sup>112</sup> (v) a sketch of Mukjar's police

<sup>99</sup> P-0916, DAR-OTP-0224-0023 at 0034, paras. 46-47.

<sup>100</sup> P-0916, DAR-OTP-0224-0023 at 0033-0034, paras. 43, 45.

<sup>101</sup> P-0916, DAR-OTP-0224-0023 at 0034, para. 49 and at 0036, para. 63.

<sup>102</sup> P-0916, DAR-OTP-0224-0023 at 0034-0035, paras. 49-55, 58 and at 0037, para. 65.

<sup>103</sup> P-0916, DAR-OTP-0224-0023 at 0035-0037, paras. 59-60, 64.

<sup>104</sup> P-0916, DAR-OTP-0224-0023 at 0037-0038, paras. 66-73.

<sup>105</sup> P-0916, DAR-OTP-0224-0023 at 0038-0042, paras. 74-82, 85-90, 92-94.

<sup>106</sup> P-0916, DAR-OTP-0224-0023 at 0040-0043, paras. 83, 92, 95-101.

<sup>107</sup> P-0916, DAR-OTP-0224-0023 at 0043-0044, paras. 102-108.

<sup>108</sup> P-0916, DAR-OTP-0224-0023 at 0035, paras. 56-57.

<sup>109</sup> P-0916, DAR-OTP-0224-0023 at 0027-0028, paras. 17, 22; DAR-OTP-0224-0047.

<sup>110</sup> P-0916, DAR-OTP-0224-0023 at 0035, para. 52; DAR-OTP-0224-0048.

<sup>111</sup> P-0916, DAR-OTP-0224-0023 at 0032, para. 35; DAR-OTP-0224-0049.

<sup>112</sup> P-0916, DAR-OTP-0224-0023 at 0037, para. 66 ; DAR-OTP-0224-0050.

compound showing the location of [REDACTED];<sup>113</sup> and (vi) a list of victims that were injured in 2003-2004.<sup>114</sup>

*The Prosecution requests one hour for its limited supplementary examination of P-0916*

37. The Prosecution seeks approximately one hour to conduct a streamlined supplementary examination of P-0916, pursuant to rule 68(3) of the Rules and the prior jurisprudence of this Court,<sup>115</sup> on topics including: (a) information on persons detained at Mukjar police station and [REDACTED]; (b) [REDACTED]; (c) further clarification on the execution of detainees; and (d) information on the identity of Mr Abd-Al-Rahman, known as Ali Kushayb.

38. The Prosecution estimates that it would require 4.5 hours for direct examination of P-0916, if his prior recorded testimony is not introduced through rule 68(3). The introduction of P-0916's prior recorded testimony under rule 68(3) of the Rules would shorten the in-court testimony of this witness by 3.5 hours.

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

39. The Prior Recorded Testimonies of the Five Witnesses on the charged crimes are cumulative in nature and are corroborative of the evidence,<sup>116</sup> as described in the paragraphs below.

40. The evidence provided by P-0041 and P-0675 on the contextual elements of crimes against humanity is corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses P-0129, P-0547, P-0769, P-0878, P-0884, P-0903, P-0905, P-0921, P-0976, P-0984, P-1021.<sup>117</sup>

<sup>113</sup> P-0916, DAR-OTP-0224-0023 at 0037, para. 67; DAR-OTP-0224-0053.

<sup>114</sup> P-0916, DAR-OTP-0224-0023 at 0029-0032, paras. 29-32; DAR-OTP-0222-0559 (English translation at DAR-OTP-0220-1957).

<sup>115</sup> See fn. 32.

<sup>116</sup> See Bemba Rule 68 Appeals Decision, [ICC-01/05-01/08-1386](#), para. 78.

<sup>117</sup> P-0129, DAR-OTP-0128-0128 at 0136-0128, paras. 31, 35-38; P-0547, DAR-OTP-0196-0146 at 0174, para. 90; P-0769, DAR-OTP-0212-0296 at 0323, paras. 213-215; P-0878, DAR-OTP-0219-3062 at 3066, para. 16; P-0878, DAR-OTP-0215-9919 at 9933-9935, 9955, 9957; P-0884, DAR-OTP-0216-0503 at 0522, para. 87; P-0903,

41. The evidence provided by P-0041 and P-0916 on Mr Abd-Al-Rahman's position of authority and individual criminal responsibility, particularly on Al-Dayf Samih being his subordinate, is corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses P-0012, P-0874, P-0877 and P-0921.<sup>118</sup>

42. Moreover, the evidence provided by P-0041, on Mr Abd-Al-Rahman's individual criminal responsibility, specifically on his cooperation with senior GoS Officials, is corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses P-0188, P-0883, P-0931, P-0990.<sup>119</sup>

43. The evidence provided by P-0675, P-0720 and P-0892 on the charges of torture, other inhumane acts, cruel treatment, and outrages upon personal dignity, is corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses P-0012, P-0028, P-0029, P-0129, P-0188, P-0877, P-0903, P-0905, P-0913, P-0919, P-0932, P-0976, P-0984, P-0990 and P-0992.<sup>120</sup>

44. The evidence provided by P-0675, P-0892 and P-0916 on the charged crimes of murder and attempted murder is corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses P-0012, P-0028, P-0029, P-0129, P-

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DAR-OTP-0221-0436 at 0438-0442, paras. 11, 17-28; P-0905, DAR-OTP-0219-6214 at 6229, l. 503-615, and DAR-OTP-0219-6379 at 6381, l. 44-56, and DAR-OTP-0219-6741 at 6754-6757, l. 441-540; P-0921, DAR-OTP-0219-8253 at 8271, l. 620-638; P-0976, DAR-OTP-0222-0526 at 0535-0536, paras. 59-65 ; P-0984, DAR-OTP-0222-0084 at 0089-0090, para. 29; P-1021, DAR-OTP-0221-1134 at 1145-1146, l. 345-392.

<sup>118</sup> P-0012, DAR-OTP-0119-0503 at 0511, para. 33 ; P-0874, DAR-OTP-0219-7155 at 7157, l. 47-49, and DAR-OTP-0219-7207 at 7224-7225, l. 564-587 ; P-0877, DAR-OTP-0217-0211 at 0217, para. 34 ; P-0921, DAR-OTP-0219-3146 at 3158, l. 391-409.

<sup>119</sup> P-0188, DAR-OTP-0216-0060 at 0078-0079, paras. 112, 117-119; P-0883, DAR-OTP-0218-0059 at 0063, para. 22 and at 0070-0071, paras. 58-60 and at 0093, paras. 181-182; P-0931, DAR-OTP-0219-8720 at 8734-8735, l. 490-495; P-0990, DAR-OTP-0223-0217 at 0223-0224, paras. 31, 35.

<sup>120</sup> P-0012, DAR-OTP-0119-0503 at 0524-0525, paras. 94-95, 97-99, 102; P-0028, DAR-OTP-0094-0423 at 0439-0440, paras. 65-68; P-0029, DAR-OTP-0094-0119 at 0152, para. 142; P-0129, DAR-OTP-0128-0128 at 0138-0139, paras. 39, 41, 44-45; P-0129, DAR-OTP-0223-0157 at 0160-0161, paras. 15-16 and at 0164, paras. 35, 37, 39 and at 0167, para. 49 and at 0179-0180, paras. 116, 118 and at 0186-0187, para. 163; P-0188, DAR-OTP-0216-0060 at 0074, para. 86 and at 0076, paras. 99-100 and at 0081-0082, paras. 133, 135-136, 140; P-0877, DAR-OTP-0217-0211 at 0224-0227 paras. 77-79, 84, 88-90, 94-98 and at 0229-0230, paras. 103-104, 112; P-0903, DAR-OTP-0221-0436 at 0443, para. 34 and at 0445-0447, paras. 40, 50-51 and at 0449, para. 62; P-0905, DAR-OTP-0219-6238 at 6251, l. 467-471, 474-475; P-0913, DAR-OTP-0218-0021 at 0036-0037, paras. 102-104, 106; P-0919, DAR-OTP-0217-0423 at 0429-0431, paras. 28-29, 31, 39-41 and at 0432, paras. 48-49 and at 0435-0436, paras. 61-62, 64, 67; P-0932, DAR-OTP-0222-0602 at 0619-0621, paras. 97-100, 107, 110; P-0976, DAR-OTP-0222-0526 at 0535, paras. 57-58 and at 0540, para. 90; P-0984, DAR-OTP-0222-0084 at 0097-0099, paras. 73, 78-79, 84; P-0990, DAR-OTP-0223-0217 at 0220-0222, paras. 20-25; P-0992, DAR-OTP-0221-0668 at 0680-0681, paras. 69, 73, 77.



0188, P-0877, P-0885, P-0903, P-0905, P-0913, P-0919, P-0931, P-0932, P-0976, P-0984, P-0992.<sup>121</sup>

45. The evidence provided by the P-0675, P-0892 and P-0916 on the charged crime of persecution on Mukjar and surrounding areas is corroborative of, and cumulative to, the evidence to be provided by, among others, *viva voce* witnesses P-0029, P-0129, P-0188, P-0877, P-0885, P-0903, P-0913, P-0919, P-0976, P-0984, P-0990.<sup>122</sup>

46. The evidence provided by P-0041 on the contextual elements of the crime of persecution is corroborative of, and cumulative to, the evidence provided by, among others, *viva voce* witness P-0843.<sup>123</sup>

47. The evidence provided by P-0916 on the attacks on Kodoom, Bindisi and surrounding areas in August 2003 is corroborative of, and cumulative to, the evidence provided by, among others, *viva voce* witnesses P-0007, P-0011, P-0012, P-0029, P-0589, P-0874, P-0921, P-1021 and P-0878,<sup>124</sup> who is directly mentioned by P-0916.

<sup>121</sup> P-0012, DAR-OTP-0119-0503 at 0525, paras. 100-101; P-0028, DAR-OTP-0094-0423 at 0439-0440, paras. 67-68; P-0029, DAR-OTP-0094-0119 at 0152-0153, paras. 144-145; P-0129, DAR-OTP-0128-0128 at 0140, para. 45 and 0143-0145, paras. 51-60; P-0129, DAR-OTP-0223-0157 at 0166-0169, paras. 49, 51, 53, 55-57 and 0171-0172, paras. 66-70 and 0173-0175, paras. 76-77, 82, 84-86, 90 and 0181-0182, paras. 127-128, 130; P-0188, DAR-OTP-0216-0060 at 0085, paras. 156-158 and at 0087, para. 170; P-0877, DAR-OTP-0217-0211 at 0230-0231, paras. 112-113, 115-117 and at 0235, para. 136; P-0885, DAR-OTP-0222-0784 at 0788, l. 120-128 and 0790, l. 179-197 and 0801, l. 555-567; P-0903, DAR-OTP-0221-0436 at 0444-0445, paras. 37-38, 40 and 0449, para. 62; P-0905, DAR-OTP-0219-6238 at 6253-6254, l. 560-579, and DAR-OTP-0219-6599 at 6611, l. 412-419 and at 6613-6614, l. 493-499 and at 6622, l. 795-801 and at 6624, l. 860-861; P-0913, DAR-OTP-0218-0021 at 0036-0038, paras. 94-108, 110, 112 and at 0040, para. 122; P-0919, DAR-OTP-0217-0423 at 0433-0434, paras. 51-52, 60; P-0931, DAR-OTP-0219-8617 at 8621-8624, l. 114-211; P-0932, DAR-OTP-0222-0602 at 0619, para. 102 and at 0621, para. 108 and 0622, para. 116; P-0976, DAR-OTP-0222-0526 at 0540-0541, paras. 92-93; P-0984, DAR-OTP-0222-0084 at 0097, paras. 82-86 and at 0100, para. 98; P-0992, DAR-OTP-0221-0668 at 0680-0681, paras. 71, 74.

<sup>122</sup> P-0029, DAR-OTP-0094-0119 at 0152, para. 141; P-0129, DAR-OTP-0128-0128 at 0137-0138, paras. 35-39 and at 0142, para. 47; P-0129, DAR-OTP-0223-0157 at 0164, para. 35; P-0188, DAR-OTP-0216-0060 at 0081, paras. 129-130; P-0877, DAR-OTP-0217-0211 at 0223, paras. 69-72; P-0885, DAR-OTP-0222-0784 at 0785-0786, l. 32-35 and at 0797-0798, l. 433-453; P-0885, DAR-OTP-0222-0907 at 0908-0910, l. 33-100; DAR-OTP-0145-0237 at 0311-0312, 0314-0317, 0319 ; P-0903, DAR-OTP-0221-0436 at 0443-0444, paras. 33, 35; P-0913, DAR-OTP-0218-0021 at 0030, para. 61; P-0919, DAR-OTP-0217-0423 at 0431, para. 41 ; P-0976, DAR-OTP-0222-0526 at 0429, para. 27 and at 0534-0535, paras. 52-56 and at 0537-0538, paras. 74-75, 79-80 and at 0539, paras. 84, 88; P-0984, DAR-OTP-0222-0084 at 0096-0097, paras. 75-79 ; P-0990, DAR-OTP-0223-0217 at 0220-0221, paras. 19-20.

<sup>123</sup> P-0843, DAR-OTP-0216-0600 at 0619, para. 90.

<sup>124</sup> P-0007, DAR-OTP-0088-0060 at 0065-0066, paras. 21-23 and at 0070-0071, paras. 38, 41-43 ; P-0011, DAR-OTP-0088-0219 at 0227-0231, paras. 43, 53, 57, 59, 61-71 and at 0231-0233, paras. 73-75, 77-78, 80-81; P-0012, DAR-OTP-0119-0503 at 0520-0523, paras. 78-79, 81, 83-85, 87; P-0029, DAR-OTP-0094-0119 at 0133-0136, paras. 60-66, 70-71, 73; P-0589, DAR-OTP-0223-0005 at 0017-0023, paras. 70-78, 84-88, 90-98, 100, 102-103; P-0874, DAR-OTP-0219-7164 at 7182, l. 581-590 and at 7188-7190, l. 789-805, 817-822, 833-860, 866-879; P-0874, DAR-OTP-0219-7129 at 7136-7138, l. 213, 248-288 and at 7143-7144, l. 464-498; P-0874, DAR-OTP-

48. Furthermore, the information provided by P-0041,<sup>125</sup> P-0675,<sup>126</sup> P-0892<sup>127</sup> and P-0916<sup>128</sup> in relation to the Accused's identity corroborates four facts already agreed upon between the Defence and the Prosecution,<sup>129</sup> i.e., that Mr Abd-Al-Rahman is from the Ta'aisha tribe, that he was formerly part of the Medical Corps of the Sudanese Armed Forces, that upon his retirement from the Sudanese Armed Forces he lived in Garsila, and that in Garsila he opened a shop, from which he sold medication.

49. In addition, the evidence provided by the Five Witnesses on the Accused being a leader of the *Militia*/Janjaweed<sup>130</sup> is corroborative of and cumulative to the evidence to be provided by *viva voce* witnesses P-0012, P-0129, P-0643, P-0878, P-0903, P-0907 and P-0987.<sup>131</sup> Moreover, rule 68(3) does not preclude the admission of evidence which goes to the acts and conduct of the Accused for charged crimes.<sup>132</sup>

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

50. The introduction of the Prior Recorded Testimonies of the Five Witnesses into evidence would not be prejudicial to or inconsistent with the rights of Mr Abd-Al-

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0219-7191 at 7195-7200, l. 115-297 and at 7205-7206, l. 450-451, 456, 461-463, 477-479; P-0874, DAR-OTP-0219-7207 at 7208-7209, l. 18-52 and at 7211-7213, l. 120-122, 152-163, 176-186 and at 7217, l. 317-322 and at 7224-7226, l. 578-621; P-0874, DAR-OTP-0219-7230 at 7231, l. 11-35 and at 7233-7235, l. 89-169; P-0921, DAR-OTP-0219-8217 at 8221-8222, l. 136-151 and at 8232, l. 471-49; P-0921, DAR-OTP-0219-8188 at 8196, l. 225-227, 232-233 and at 8199-8202, l. 347-360, 373-374, 388-392, 439-440, 447-448; P-0921, DAR-OTP-0219-8205 at 8209-8210, l. 81-90, 121-140 and at 8213-8215, l. 238-297; P-1021, DAR-OTP-0221-1111 at 1129-1130, l. 579-585, 600, 614-619, 627-631; P-1021, DAR-OTP-0221-1134 at 1159-1161, l. 821-826, 871-885; P-1021, DAR-OTP-0221-1212 at 1218-1219, l. 196-198, 208-214 and at 1221, l. 283-289 and at 1223, l. 369-370 and at 1228, l. 542-55 and at 1233, l. 698-713 and at 1242-1243, l. 1028-1035; P-1021, DAR-OTP-0221-1247 at 1253-1256, l. 179-188, 219-222, 261-263, 286-289 and at 1265, l. 579-588; P-1021, DAR-OTP-0221-1276 at 1283, l. 214-215; P-0878, DAR-OTP-0219-3062 at 3066-3068, paras. 15-20, 22-24, 26, 31 and at 3070-3071, paras. 35-37, 39; P-0878, DAR-OTP-0215-9919 at 9929\_01, 9929\_02, 9934-9935, 9941-9942, 9944-9953, 9955-9957.

<sup>125</sup> P-0041, DAR-OTP-0206-0033 at 0040, para. 23.

<sup>126</sup> P-0675, DAR-OTP-0206-0173 at 0186, para. 47.

<sup>127</sup> P-0892, DAR-OTP-0217-0384 at 0390, para. 34.

<sup>128</sup> P-0916, DAR-OTP-0224-0023 at 0033, para. 38 and at 0035, para. 56.

<sup>129</sup> Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, 9 November 2021, [ICC-02/05-01/20-504-AnxA](#), facts 4, 10, 15 and 11, respectively.

<sup>130</sup> P-0041, DAR-OTP-0206-0033 at 0040, para. 23; P-0041, DAR-OTP-0096-0002 at 0006, para. 13; P-0675, DAR-OTP-0206-0173 at 0186, paras. 46-47 and at 0201, para. 100; P-0720, DAR-OTP-0210-0291 at 0300, para. 61; P-0892, DAR-OTP-0217-0384 at 0390, para. 34; P-0916, DAR-OTP-0224-0023 at 0032, para. 37.

<sup>131</sup> P-0012, DAR-OTP-0119-0503 at 0511 and 0525, paras. 33, 100; 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.

<sup>132</sup> *Gbagbo & Blé Goudé* Rule 68 Appeals Decision, [ICC-02/11-01/15-744](#), para. 69.

Rahman, since, pursuant to rule 68(3) of the Rules, the Five Witnesses will appear before the Chamber, their evidence will only be introduced upon their consent, and the Parties, the Common Legal Representative of Victims and the Chamber will have an opportunity to examine them during the proceedings.

51. The Defence has been consulted on the Prosecution's application for the admission into evidence of the Prior Recorded Testimonies of the Five Witnesses, pursuant to rule 68(3), but opposed it.<sup>133</sup> This, however, does not militate against the admission into evidence of the Prior Recorded Testimonies, nor does it indicate this would be prejudicial to, or inconsistent with, the rights of the Accused.<sup>134</sup>

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

52. 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.<sup>135</sup> In addition to being mainly corroborative in nature and internally consistent, the Prior Recorded Testimonies of the Five Witnesses bear other formal indicia of reliability for introduction into evidence in accordance with prior jurisprudence of the Court.<sup>136</sup> The Five Witnesses have signed their Prior Recorded Testimonies, attesting to the fact that they were voluntarily given and are true to their best knowledge and recollection of events.<sup>137</sup> The Prior Recorded Testimonies also bear the interpreters' signature and certification that the interviews were orally translated into a language that the witnesses speak and understand.<sup>138</sup>

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<sup>133</sup> See [REDACTED].

<sup>134</sup> *Ongwen*, Public Redacted Version of Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 16 August 2018, [ICC-02/04-01/15-1322-Red](#), paras. 7, 9, 10.

<sup>135</sup> See paras. 3, 10-12, 16-18, 22-24, 28-30, 34-36, 40-49.

<sup>136</sup> *Ntaganda* Preliminary decision on rule 68(3), [ICC-01/04-02/06-1640-Red](#), para. 9.

<sup>137</sup> P-0041, DAR-OTP-0096-0002 at 0007; P-0041, DAR-OTP-0206-0033 at 0055; P-0675, DAR-OTP-0206-0173 at 0214; P-0720, DAR-OTP-0210-0291 at 0311; P-0892, DAR-OTP-0217-0384 at 0405; P-0916, DAR-OTP-0224-0023 at 0045.

<sup>138</sup> P-0041, DAR-OTP-0096-0002 at 0007; P-0041, DAR-OTP-0206-0033 at 0056; P-0675, DAR-OTP-0206-0173 at 0214-0215; P-0720, DAR-OTP-0210-0291 at 0311; P-0892, DAR-OTP-0217-0384 at 0405; P-0916, DAR-OTP-0224-0023 at 0046.

#### IV. CONCLUSION

53. 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.



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**Karim A. A. Khan QC**  
**Prosecutor**

Dated this 17<sup>th</sup> day of March 2022

At The Hague, The Netherlands