



Original: English

No. ICC-02/05-01/20

Date: 10 July 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

Public redacted version of 'Decision on the Defence's Motion for request for cooperation to [REDACTED] of Prosecution witness P-0927', 10 May 2023, ICC-02/05-01/20-936-Conf

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

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Procedural background

1. On 11 March 2022, Trial Chamber I (the ‘Chamber’) admitted into evidence the prior recorded testimony of P-0927 under Rule 68(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’).¹
2. On 25 April 2023, the Defence filed a motion, seeking that the Chamber issue a request for cooperation to [REDACTED] of P-0927 (the ‘Motion’).²

II. Submissions

3. In its Motion, the Defence submits that P-0927’s prior recorded statement refers to issues materially in dispute in this case, particularly regarding the alleged attack on Bindisi and surrounding areas on 15-16 August 2003. The Defence avers that these issues must be subjected to Defence scrutiny.³ It contends that discrepancies between [REDACTED] and ICC statements have been explored during cross-examination in this trial and in other cases before this Court.⁴
4. The Defence further submits that P-0927’s refusal to give his consent only occurred after the Rule 68(2)(b) litigation and was therefore a matter unknown to the Defence.⁵
5. The Defence contends that the disclosure of P-0927’s [REDACTED] would not prejudice him in any way, as he is not a protected witness, and his place of interview was already disclosed to the Defence. It posits that [REDACTED] have disclosed the [REDACTED] of other Prosecution witnesses in the past.⁶
6. No responses to the Motion were filed.

¹ Second Decision on the Prosecution’s requests to introduce prior recorded testimonies under Rule 68(2)(b), ICC-02/05-01/20-625-Conf (hereinafter ‘Second Decision on Rule 68(2)(b)’). A public redacted version was notified on the same day, ICC-02/05-01/20-625-Red.

² Motion for Request for cooperation to [REDACTED] of Prosecution witness P-0927, ICC-02/05-01/20-923-Conf. None of the parties or participants responded.

³ Motion, ICC-02/05-01/20-923-Conf, paras 14-15.

⁴ Motion, ICC-02/05-01/20-923-Conf, paras 16-17.

⁵ Motion, ICC-02/05-01/20-923-Conf, para. 18.

⁶ Motion, ICC-02/05-01/20-923-Conf, paras 19-20.

III. Analysis

7. The Chamber incorporates by reference the general framework applicable to requests for cooperation.⁷

8. The Chamber notes that, pursuant to Article 93(1)(i) of the Statute, the ‘provision of records and documents, including official records and documents’ may be the subject of a cooperation request. In relation to the documents sought by the Defence,⁸ the Chamber is satisfied that these documents are specific and relevant to the present case. As noted in the decision authorising the submission of his prior recorded testimony under Rule 68(2)(b) ‘some of the issues identified by the Defence in its submissions are materially in dispute in the present case.’⁹

9. Moreover, the Chamber is satisfied that the Defence has taken the necessary steps to try and obtain these documents, including through communication with the Prosecution,¹⁰ prior to seeking this order from the Chamber. The Chamber further notes that the Motion is unopposed.

10. Accordingly, the Chamber grants the Defence request for cooperation to obtain [REDACTED] of Prosecution witness P-0927.

IV. Conclusion

11. For the above reasons the Chamber:

GRANTS the Defence’s Motion for Request for cooperation in relation to the documents mentioned above in paragraph 10;

ORDERS the Registry (a) to transmit forthwith a cooperation request to [REDACTED] in this matter; and (b) to serve the request to [REDACTED] through the proper channels of communication as provided for in the applicable legal framework;

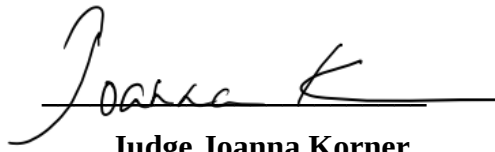
INVITES the representatives of [REDACTED] to consult with the Court in case it identifies any issue obstructing the execution of the request; and to do so without delay so as to resolve any such matter.

⁷ Decision on the Defence request for cooperation pursuant to Article 57(3)(b) of the Statute, 11 February 2022, ICC-02/05-01/20-590-Conf-Exp, paras 6-7. A public redacted version was notified on the same day, ICC-02/05-01/20-590-Red.

⁸ Motion, ICC-02/05-01/20-923-Conf, para. 4.

⁹ Second Decision on Rule 68(2)(b), ICC-02/05-01/20-625-Conf, para. 73.

¹⁰ Motion, ICC-02/05-01/20-923-Conf, para. 10.

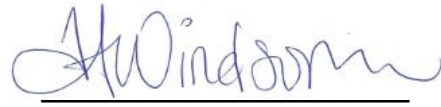
A handwritten signature in black ink, appearing to read 'Joanna K', written over a horizontal line.

Judge Joanna Korner

Presiding Judge

A handwritten signature in black ink, appearing to read 'Reine', written over a horizontal line.

Judge Reine Alapini-Gansou

A handwritten signature in blue ink, appearing to read 'Althea Windsor', written over a horizontal line.

Judge Althea Violet Alexis-Windsor

Dated this **10 July 2024**

At The Hague, The Netherlands