



Original: English

**No. ICC-02/05-01/20
Date: 3 November 2023**

TRIAL CHAMBER I

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

SITUATION IN DARFUR, SUDAN

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

Public redacted version of

**Decision on the Defence's request to introduce the prior recorded testimony of
D-0017 under Rule 68(2)(b)**

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

The Office of the Prosecutor

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Nazhat Shameem Khan
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Counsel for the Defence

Cyril Laucci
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Legal Representatives of Victims

Natalie von Wistinghausen
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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural background

1. On 5 October 2023, the Defence filed a request to introduce into evidence the prior recorded testimony of D-0017 pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’) (the ‘Request’).¹
2. None of the parties or participants filed a response.

II. Analysis

3. The Chamber refers to the general framework applicable to the assessment of applications for introduction of prior recorded testimony pursuant to Rule 68(2)(b) of the Rules.²

D-0017

4. D-0017, former Prosecution witness DAR-OTP-P-0017, worked for [REDACTED] and trained with [REDACTED].³ D-0017 worked for a [REDACTED] during the time relevant to the charges.⁴ He provides evidence on the structure and internal functioning of the PDF and the Popular Police Forces (‘PPF’), as well as on their relationship with the *Janjaweed*.⁵
5. The Defence seeks to introduce a statement taken by the Prosecution in 2005 (and its Arabic translation), as well as a statement taken by the Defence in 2023. In addition to these, the Defence seeks to introduce into evidence two notes, one list and corresponding translations, six maps, and two ICC investigator notes.⁶

¹ Defence request to submit the prior recorded testimony of Witness DAR-OTP-P-0017/D-0017 under rule 68(2)(b), 5 October 2023, ICC-02/05-01/20-1027-Conf (with one confidential annex, notified on 6 October 2023). A public redacted version was notified on the same date, ICC-02/05-01/20-1027-Red.

² Decision on the Prosecution’s sixth, seventh and eighth applications to introduce prior recorded testimonies under Rule 68(2)(b), 7 November 2022, ICC-02/05-01/20-808-Conf, paras 7-8; First Decision on the Prosecution’s requests to introduce prior recorded testimonies under Rule 68(2)(b), 2 March 2022, ICC-02/05-01/20-612-Conf (‘First Rule 68(2)(b) Decision’), paras 11-19.

³ Request, ICC-02/05-01/20-1027-Conf, paras 3, 12.

⁴ Request, ICC-02/05-01/20-1027-Conf, para. 12.

⁵ Request, ICC-02/05-01/20-1027-Conf, paras 10, 12-13.

⁶ Request, ICC-02/05-01/20-1027-Conf, paras 1, 11 and Annex A.

6. The Chamber notes, as pointed out by the Defence,⁷ that nothing in D-0017's statements relates to the acts and conduct of the accused.

7. The Chamber further notes the Defence's submission that the testimony of D-0017 on the structural composition of the PDF, PPF and the *Janjaweed* in Darfur is corroborative of and cumulative to the evidence provided by Prosecution witnesses [REDACTED], and that expected of Defence witness D-0016.⁸

8. The Chamber observes that the witness's statements are signed by the witness and the interpreters who assisted D-0017 during the interviews. D-0017 also acknowledges the use of the associated material to be introduced together with the statements and confirms that the testimony was provided voluntarily.⁹

9. The Chamber further observes that the Prosecution does not oppose the Request.

10. In light of the above, the Chamber is satisfied that the requirements under Rule 68(2)(b)(i) of the Rules are met.

11. The Chamber therefore authorises the introduction of the prior recorded testimony of D-0017 as identified in the Request and its corresponding annex pursuant to Rule 68(2)(b) of the Rules.¹⁰ The Chamber's preliminary ruling is subject to the receipt of the declarations as discussed in the First Rule 68(2)(b) Decision.¹¹

12. The Chamber orders the Registry, upon filing of the aforesaid declaration, to reflect in the eCourt metadata the introduction of the prior recorded testimony as identified in the present decision.

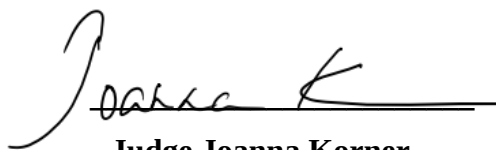
⁷ Request, ICC-02/05-01/20-1027-Conf, para. 14.

⁸ Request, ICC-02/05-01/20-1027-Conf, paras 3, 17.

⁹ DAR-OTP-0088-0262-R01, at 0293-0294; DAR-D31-00000146, at 0009-0011.

¹⁰ Annex A to the Defence Request under rule 68(2)(b), 5 October 2023, ICC-02/05-01/20-1027-Conf-AnxA (notified on 6 October 2023).

¹¹ First Rule 68(2)(b) Decision, ICC-02/05-01/20-612-Conf, paras. 17-19.



Judge Joanna Korner

Presiding Judge



Judge Reine Alapini-Gansou



Judge Althea Violet Alexis-Windsor

Dated this **3 November 2023**

At The Hague, The Netherlands