



**Original: English**

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

**Date: 2 May 2024**

**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**

**Decision on the Defence Request to admit D-0036 as an Expert Witness**

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

**The Office of the Prosecutor**

Karim A.A. Khan  
Nazhat Shameem Khan  
Julian Nicholls

**Counsel for the Defence**

Cyril Laucci  
Iain Edwards

**Legal Representatives of Victims**

Natalie von Wistinghausen  
Anand Shah

**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*

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**REGISTRY**

**Registrar**

Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations Other  
Section**

1. On 12 April 2024, the Defence requested that Trial Chamber I (the ‘Chamber’): (i) admit D-0036 as an expert witness; (ii) allow him to testify under Rule 68(3) of the Rules of Procedure and Evidence (the ‘Rules’); and (iii) authorise the introduction into evidence of his expert report (the ‘Report’), documentation establishing his qualifications and supporting material thereto.<sup>1</sup> The Defence further gave notice of its addition of D-0036 to its list of witnesses (the ‘Request’).<sup>2</sup>
2. On 25 April 2024, the Prosecution sent an email informing the Defence and the Chamber that it does not oppose the Request (the ‘Response’). The Prosecution nonetheless reserved its right ‘to make submissions on the reliability of the report, its methodology and conclusions as part of its cross-examination’.<sup>3</sup>
3. The Chamber incorporates, by reference, the general framework applicable to the admission of expert witnesses, as set out in a previous decision.<sup>4</sup> The Chamber further incorporates, by reference, the general framework applicable to the assessment of requests for introduction of prior recorded testimonies pursuant to Rule 68(3) of the Rules.<sup>5</sup>
4. The Chamber notes that the Prosecution does not challenge D-0036’s expertise.<sup>6</sup> Having considered D-0036’s academic background and professional experience,<sup>7</sup> the Chamber accepts that, as submitted by the Defence,<sup>8</sup> the witness is sufficiently qualified to provide expert evidence on the Popular Defence Forces (‘PDF’).

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<sup>1</sup> ICC-02/05-01/20-1110-Conf, paras 3, 17 *referring to* Report, DAR-D31-00000312; Curriculum Vitae, DAR-D31-00000306; Book, DAR-D31-00000298.

<sup>2</sup> ICC-02/05-01/20-1110-Conf, para. 1. The Chamber recalls that in its oral ruling, the Chamber accepted the Defence’s updated list of witnesses, including D-0036. *See* Transcript of hearing, 24 April 2024, ICC-02/05-01/20-T-150-CONF-ENG, p. 17, line 24 to p. 20, line 19.

<sup>3</sup> E-mail from the Prosecution, 25 April 2024, at 13:45; Transcript of hearing, 24 April 2024, ICC-02/05-01/20-T-150-CONF-ENG, p. 10, lines 6-16. Pursuant to Regulation 24(5) of the Regulations of the Court, the Chamber will disregard the Defence’s email in reply as it did not seek leave to do so. *See* email from the Defence, 25 April 2024, at 14:54.

<sup>4</sup> Decision on the Defence Request to admit Dr Philippe Gout as an Expert Witness, 30 November 2023, ICC-02/05-01/20-1044 (‘Decision on Expert Witness’), paras 9-11.

<sup>5</sup> First Decision on the Prosecution’s request to introduce prior recorded testimonies under Rule 68(3), 20 January 2022, ICC-02/05-01/20-559-Red, paras 7-17.

<sup>6</sup> E-mail from the Prosecution, 25 April 2024, at 13:45.

<sup>7</sup> Curriculum Vitae, DAR-D31-00000306.

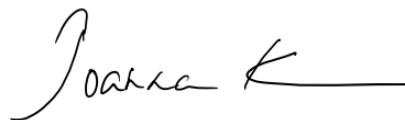
<sup>8</sup> Request, ICC-02/05-01/20-1110-Conf, paras 6-12.

5. Moreover, as submitted by the Defence,<sup>9</sup> the Chamber finds that D-0036's expert opinion may assist the Chamber in its assessment of the evidence on the record. As submitted by the Defence,<sup>10</sup> the topics, covered by the report, are ones that fall within D-0036's expertise.

6. The Chamber further observes the Prosecution's submission that given that certain items cited in the Report have not been provided by D-0036, the Prosecution reserves its right to make submissions on the reliability of the Report, its methodology and conclusions.<sup>11</sup> Considering that the findings above are *prima facie* ones,<sup>12</sup> the Chamber notes that these are matters which the Prosecution may explore in its cross-examination of the expert witness, should it wish to do so.

7. Finally, the Chamber notes the parties' agreement to introduce the Report, the documentation establishing D-0036's qualifications and supporting material thereto under Rule 68(3) of the Rules. Noting the absence of objections by the parties, the Chamber authorises the introduction into evidence of these materials pursuant to this provision. The Chamber's preliminary ruling is subject to the witness' appearance before the Chamber and his consent to the introduction of the aforesaid materials under Rule 68(3) of the Rules.

8. Considering the above, the Chamber grants the Request. The Chamber further directs the Defence to file a public redacted version of the Request.



**Judge Joanna Korner**

**Presiding Judge**



**Judge Reine Alapini-Gansou**



**Judge Althea Violet Alexis-Windsor**

Dated this **2 May 2024**

At The Hague, The Netherlands

<sup>9</sup> Request, ICC-02/05-01/20-1110-Conf, paras 13-16.

<sup>10</sup> Request, ICC-02/05-01/20-1110-Conf, paras 13-16.

<sup>11</sup> E-mail from the Prosecution, 25 April 2024, at 13:45.

<sup>12</sup> Decision on Expert Witness, ICC-02/05-01/20-1044, para. 32.