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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 fourth application under rule 68(2)(b) to introduce into evidence prior recorded testimony of witnesses P-0756, P-0816, P-0867 and P-0927” 2 February 2022, ICC-02/05-01/20-573-Conf

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I. INTRODUCTION

1. Pursuant to article 69(2) and (4) of the Rome Statute (“Statute”) and rule 68(2)(b) 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 Testimony”)¹ of P-0756, P-0816, P-0867 and P-0927 (“Four Witnesses”); (ii) designate the Registry Legal Counsel, or any appropriate person delegated by him, as the person authorised to witness declarations required pursuant to rule 68(2)(b)(ii); and (iii) authorise remote certifications due to the current challenges imposed by the ongoing COVID-19 pandemic² (“Application”).³
2. Granting the Application will enhance the expeditiousness of the proceedings, obviate the unnecessary appearance of witnesses, save valuable court time and resources, and would serve the interests of justice.⁴
3. As submitted, the Prior Recorded Testimonies of the Four Witnesses do not concern the acts and conduct of Mr Abd-Al-Rahman.⁵ They relate primarily to the charged crimes in Kodoom, Bindisi and surrounding areas between 15 and 16 August 2003, the charged crimes in Mukjar and surrounding areas in February/March 2004

¹ Annex A (A1 to A6) lists the prior recorded testimonies of the Four 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 *Abd-Al- Rahman (“Ali Kushayb”)*, Directions on the conduct of proceedings, [ICC-02/05-01/20-478](#), (“Directions on the Conduct of Proceedings”), para. 47.

² *Al Hassan* Public redacted version of the Decision on the introduction of P-0598’s evidence pursuant to Rule 68(2)(b) of the Rules, TC X, 29 October 2020, [ICC-01/12-01/18-1111-Red](#), para. 18.

³ This Application is submitted in accordance with Directions on the Conduct of Proceedings, paras. 46-48.

⁴ 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 OA10](#), 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.

⁵ The Prosecution excluded those portions in the Prior Recorded Testimonies that go to the acts and conduct of the Accused, as set out below.

and the contextual elements of crimes against humanity, as confirmed by Pre-Trial Chamber II.⁶

4. In particular, the Four Witnesses provide testimony of specific events relating to the contextual elements of crimes against humanity and to the charged crimes of murder (Counts 2 and 3), pillage (Count 4), destruction of property (Count 5), rape (Counts 8 and 9) and forcible displacement (Count 10) in Kodoom, Bindisi and surrounding areas and murder and attempted murder (Counts 17-20) in Mukjar and surrounding areas.

5. As set out below, the Prior Recorded Testimonies of the Four Witnesses are relevant, reliable and probative. The introduction into evidence of these testimonies is not prejudicial to or inconsistent with the rights of Mr Abd-Al-Rahman, as they do not concern the acts or conduct of the Accused, are of a cumulative or corroborative nature, and/or do not relate to issues materially in dispute.

II. CLASSIFICATION

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

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(2)(b) of the Rules, as set out at paragraphs 6 to 8 of the first application under rule 68(2)(b).⁷

⁶ Confirmation Decision, [ICC-02/05-01/20-433-Corr](#), paras. 61-67, 86, 94, 97, 104.

⁷ Prosecution's first application under rule 68(2)(b) to introduce into evidence prior recorded testimony of witnesses P-0013, P-0034, P-0043, and P-0065, 26 January 2022, [ICC-02/05-01/20-565-Conf](#), paras. 6-8.

A. Overview of the Prior Recorded Testimonies of P-0756, P-0816, P-0867 and P-0927

8. The Prior Recorded Testimonies of the Four Witnesses relate primarily to the contextual elements of crimes against humanity, the charged crimes in Kodoom, Bindisi and surrounding areas on or about 15 and 16 August 2003 and in Mukjar and surrounding areas between late February and early March 2004.⁸

9. In addition to the statements of the Four Witnesses, the Prosecution seeks to introduce into evidence the associated material for each of the Four Witnesses,⁹ which forms an integral part of their prior recorded testimonies.¹⁰ These items are also necessary to fully comprehend the accounts of the Four Witnesses, as witnesses discuss and/or clarify the items 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 testimony being introduced."¹¹

(i) *Prior Recorded Testimony of P-0756*

10. The Prosecution seeks to submit into evidence P-0756's prior recorded testimony, including the associated material listed in Annex A (A1) to this Application. P-0756's prior recorded testimony comprises a single witness statement, and three associated items that were used and explained by the witness in his statement.

11. P-0756, a Fur civilian, provides information on the Militia/*Janjaweed*¹² and the Sudanese Liberation Army/Movement.¹³ The witness also provides testimony on a

⁸ Confirmation decision, [ICC-02/05-01/20-433-Corr](#), paras. 86, 94, 97 and 104.

⁹ 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.

¹⁰ See *Yekatom & Ngaissona* Decision on the Prosecution Requests under Rule 68(3), [ICC-01/14-01/18-907-Red](#), para. 26.

¹¹ *Ruto & Sang* Decision on the Admission of Prior Recorded Testimony, [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33. See also *Ntaganda* Transcript of 20 June 2016, [ICC-01/04-02/06-T-105-Red2-ENG](#), p.94, l. 2-7; *Ntaganda* Decision on Prosecution application under Rule 68, [ICC-01/04-02/06-1205](#), para.7; *Ntaganda* Decision on Rule 68(2)(c), [ICC-01/04-02/06-1029](#), paras. 23, 35;.

¹² [REDACTED].

¹³ [REDACTED].

rebel attack on the Mukjar police station in August 2003 and the subsequent visit of Ahmad Harun to Mukjar.¹⁴ The witness provides hearsay information on the attack on Nyerli¹⁵ and eyewitness testimony on the attack on Tiro¹⁶ in mid-August 2003 by Government of Sudan Forces (“GoS Forces”) Forces and Militia/*Janjaweed*, who then headed in the direction of Kodoom.¹⁷ P-0756 also provides information on the forcible displacement of civilians from surrounding villages to Mukjar,¹⁸ where they were harassed and arrested.¹⁹ P-0756 was arrested for two days in October 2003 in Mukjar under the allegation that he was associated with or supporting rebel armed groups.²⁰ P-0756 also provides information on the presence of Ahmed Harun, delivering ammunition and addressing the military, in Mukjar in February 2004.²¹ Mr Abd-Al-Rahman, is also mentioned to be present in Mukjar at the same time.²²

12. Finally, P-0756 provides eyewitness testimony on the arrest of *Umdah* Yahia Zarruq²³ and on prisoners being taken out of the Mukjar police station and loaded onto Land Cruisers which came back empty in March 2004.²⁴

13. P-0756’s prior recorded testimony is relevant to the contextual elements of crimes against humanity²⁵ and to the charges crimes of murder and attempted murder in Mukjar and surrounding areas.²⁶

14. P-0756’s associated material consists of: (i) a witness colour chart,²⁷ used by the witness to identify the colour of the outfits of the Militia/*Janjaweed* and GoS Forces²⁸ and of their vehicles.²⁹ P-0756 used the same witness colour chart to also identify the

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

colours of the uniforms and/or clothing worn by security personnel who arrested him in Mukjar, the helicopter which transported Ahmed Harun to Mukjar³⁰ and the clothing of the men who disembarked from the helicopter.³¹ The associated material also comprises (ii) a headdress board³², used by the witness to identify the headdress worn by the Militia/*Janjaweed* and GoS Forces,³³ and (iii) an investigation report referring to the height of an investigator, which was used by the witness to estimate the height of the Mr Abd-Al-Rahman.³⁴

The Prosecution does not request the introduction into evidence of the paragraphs identified below in the prior recorded testimony of P-0756

15. P-0756 provides testimony about seeing Mr Abd-Al-Rahman in Mukjar in February 2004 on a number of occasions,³⁵ and recalls hearing unidentified individuals mentioning that Mr Abd-Al-Rahman was the Militia/*Janjaweed* leader.³⁶ The Prosecution does not seek to introduce these paragraphs of P-0756's statement into evidence.

16. With the exception of these paragraphs, the reminder of P-0756's Prior Recorded Testimony goes to proof of matters other than the acts and conduct of the Accused as required by rule 68(2)(b) of the Rules.

(ii) Prior Recorded Testimony of P-0816

17. The Prosecution seeks to submit into evidence P-0816's prior recorded testimony, including the associated material listed in Annex A (A2) to this Application. P-0816's prior recorded testimony comprises a single witness statement, which refers to five associated items that were used and/or explained by the witness in his statement and relate to information and events discussed therein.

³⁰ [REDACTED].

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

³⁴ [REDACTED].

³⁵ [REDACTED]

³⁶ [REDACTED].

18. P-0816, a Fur civilian from [REDACTED] near Bindisi, provides testimony on the rebel attacks on Bindisi and Mukjar in 2003,³⁷ as well as on the attack on Bindisi and surrounding area by Militia/*Janjaweed* and GoS Forces in August 2003,³⁸ including hearsay evidence relating to the presence of P-0878 and P-0921 during the attack.³⁹ P-0816 provides testimony that, after hiding four days in the forest close to Bindisi, he came back to Bindisi and found that most houses, including his own, had been pillaged and/or burnt – and that he saw dead bodies, which he buried. He also provides information on the forced displacement of civilians – including his family and himself,⁴⁰ to Mukjar, as a result of the attack. P-0816 also describes the presence of Militia/*Janjaweed* and GoS Forces⁴¹ and the arrest and killing of displaced persons in Mukjar in 2003.⁴² P-0816's prior recorded testimony is relevant to, *inter alia*, the charges of murder⁴³, pillaging,⁴⁴ destruction of property⁴⁵ and forcible transfer of civilians⁴⁶ between 15 and 16 August 2003 in Bindisi and surrounding areas.

19. P-0816's associated material consists of: (i) a consent form authorising OTP to obtain [REDACTED];⁴⁷ (ii) a sketch map of Bindisi drawn by P-0816 depicting various areas of interests and natural landmarks in Bindisi;⁴⁸ (iii) a witness colour chart used by the witness to identify the colours of the uniform and clothing worn by police personnel stationed in Bindisi and by the Militia/*Janjaweed* respectively;⁴⁹ (iv) a headdress board used by the witness to identify the type of hat worn by the police officers in Bindisi;⁵⁰ and (v) a sketch map drawn by P-0816 depicting areas of significance in Mukjar.⁵¹

³⁷ [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ [REDACTED].

⁴² [REDACTED].

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ [REDACTED].

⁵¹ [REDACTED].

The Prosecution does not request the introduction into evidence of the paragraph identified below in the prior recorded testimony of P-0816

20. P-0816 refers to Ali Kushayb once in his statement, to say that he was the *Janjaweed* leader in Garsila.⁵² The Prosecution does not seek to introduce this paragraph of P-0816's prior recorded testimony into evidence.

21. With the exception of this paragraph, the reminder of P-0816's Prior Recorded Testimony goes to proof of matters other than the acts and conduct of the Accused as required by rule 68(2)(b) of the Rules.

(iii) *Prior Recorded Testimony of P-0867*

22. The Prosecution seeks to submit into evidence P-0867's prior recorded testimony listed in Annex A (A3) to this Application. P-0867's prior recorded testimony comprises a single witness statement and does not refer to any associated material.

23. P-0867, a Fur civilian, provides information on rebel armed groups⁵³ and the emergence of the Militia/*Janjaweed*. He also provides testimony on an attack on Gausir in March 2003⁵⁴ and hearsay information on the attack on Kodoom, Bindisi and surrounding areas during the charged period.⁵⁵ He finally provides direct testimony on the attack on Gausir, a village neighbouring Bindisi during the same period⁵⁶ and details rapes committed by Militia/*Janjaweed* and/or GoS Forces during that attack.⁵⁷ P-0867's prior recorded testimony is relevant to, *inter alia*, the contextual elements of crimes against humanity⁵⁸ and rape.⁵⁹

⁵² [REDACTED].

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ [REDACTED].

⁵⁸ [REDACTED].

⁵⁹ [REDACTED].

The Prosecution does not request the introduction into evidence of the paragraphs identified below in the prior recorded testimony of P-0867

24. P-0867 provides evidence about Mr Abd-Al-Rahman's actions in paragraphs 75-76 and 78-79 of his statement in relation to uncharged events. He also states that he was told by a villager from Gausir that Mr Abd-Al-Rahman was one of the main Militia/*Janjaweed* leaders.⁶⁰ The Prosecution does not seek to introduce these paragraphs of P-0867's prior recorded testimony into evidence.

25. With the exception of these paragraphs, the reminder of P-0867's statement goes to proof of matters other than the acts and conduct of the accused as required by rule 68(2)(b) of the Rules.

(iv) Prior Recorded Testimony of P-0927

26. The Prosecution seeks to submit into evidence P-0927's prior recorded testimony listed in Annex A (A4) to this Application. P-0927's prior recorded testimony comprises a single witness statement and two photographs that were used and explained by the witness in his statement and relate to information and events discussed therein.

27. P-0927, a Fur civilian, provides direct eyewitness testimony on the attack on Bindisi and surrounding area during the charged period,⁶¹ as well as the crimes committed by Militia/*Janjaweed* and GoS Forces during the attack, including murder,⁶² pillaging,⁶³ destruction of property, especially those belonging to the Fur,⁶⁴ persecution⁶⁵ and rape.⁶⁶ In addition, P-0927 provides evidence in relation to civilians from neighbouring villages of Bindisi fleeing to Bindisi on 15 August 2003.⁶⁷

⁶⁰ [REDACTED].

⁶¹ [REDACTED].

⁶² [REDACTED].

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [REDACTED].

P-0927's prior recorded testimony is relevant to, *inter alia*, persecution,⁶⁸ pillaging,⁶⁹ destruction of property,⁷⁰ rape,⁷¹ and forcible displacement.⁷²

28. P-0927's associated material consists of two photographs of scars he sustained [REDACTED] during the attack on Bindisi and surrounding areas.⁷³

The Prosecution does not request the introduction into evidence of the paragraphs identified below in the prior recorded testimony of P-0927

29. P-0927 provides evidence in relation to Mr Abd-Al-Rahman in paragraphs 45 to 48 of his prior recorded testimony.⁷⁴ The Prosecution does not seek to introduce those paragraphs of P-0927's prior recorded testimony into evidence as they relate to uncharged events.

30. With the exception of these paragraphs, the remainder of P-0927's statement goes to proof of matters other than the acts and conduct of the accused as required by rule 68(2)(b) of the Rules.

B. The Prior Recorded Testimonies are admissible under rule 68(2)(b)

31. The Prior Recorded Testimonies that the Prosecution seeks to introduce into evidence, pursuant to rule 68(2)(b) of the Rules are relevant, reliable and probative.⁷⁵

32. The Four Witnesses have signed their Prior Recorded Testimonies, attesting that their testimony was read back to them, was given voluntarily and its content is true to the best of their recollection of the events.⁷⁶ These Prior Recorded Testimonies also bear the interpreters' signature and certification certifying that each witness

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ *Gbagbo & Blé Goudé*, Public Redacted version of Decision on the "Prosecution's consolidated application to conditionally admit the prior recorded statements and related documents...", 6 June 2017, TC I, [ICC-02/11-01/15-950-Red](#), para. 22.

⁷⁶ [REDACTED].

appeared to have heard and understood the translation.⁷⁷ The prior recorded testimonies of all Four Witnesses are internally consistent.⁷⁸ Accordingly, the Prior Recorded Testimonies have the necessary indicia of reliability, for introduction into evidence.

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

33. The Prior Recorded Testimonies of the Four Witnesses on the charged crimes and the contextual elements of crimes against humanity are cumulative in nature and are corroborative of other evidence,⁷⁹ as described in below paragraphs.

34. P-0756's⁸⁰ and P-0867's⁸¹ evidence on the contextual elements of crimes against humanity is corroborative of, and cumulative to, the evidence to be provided by other prosecution witnesses, in particular, witnesses [REDACTED],⁸² [REDACTED],⁸³ [REDACTED],⁸⁴ [REDACTED],⁸⁵ [REDACTED],⁸⁶ and [REDACTED].⁸⁷

35. P-0867's evidence on the contextual elements of sexual crimes committed in neighbouring villages of Kodoom and Bindisi during the charged period⁸⁸ is corroborative of, and cumulative to, the evidence to be provided by other prosecution

⁷⁷ [REDACTED].

⁷⁸ *Ntaganda* Public redacted version of Decision on Prosecution application for admission of prior recorded testimony of Witnesses P-0020, P-0057 and P-0932 under Rule 68(2)(b), 18 January 2017, TC VI, [ICC-01/04-02/06-1730-Red](#), para. 13. *Ongwen* Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, TC IX, [ICC-02/04-01/15-596-Red](#), paras. 17-19. *Gbagbo & Blé Goudé* Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled "Decision on the Prosecutor's application to introduce prior recorded testimony under Rule 68(2)(b) and 68(3)", 1 November 2016, Appeals, [ICC-02/11-01/15-744 OA 8](#), para. 3.

⁷⁹ See *Bemba* Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence", 3 May 2011, Appeal Chamber, [ICC-01/05-01/08-1386](#), para. 78.

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² [REDACTED].

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [REDACTED].

⁸⁶ [REDACTED].

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

witnesses, in particular, witnesses [REDACTED],⁸⁹ [REDACTED],⁹⁰ [REDACTED],⁹¹ [REDACTED]⁹² and [REDACTED].⁹³

36. P-0756's evidence on murder in Mukjar and surrounding areas is corroborative of, and cumulative to, the evidence to be provided by other prosecution witnesses, in particular, witnesses [REDACTED],⁹⁴ [REDACTED],⁹⁵ [REDACTED],⁹⁶ [REDACTED],⁹⁷ [REDACTED],⁹⁸ [REDACTED],⁹⁹ [REDACTED],¹⁰⁰ and [REDACTED].¹⁰¹

37. P-0816's evidence on murder in Bindisi and surrounding areas is corroborative of, and cumulative to, the evidence to be provided by other prosecution witnesses, in particular, witnesses [REDACTED],¹⁰² [REDACTED],¹⁰³ [REDACTED],¹⁰⁴ [REDACTED],¹⁰⁵ [REDACTED],¹⁰⁶ [REDACTED],¹⁰⁷ and [REDACTED].¹⁰⁸

38. P-0816's and P-0927's evidence on pillaging in Bindisi and surrounding areas is corroborative of, and cumulative to, the evidence to be provided by other prosecution witnesses, in particular, witnesses [REDACTED],¹⁰⁹ [REDACTED],¹¹⁰ [REDACTED],¹¹¹

⁸⁹ [REDACTED].

⁹⁰ [REDACTED].

⁹¹ [REDACTED].

⁹² [REDACTED].

⁹³ ⁹³ [REDACTED].

⁹⁴ [REDACTED].

⁹⁵ [REDACTED].

⁹⁶ [REDACTED].

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² [REDACTED].

¹⁰³ [REDACTED].

¹⁰⁴ [REDACTED].

¹⁰⁵ [REDACTED].

¹⁰⁶ [REDACTED].

¹⁰⁷ [REDACTED].

¹⁰⁸ [REDACTED].

¹⁰⁹ [REDACTED].

¹¹⁰ [REDACTED].

¹¹¹ [REDACTED].

[REDACTED],¹¹² [REDACTED],¹¹³ [REDACTED],¹¹⁴ [REDACTED],¹¹⁵ and [REDACTED].¹¹⁶

39. P-0816's and P-0927's evidence on destruction of property in Bindisi and surrounding areas is corroborative of, and cumulative to, the evidence to be provided by other prosecution witnesses, in particular, witnesses [REDACTED],¹¹⁷ [REDACTED],¹¹⁸ [REDACTED],¹¹⁹ [REDACTED],¹²⁰ [REDACTED],¹²¹ [REDACTED],¹²² [REDACTED],¹²³ and [REDACTED].¹²⁴

40. P-0816 and P-0927's evidence on forcible displacement from Bindisi and surrounding areas is corroborative of, and cumulative to, the evidence to be provided by, in particular, witnesses [REDACTED],¹²⁵ [REDACTED],¹²⁶ [REDACTED],¹²⁷ [REDACTED],¹²⁸ [REDACTED],¹²⁹ [REDACTED],¹³⁰ [REDACTED],¹³¹ [REDACTED].¹³²

41. P-0927's evidence on rapes in Bindisi and surrounding areas is corroborative of, and cumulative to, the evidence to be provided by other prosecution witnesses, in

¹¹² [REDACTED].

¹¹³ [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

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].

particular, witnesses [REDACTED],¹³³ [REDACTED],¹³⁴ [REDACTED],¹³⁵ [REDACTED],¹³⁶ [REDACTED],¹³⁷ [REDACTED],¹³⁸ and [REDACTED].¹³⁹

D. The introduction of the Prior Recorded Testimonies of the Four Witnesses is not prejudicial to or inconsistent with the rights of the Accused

42. The Defence has been consulted on the Prosecution's application for the admission into evidence of the Prior Recorded Testimonies of the Four Witnesses, pursuant to rule 68(2)(b) and opposed it.¹⁴⁰

43. Nonetheless, the introduction of the Prior Recorded Testimonies of the Four Witnesses into evidence would not be prejudicial to or inconsistent with the rights of Mr Abd-Al-Rahman, given the limited nature of the testimony of each witness on issues relating to the crime base and the contextual elements of crimes against humanity. In addition the contextual elements of crimes against humanity are not materially in dispute between the parties.¹⁴¹ Furthermore, the Defence retains the possibility to cross-examine other *viva voce* witnesses on the basis of information contained in the Prior Recorded Testimony of these witnesses, lead contradictory evidence during the Defence case, or - to the extent that discrepancies exist with any other evidence - advance arguments on the weight to be attributed to the prior recorded testimonies.

E. Request to designate the Legal Counsel of the Registry or any appropriate person delegated by him to witness the declarations required under rule 68(2)(b)(ii) and (iii)

¹³³ [REDACTED].

¹³⁴ [REDACTED].

¹³⁵ [REDACTED].

¹³⁶ [REDACTED].

¹³⁷ [REDACTED].

¹³⁸ [REDACTED].

¹³⁹ [REDACTED].

¹⁴⁰ See Emails from the Defence, "RE: Provisional list of Rule 68 witnesses," 13 December 2021 11:34 and 19 January 2022 13:35.

¹⁴¹ *Ongwen* [rule 68\(2\)\(b\) decision](#), para. 15; *Bemba*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled "Decision on the admission into evidence of materials contained in the prosecution's list of evidence", AC, 3 May 2011, [ICC-01/05-01/08-1386 OA 5 OA 6](#), para. 78.

and to authorize remote certifications due to the current challenges imposed by the ongoing COVID-19 pandemic

44. Prior recorded testimony may only be introduced under rule 68(2)(b) if the testifying person declares that it is true and correct through the formalities specified in sub-rules (ii) and (iii). Should this application be granted, the Prosecution requests that the Chamber designate Registry Legal Counsel, or any appropriate person delegated by him, as the person authorised to witness declarations required pursuant to rule 68(2)(b)(ii) and (iii) for the purpose of this case, and authorize remote certifications due to the current challenges imposed by the ongoing COVID-19 pandemic.¹⁴²

V. CONCLUSION

45. For the foregoing reasons, the Prosecution requests that the Chamber grant the Application subject to the fulfilment of the further conditions of rule 68(2)(b) of the Rules.



Karim A. A. Khan QC
Prosecutor

Dated this 7th day of February 2022

At The Hague, The Netherlands

¹⁴² *Al Hassan*, Public redacted version of the Decision on the introduction of P-0598's evidence pursuant to Rule 68(2)(b) of the Rules, TC X, [ICC-01/12-01/18-1111-Red](#), 29 October 2020, para. 18.