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

Date: **16 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 eighth application under rule 68(3) to introduce into evidence prior recorded testimony of five witnesses”, 14 March 2022, ICC-02/05-01/20-627-Conf

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The Office of the Prosecutor

Mr Karim A. A. Khan QC
Ms Nazhat Shameem Khan
Mr Julian Nicholls

Counsel for the Defence

Mr Cyril Laucci
Mr Iain Edwards

Legal Representatives of the Victims

Ms Natalie von Wistinghausen
Mr Nasser Mohamed Amin Abdalla

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. Pursuant to articles 64(2), 67(1)(c), 69(2) and (4) of the Rome Statute, and rule 68(1) and (3) of the Rules of Procedure and Evidence, the Prosecution requests Trial Chamber I (“Chamber”) to (i) introduce into evidence the statements and associated material (“Prior Recorded Testimonies”)¹ of witnesses P-0092, P-0591, P-0714, P-0935 and P-0955 (“Five Witnesses”), and (ii) grant one hour for the supplementary examination of each of the Five Witnesses (“Application”).²

2. The Prior Recorded Testimonies of the Five Witnesses relate primarily to the charged crimes in Deleig and surrounding areas (Counts 22 to 31),³ and are relevant, reliable and probative.

3. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of the in-court testimony of the Five Witnesses from 20.5 hours to five hours, thus saving approximately 15.5 hours of in-court time.

4. Furthermore, the introduction into evidence of the Prior Recorded Testimonies would not be prejudicial to or inconsistent with the rights of the Accused since the Five Witnesses will be available for examination by the Defence and the Chamber.

II. CLASSIFICATION

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

¹ 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, without which the testimony would not be understandable, but which the Prosecution does not seek to introduce into evidence, is also included (at III). Hyperlinks to this material are also included. See Conduct of Proceedings Directions, [ICC-02/05-01/20-478](#), para. 47.

² This Application is submitted in accordance with the [Conduct of Proceedings Directions](#), paras. 46-48. See also Transcript of hearing on 12 November 2021, [ICC-02/05-01/20-T-017-CONF-ENG](#), p. 28, l. 21-p. 29, l. 14.

³ See Confirmation Decision, [ICC-02/05-01/20-433-Corr](#), paras. 106-114 and p. 63-67, 69-70.

III. SUBMISSIONS

6. The Prosecution relies on its previous submissions in relation to the legal framework for the introduction into evidence of prior recorded testimony under rule 68(3) of the Rules, as set out in its first rule 68(3) application.⁴

7. The Prosecution seeks one hour to conduct a focussed supplementary examination in relation to each of the Five Witnesses. This time estimate is consistent with the prior jurisprudence of the Court.⁵

8. Should the request to conduct a supplementary examination be granted, the Prosecution would elicit further focussed *viva voce* evidence on certain issues that require clarification or elaboration, as indicated below. The Prosecution will ensure that the Five Witnesses are not asked to merely repeat information already provided in their Prior Recorded Testimonies.

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

9. As noted above, the Prior Recorded Testimonies of the Five Witnesses relate primarily to the charged crimes in Deleig and surrounding areas, between about 5 and about 7 March 2004 (Counts 22 to 31).⁶ The Five Witnesses are direct eye-witnesses to the Deleig incident and/or related events.⁷ The specific relevance of the evidence provided by the Five Witnesses to the case is summarised in this section.

⁴ First Rule 68(3) Application, [ICC-02/05-01/20-547-Conf](#), paras. 7-10. See also First Rule 68(3) Decision, [ICC-02/05-01/20-559-Red](#), paras. 7-17.

⁵ *Lubanga* Prior Recorded Statements Decision, [ICC-01/04-01/06-1603](#), para. 25; *Lubanga* Hearing Transcript, [ICC-01/04-01/06-T-205-Red3-ENG](#), p. 19, l. 11 *et seq*; *Katanga* Prior Recorded Testimony Decision, [ICC-01/04-01/07-2233-Corr](#), paras. 16-17; *Ntaganda* Hearing Transcript, [ICC-01/04-02/06-T-110-Red2-ENG](#), p. 34, l. 8-13; *Gbabgo & Blé Goude* Annex A to Decision Adopting Amended and Supplemented Conduct of Proceedings Directions, [ICC-02/11-01/15-498-AnxA](#), para. 40.

⁶ Given the interconnected nature of the facts and circumstances relevant to establishing the Deleig incident, the Prosecution has not indicated the relevance of the Five Witnesses by reference to specific counts.

⁷ [REDACTED].

(i) *Prior recorded testimony of P-0092*

10. P-0092, a Fur male who lived in Garsila, provides evidence about the tribal administrative structure in Garsila,⁸ the Government of Sudan (“GoS”) forces (“GoS Forces”)⁹ present in Garsila,¹⁰ and Ja’afar Abd-Al-Hakam’s (“Abd-Al-Hakam”) background and position as Commissioner of Garsila in the Wadi Salih locality.¹¹ P-0092 provides a physical description of Mr Abd-Al-Rahman, and refers to his leadership position in the Militia/*Janjaweed*.¹² P-0092 provides evidence about the GoS distributing weapons to Arab and Tama tribes at the Sudanese Armed Forces (“SAF”) base in Garsila in August 2003 before the Bindisi attack, in the presence of Mr Abd-Al-Rahman,¹³ and the refusal to arm Fur men.¹⁴

11. P-0092 provides evidence about Mr Abd-Al-Rahman’s collaboration with Abd-Al-Hakam in the recruitment of, and supply of weapons and other equipment to, Militia/*Janjaweed*.¹⁵ P-0092 also heard that Mr Abd-Al-Rahman was present during the Bindisi attack.¹⁶ P-0092 was present at a public meeting in Amar in 2003 at which Mr Abd-Al-Rahman, Abd-Al-Hakam and others spoke.¹⁷ P-0092 also states that, following the attacks on several villages near Arawala in December 2003, Mr Abd-Al-Rahman made a speech in Amar in which he said that he and his men had fought the rebels.¹⁸

⁸ P-0092, DAR-OTP-0112-0175 at 0179-1081, paras. 13-25.

⁹ The term GoS Forces includes the Sudanese Armed Forces (“SAF”), Popular Defence Forces (“PDF”), Central Reserve Forces (“CRF”), Popular Police Forces (“PPF”) and the Sudanese Police (“Police”).

¹⁰ P-0092, DAR-OTP-0112-0175 at 0181-0183, paras. 26-35.

¹¹ P-0092, DAR-OTP-0112-0175 at 0179-0181, paras. 17-25.

¹² P-0092, DAR-OTP-0112-0175 at 0178, para. 12 and 0183, para. 36 and 0186-0187, paras. 51-53 and 0189, para. 63.

¹³ P-0092, DAR-OTP-0112-0175 at 0183-0184, paras. 37-40 and 0189, para. 63.

¹⁴ P-0092, DAR-OTP-0112-0175 at 0184-0186, paras. 41-49.

¹⁵ P-0092, DAR-OTP-0112-0175 at 0189, para. 62 and 0200, para. 105.

¹⁶ P-0092, DAR-OTP-0112-0175 at 0187, para. 55.

¹⁷ P-0092, DAR-OTP-0112-0175 at 0188-0190, paras. 58-67.

¹⁸ P-0092, DAR-OTP-0112-0175 at 0192-0193, paras. 73-79.

12. P-0092 describes how Mr Abd-Al-Rahman [REDACTED],¹⁹ [REDACTED].²⁰ P-0092 was [REDACTED] and reports that 170 detainees were loaded onto vehicles.²¹ P-0092 states that [REDACTED].²² He recounts that [REDACTED].²³ He also provides information about [REDACTED].²⁴

13. P-0092's prior recorded testimony²⁵ comprises one statement,²⁶ and associated material consisting of: (i) a letter, dated 4 April 2004, received by the witness from his uncle.²⁷

The Prosecution requests one hour for its limited supplementary examination of P-0092

14. The Prosecution seeks one hour to ask further questions of P-0092 on topics including: (i) Mr Abd-Al-Rahman's physical description and position as a leader of the Militia/*Janjaweed*; (ii) Mr Abd-Al-Rahman's role in relation to P-0092's [REDACTED]; (iii) the detention of males in Deleig, their loading onto vehicles, [REDACTED], and the killing of detainees outside Deleig; (iv) information P-0092 received from [REDACTED]; and (v) Mr Abd-Al-Rahman's involvement in the distribution of weapons to Militia/*Janjaweed*, and his collaboration with the GoS, especially Abd-Al-Hakam.

15. If his prior recorded testimony is not introduced under rule 68(3), the Prosecution estimates it would require 4.5 hours for the direct examination of P-0092. The introduction of P-0092's prior recorded testimony under rule 68(3) would thus shorten his in-court testimony by approximately 3.5 hours.

¹⁹ P-0092, DAR-OTP-0112-0175 at 0195-0196, paras. 85-86.

²⁰ P-0092, DAR-OTP-0112-0175 at 0196, para. 87.

²¹ P-0092, DAR-OTP-0112-0175 at 0196-0197, paras. 88-93.

²² P-0092, DAR-OTP-0112-0175 at 0197, para. 90.

²³ P-0092, DAR-OTP-0112-0175 at 0196-0197, paras. 89-92.

²⁴ P-0092, DAR-OTP-0112-0175 at 0197, para. 93.

²⁵ Annex A1, p. 1.

²⁶ DAR-OTP-0112-0175.

²⁷ DAR-OTP-0112-0204 (Translation DAR-OTP-0153-0329); DAR-OTP-0112-0205 (Translation DAR-OTP-0153-0331). The letter is registered in two parts.

(ii) *Prior recorded testimony of P-0591*

16. P-0591, a Fur civilian from [REDACTED], provides direct evidence on Mr Abd-Al-Rahman's speech in Waro in May 2003, during which he told a crowd of Militia/*Janjaweed* to "own these villages" and kill anybody who resisted.²⁸ Following Mr Abd-Al-Rahman's speech, the Militia/*Janjaweed* looted animals,²⁹ seized the farms,³⁰ and encircled the village of Waro for about 9 to 10 days,³¹ during which Fur men older than 18 were also required to register themselves with the Militia/*Janjaweed* and the Police.³²

17. P-0591 also provides direct evidence on the Deleig operation between about 5 and about 7 March 2004. P-0591 recounts that on Friday, 5 March 2004, the Militia/*Janjaweed* conducted house searches and arrested Fur males,³³ including those displaced to Deleig.³⁴ P-0591 saw at least 100 detainees being brought to the Deleig police station where they were physically and verbally mistreated for two days by the Militia/*Janjaweed* and Popular Defence Forces ("PDF") soldiers,³⁵ in the presence and under the authority of Mr Abd-Al-Rahman.³⁶ P-0591 witnessed Mr Abd-Al-Rahman beating detainees, including by using the back of an axe, near the Deleig police station.³⁷ On or about Sunday, 7 March 2004, P-0591 saw the detainees being loaded onto vehicles by PDF soldiers, in the presence of Mr Abd-Al-Rahman, and then driven towards Garsila and Zalingei.³⁸ After the vehicles had left, P-0591 heard heavy shooting coming from the direction of Arawala and later saw the vehicles return empty to the Deleig police station, where they were re-loaded with detainees before

²⁸ P-0591, DAR-OTP-0202-0026 at 0035-0036, paras. 34-35.

²⁹ P-0591, DAR-OTP-0202-0026 at 0036-0037, paras. 36, 39.

³⁰ P-0591, DAR-OTP-0202-0026 at 0036, para. 36.

³¹ P-0591, DAR-OTP-0202-0026 at 0037, paras. 39-41.

³² P-0591, DAR-OTP-0202-0026 at 0038, paras. 42-43.

³³ P-0591, DAR-OTP-0202-0026 at 0043, para. 62.

³⁴ P-0591, DAR-OTP-0202-0026 at 0044, paras. 64-65.

³⁵ P-0591, DAR-OTP-0202-0026 at 0044-0045, paras. 68-85.

³⁶ P-0591, DAR-OTP-0202-0036 at 0045, para. 69.

³⁷ P-0591, DAR-OTP-0202-0036 at 0049, para. 86.

³⁸ P-0591, DAR-OTP-0202-0026 at 0050-0051, paras. 91-92.

leaving again.³⁹ P-0591 states that the whole operation lasted at least two hours.⁴⁰ P-0591 was later told that the Fur men loaded onto the vehicles had been killed.⁴¹

18. P-0591's also provides evidence about Mr Abd-Al-Rahman's physical description and personal background,⁴² and his position of authority as a Militia/*Janjaweed* leader.⁴³

19. P-0591's prior recorded testimony⁴⁴ comprises one statement,⁴⁵ and associated material consisting of: (i) a sketch drawn by P-0591 of Deleig showing relevant locations.⁴⁶

The Prosecution requests one hour for its limited supplementary examination of P-0591

20. The Prosecution seeks one hour to ask further questions of P-0591 on topics including: (i) the identity and background of Mr Abd-Al-Rahman; (ii) Mr Abd-Al-Rahman's presence and role during the Deleig incident in March 2004; (iii) the house searches and arrests of Fur males; and (iv) the detention and mistreatment of Fur males outside the Deleig police station, and their loading onto vehicles.

21. If his prior recorded testimony is not introduced under rule 68(3), the Prosecution estimates it would require 3.5 hours for the direct examination of P-0591. The introduction of P-0591's prior recorded testimony under rule 68(3) would thus shorten his in-court testimony by approximately 2.5 hours.

³⁹ P-0591, DAR-OTP-0202-0026 at 0051, paras. 93-95.

⁴⁰ P-0591, DAR-OTP-0202-0026 at 0051-0052, para. 96.

⁴¹ P-0591, DAR-OTP-0202-0026 at 0053, para. 101.

⁴² P-0591, DAR-OTP-0202-0026 at 0034, paras. 28-30.

⁴³ P-0591, DAR-OTP-0202-0026 at 0035, para. 34 and 0039, para. 46 and 0045-0046 paras. 69, 71 and 0049, para. 86.

⁴⁴ Annex A2, p. 2.

⁴⁵ DAR-OTP-0202-0026.

⁴⁶ DAR-OTP-0202-0064 (Translation at DAR-OTP-0219-1678).

(iii) *Prior recorded testimony of P-0714*

22. P-0714, a Fur civilian, provides evidence on the attacks on Taringa by GoS Forces and the Militia/*Janjaweed* in November 2003,⁴⁷ and their mobilisation in Garsila around December 2003.⁴⁸ P-0714 describes the displacement of a large number of civilians, [REDACTED], to Deleig.⁴⁹ P-0714 refers to Abd-Al-Hakam arriving in Deleig in around January 2004, where he addressed the crowd and advised them to remain in Deleig.⁵⁰

23. P-0714 states that the GoS Forces and Militia/*Janjaweed* surrounded Deleig on or about 5 March 2004, and searched for and arrested males displaced to Deleig,⁵¹ who were then detained and mistreated outside the Deleig police station.⁵² P-0714 recounts how vehicles loaded with detainees drove out of Deleig and returned empty.⁵³ P-0714 gives evidence about Mr Abd-Al-Rahman's indicia of authority,⁵⁴ and presence and participation in the Deleig operation,⁵⁵ including the arrest and mistreatment of Adam Abd-Al-Rahman ("Jenif"), the PDF coordinator in Garsila.⁵⁶ P-0714 also provides evidence about the presence of Lieutenant Hamdi Sharaf-Al-Din Sid Ahmad ("Hamdi") in Deleig.⁵⁷ P-0714 was told by an execution survivor about the detention and execution of *Umdah* Jiddo Khamis and *Umdah* Adam Adam Deguis (nickname Kindiri),⁵⁸ and other Deleig detainees⁵⁹ between about 5 and about 7 March 2004.

⁴⁷ P-0714, DAR-OTP-0209-1916 at 1919-1920, para. 15.

⁴⁸ P-0714, DAR-OTP-0209-1916 at 1921-1922, paras. 19-22.

⁴⁹ P-0714, DAR-OTP-0209-1916 at 1927, para. 40.

⁵⁰ P-0714, DAR-OTP-0209-1916 at 1927, para. 41.

⁵¹ P-0714, DAR-OTP-0209-1916 at 1929, paras. 45-46 and 1931, paras. 53-54.

⁵² P-0714, DAR-OTP-0209-1916 at 1932, paras. 57-58.

⁵³ P-0714, DAR-OTP-0209-1916 at 1936-1937, paras. 70-74.

⁵⁴ P-0714, DAR-OTP-0209-1916 at 1933-1934, para. 64.

⁵⁵ P-0714, DAR-OTP-0209-1916 at 1935-1936, paras. 69-70.

⁵⁶ P-0714, DAR-OTP-0209-1916 at 1932-1934, paras. 60-65.

⁵⁷ P-0714, DAR-OTP-0209-1916 at 1936-1937, para. 73.

⁵⁸ P-0714, DAR-OTP-0209-1916 at 1940, para. 83.

⁵⁹ P-0714, DAR-OTP-0209-1916 at 1939, para. 80.

Finally, P-0714 describes [REDACTED],⁶⁰ as well as his discovery of dead bodies in an area near Koska mountains to the south of Deleig, following the Deleig executions.⁶¹

24. P-0714's prior recorded testimony⁶² comprises one statement,⁶³ and associated material consisting of: (i) a witness colour chart used by P-0714 to identify the colour of the uniform worn by the Police and Mr Abd-Al-Rahman in Deleig;⁶⁴ (ii) a sketch drawn by P-0714 to illustrate some of the locations mentioned in the statement;⁶⁵ and (iii) three satellite images used by P-0714 to identify locations mentioned in the statement.⁶⁶

The Prosecution requests one hour for its limited supplementary examination of P-0714

25. The Prosecution seeks one hour to ask further questions of P-0714 on topics including: (i) the search, arrest and execution of males in Deleig; (ii) Mr Abd-Al-Rahman's presence and role during the Deleig incident; (iii) his discovery of bodies outside of Deleig; and (iv) any lasting medical issues experienced by P-0714 as a result of the events described in his statement.

26. If his prior recorded testimony is not introduced under rule 68(3), the Prosecution estimates it would require 4.5 hours for the direct examination of P-0714. The introduction of P-0714's prior recorded testimony under rule 68(3) would thus shorten his in-court testimony by approximately 3.5 hours.

⁶⁰ P-0714, DAR-OTP-0209-1916 at 1937-1938, paras. 75-78.

⁶¹ P-0714, DAR-OTP-0209-1916 at 1940, para. 84.

⁶² Annex A3, p. 3-4.

⁶³ DAR-OTP-0209-1916.

⁶⁴ DAR-OTP-0209-1947.

⁶⁵ DAR-OTP-0209-1949 (Translation at DAR-OTP-0219-9120).

⁶⁶ DAR-OTP-0209-1951 (containing one satellite image); DAR-OTP-0209-1953 (containing two satellite images).

(iv) *Prior recorded testimony of P-0935*⁶⁷

27. P-0935, [REDACTED],⁶⁸ provides evidence on the leadership and command structure at the SAF military base in Garsila,⁶⁹ and the close relationship between members of the SAF and Mr Abd-Al-Rahman, who was the leader of the Militia/*Janjaweed*.⁷⁰ P-0935 states that between 2003 and 2004, a high-level delegation, including Abdel Raheem Muhammad Hussein, visited the Garsila SAF base.⁷¹ Subsequently, military supplies were delivered to the base, including weapons⁷² and military vehicles equipped with machine guns (*dushka*),⁷³ some of which were provided to Mr Abd-Al-Rahman⁷⁴ and members of the Militia/*Janjaweed*.⁷⁵ P-0935 further states that the SAF and Militia/*Janjaweed* under Mr Abd-Al-Rahman's command launched attacks on rebel armed groups to the east and west of Garsila in 2004,⁷⁶ during which they looted villagers' belongings and livestock.⁷⁷

28. P-0935 also provides evidence on the deployment of SAF soldiers to Deleig⁷⁸ and Mr Abd-Al-Rahman's transfer of detainees from the Garsila SAF base to Deleig, where P-0935 later heard from returning soldiers that they were killed by Mr Abd-Al-Rahman and his men.⁷⁹ P-0935 also states that a high-ranking delegation of GoS officials was present at the Garsila SAF base during the Deleig operation, and [REDACTED].⁸⁰ P-0935 also provides evidence on the identity and background of Mr

⁶⁷ The Prosecution initially intended to call P-0935 to give his evidence *viva voce*, however, upon further assessment considers that his evidence is suitable to be adduced pursuant to rule 68(3) of the Rules. See [ICC-02/05-01/20-580-Red](#), para. 99, fn. 269.

⁶⁸ P-0935, DAR-OTP-0218-0705 at 0707, para. 13.

⁶⁹ P-0935, DAR-OTP-0218-0705 at 0708-0709, paras. 16-17.

⁷⁰ P-0935, DAR-OTP-0218-0705 at 0708-0709, paras. 17, 19 and 0717, paras. 53-54.

⁷¹ P-0935, DAR-OTP-0218-0705 at 0709-0710, para. 21.

⁷² P-0935, DAR-OTP-0218-0705 at 0710, para. 22.

⁷³ P-0935, DAR-OTP-0218-0705 at 0710, para. 23.

⁷⁴ P-0935, DAR-OTP-0218-0705 at 0710-0711, para. 24.

⁷⁵ P-0935, DAR-OTP-0218-0705 at 0711, para. 25.

⁷⁶ P-0935, DAR-OTP-0218-0705 at 0713-0715, paras. 32-44.

⁷⁷ P-0935, DAR-OTP-0218-0705 at 0715, para. 45.

⁷⁸ P-0935, DAR-OTP-0218-0705 at 0718-0719, paras. 56-57, 60-61.

⁷⁹ P-0935, DAR-OTP-0218-0705 at 0718-0719, paras. 58-60, 63.

⁸⁰ P-0935, DAR-OTP-0218-0705 at 0719-0720, paras. 65-69.

Abd-Al-Rahman,⁸¹ and his use of the Garsila SAF base to detain prisoners who were mostly Fur.⁸²

29. P-0935's prior recorded testimony⁸³ comprises one statement,⁸⁴ and associated material consisting of: (i) a sketch drawn by P-0935 of the Garsila SAF base showing several locations relevant to his account.⁸⁵

The Prosecution requests one hour for its limited supplementary examination of P-0935

30. The Prosecution seeks one hour to ask further questions of P-0935 on topics including: (i) the identity and background of Mr Abd-Al-Rahman, his position of authority, and his cooperation with GoS officials; (ii) the arrest and detention of Fur males at the Garsila SAF base, and the transfer of detainees by Mr Abd-Al-Rahman to Deleig; and (iii) the presence of a high-ranking GoS delegation at the Garsila SAF base during the Deleig operation, and [REDACTED].

31. If his prior recorded testimony is not introduced under rule 68(3), the Prosecution estimates that it would require 4.5 hours for the direct examination of P-0935. The introduction of P-0935's prior recorded testimony under rule 68(3) would thus shorten his in-court testimony by approximately 3.5 hours.

(v) Prior recorded testimony of P-0955

32. P-0955, a Fur male from [REDACTED], provides evidence on the attacks on Arawala and Forgo by the Militia/*Janjaweed* and GoS Forces in December 2003.⁸⁶ Due to the attack on Forgo, [REDACTED].⁸⁷ P-0955 recounts that on or about 5 March 2004, Militia/*Janjaweed* and GoS Forces surrounded Deleig and conducted house searches

⁸¹ P-0935, DAR-OTP-0218-0705 at 0716-0717, paras. 51-52.

⁸² P-0935, DAR-OTP-0218-0705 at 0721-0722, para. 73.

⁸³ Annex A4, p. 5.

⁸⁴ DAR-OTP-0218-0705.

⁸⁵ DAR-OTP-0218-0725.

⁸⁶ P-0955, DAR-OTP-0220-0620 at 0624-0627, paras. 15-16, 18-27 and 0634, para. 57.

⁸⁷ P-0955, DAR-OTP-0220-0620 at 0627, para. 27.

targeting displaced persons.⁸⁸ P-0955 saw Mr Abd-Al-Rahman arrest and mistreat [REDACTED], *Umdah* Adam Kindiri, [REDACTED] in Deleig.⁸⁹ P-0955's [REDACTED] was driven towards the Deleig police station,⁹⁰ and P-0955 later saw him at the Deleig market detained in the same Land Cruiser vehicle together with *Umdah* Jiddo Khamis.⁹¹ Shortly after, P-0955 saw the Land Cruiser vehicle move in the direction of Garsila.⁹²

33. P-0955 recounts seeing about 200 detainees being mistreated at the Deleig police station, in the presence of the Militia/*Janjaweed* and GoS Forces, before being loaded onto vehicles and driven in the direction of Garsila.⁹³ P-0955 saw the same vehicles return empty, load other detainees, and drive away in the same direction.⁹⁴ P-0955 affirms the operation was repeated multiple times.⁹⁵ P-0955 later heard that [REDACTED] and *Umdah* Jiddo Khamis had been detained inside the Deleig police station,⁹⁶ and that their corpses were discovered in Fere to the west of Deleig, together with the bodies of other *umdahs*, including *Umdah* Mohamed Suleiman Abdulshafa (nickname Dirbo), *Sheikh* Ismail Abdulaziz (nickname Dikobi), and Hassan Adam Musa.⁹⁷ P-0955 also states that, on or about 8 March 2004, after P-0955 [REDACTED], Mr Abd-Al-Rahman and two soldiers entered and searched the house where P-0955 was staying in [REDACTED].⁹⁸ P-0955 also provides evidence in relation to Mr Abd-Al-Rahman's identity and background.⁹⁹

⁸⁸ P-0955, DAR-OTP-0220-0620 at 0628, paras. 32-33.

⁸⁹ P-0955, DAR-OTP-0220-0260 at 0628, paras. 34-38.

⁹⁰ P-0995, DAR-OTP-0220-0620 at 0628, para. 37.

⁹¹ P-0955 DAR-OTP-0220-0620 at 0628-0629, paras. 40-42.

⁹² P-0955, DAR-OTP-0220-0620 at 0629, para. 43.

⁹³ P-0955, DAR-OTP-0220-0620 at 0630, paras. 45-46.

⁹⁴ P-0955, DAR-OTP-0220-0620 at 0630, para. 46.

⁹⁵ P-0955, DAR-OTP-0220-0620 at 0630, para. 46.

⁹⁶ P-0955, DAR-OTP-0220-0620 at 0630, para. 47.

⁹⁷ P-0955, DAR-OTP-0220-0620 at 0630-0631, paras. 48-49.

⁹⁸ P-0955, DAR-OTP-0220-0620 at 0632-0633, paras. 51-52.

⁹⁹ P-0955, DAR-OTP-0220-0620 at 0629, para. 38 and 0633, para. 53.

34. P-0955's prior recorded testimony¹⁰⁰ comprises one statement,¹⁰¹ and associated material consisting of: (i) a list of P-0955's family members;¹⁰² (ii) a witness colour chart which P-0955 used to indicate the colour of the vehicles that he saw in Deleig;¹⁰³ (iii) a headdress board which P-0955 used to indicate the type of headdresses worn by Militia/*Janjaweed* and GoS Forces during the Deleig operation;¹⁰⁴ (iv) a map sketched by P-0955 depicting the mountain chain where corpses of Deleig execution victims were found; and (v) an interpreter certification relating to the remote interview.¹⁰⁵

The Prosecution requests one hour for its limited supplementary examination of P-0955

35. The Prosecution seeks one hour to ask further questions of P-0955 on topics including: (i) Mr Abd-Al-Rahman's presence and role during the Deleig incident; (ii) the house searches and arrests of displaced persons, including [REDACTED]; (iii) the detention and mistreatment of males near the Deleig police station, and their loading onto vehicles; and (iv) the detention and subsequent killing of a group of community leaders outside of Deleig, including [REDACTED].

36. If his prior recorded testimony is not introduced under rule 68(3), the Prosecution estimates it would require 3.5 hours for the direct examination of P-0955. The introduction of P-0955's prior recorded testimony under rule 68(3) would thus shorten his in-court testimony by approximately 2.5 hours.

¹⁰⁰ Annex A5, p. 6.

¹⁰¹ DAR-OTP-0220-0620.

¹⁰² DAR-OTP-0220-0638.

¹⁰³ DAR-OTP-0220-0640.

¹⁰⁴ DAR-OTP-0220-0642.

¹⁰⁵ DAR-OTP-0220-0644 (Translation at DAR-OTP-0220-0800).

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

37. The Five Witnesses provide evidence with respect to several central aspects relevant to the Deleig incident, which are corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses:

- a. the arrest of civilians in Garsila, including *Sheikh* Ismail Abdulaziz, by Mr Abd-Al-Rahman and his men in 2004;¹⁰⁶
- b. the search of Deleig and arrest of Fur males displaced to Deleig from the surrounding areas, between about 5 and about 7 March 2004;¹⁰⁷
- c. the use of derogatory language towards the Fur during the Deleig operation;¹⁰⁸
- d. the detention and mistreatment of male Fur civilians in the open area near the Deleig police station on or about 5 March 2004;¹⁰⁹
- e. the mistreatment of detainees by Mr Abd-Al-Rahman in the open area near Deleig police station on or about 5 March 2004;¹¹⁰
- f. the loading of detainees onto vehicles, which drove out of Deleig and returned empty, and the repeating of this process multiple times on or about 5 March 2004;¹¹¹

¹⁰⁶ The evidence of P-0092, P-0935 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0643, P-0883, P-0973, P-0987 and P-0994.

¹⁰⁷ The evidence of P-0591, P-0714 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0584, P-0671, P-0718, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹⁰⁸ The evidence of P-0591 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0584, P-0718, P-0905, P-0924, P-0973 and P-0987.

¹⁰⁹ The evidence of P-0092, P-0591, P-0714 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0584, P-0671, P-0718, P-0879, P-0905, P-0907, P-0924, P-0931, P-0973, P-0987 and P-0994.

¹¹⁰ The evidence of P-0591 and P-0714 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0584, P-0671, P-0879, P-0907, P-0924, P-0973 and P-0994.

¹¹¹ The evidence of P-0092, P-0591, P-0714 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0584, P-0879, P-0905, P-0907, P-0924 P-0973, P-0987 and P-0994.

- g. Mr Abd-Al-Rahman's presence during, and supervision of, the process of loading detainees onto vehicles;¹¹²
- h. the survival of several persons who were taken to execution sites, including [REDACTED];¹¹³
- i. the detention of a group of community leaders in Deleig between about 5 and about 7 March 2004;¹¹⁴
- j. the killing of a group of detainees, including several community leaders, in an area near Fere outside of Deleig on or about 7 March 2004;¹²³ and
- k. the arrest and mistreatment of Jenif in Deleig by Mr Abd-Al-Rahman and his men on or about 5 March 2004.¹²⁴

38. Four of the Five Witnesses also provide evidence with respect to the identity and position of Mr Abd-Al-Rahman, which is corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses:

- a. aspects relating to the identity and background of Mr Abd-Al-Rahman, including, in particular, his names, place of residence in Garsila, and ownership of a shop selling medication in Garsila;¹¹⁵ and

¹¹² The evidence of P-0591 and P-0714 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0584, P-0879, P-0905, P-0907, P-0924, P-0973, P-0987 and P-0994.

¹¹³ The evidence of P-0092, P-0714 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0584, P-0907, P-0924 and P-0987.

¹¹⁴ The evidence of P-0714 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0973, P-0987 and P-0994.

¹²³ The evidence of P-0714, P-0935 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0643, P-0671, P-0879, P-0883, P-0907, P-0973, P-0987, P-0924, P-0994 and P-1018.

¹²⁴ The evidence of P-0714 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0879, P-0905, P-0907, P-0987, P-0994 and P-1018.

¹¹⁵ The evidence of P-0092, P-0935 and P-0955 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0012, P-0589, P-0643, P-0769, P-0874, P-0878, P-0879, P-0883, P-0903, P-0905, P-0907, P-0921, P-0932, P-0973, P-0986, P-0987, P-0990 and P-0994.

b. the senior leadership position of Mr Abd-Al-Rahman in the Militia/*Janjaweed*.¹¹⁶

39. In relation to the identity and background of Mr Abd-Al-Rahman, the parties have so far agreed on several biographical facts, including that Mr Abd-Al-Rahman was formerly in the SAF, that upon retiring from the SAF he opened a shop in Garsila near the Agricultural Bank from which he sold medication, and that he lived in Garsila at that time.¹¹⁷ These agreed facts are supported by P-0092,¹¹⁸ P-0591,¹¹⁹ P-0935,¹²⁰ and P-0955.¹²¹

40. In relation to witnesses who provide more extensive evidence regarding the acts and conduct of Mr Abd-Al-Rahman, and his criminal responsibility for the crimes committed in Deleig and surrounding areas, the Prosecution intends to adduce their full testimony *viva voce*.¹²²

41. P-0092 and P-0935 also provide evidence in relation to the recruitment of, and the training, arming, funding and distribution of other resources to, the Militia/*Janjaweed* by the GoS, with the involvement of Mr Abd-Al-Rahman. This evidence is corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses.¹²³

42. Finally, the evidence provided by P-0955 regarding the attack on Arawala is corroborative of, and cumulative to, evidence to be provided by *viva voce* witness P-0905, and the evidence provided by P-0714 regarding the attack on Taringa is

¹¹⁶ The evidence of P-0092, P-0714 and P-0935 is corroborative of, and cumulative to, the evidence of *viva voce* witnesses, including P-0012, P-0029, P-0129, P-0131, P-0589, P-0643, P-0718, P-0874, P-0878, P-0883, P-0885, P-0903, P-0905, P-0907, P-0921, P-0987, P-0994 and P-1021.

¹¹⁷ Annex A to the Third Joint Prosecution and Defence Submission on Agreed facts, [ICC-02/05-01/20-504-AnxA](#), no. 11, 14, 15.

¹¹⁸ P-0092, DAR-OTP-0112-0175 at 0183, para. 36.

¹¹⁹ P-0591, DAR-OTP-0202-0026 at 0034, paras. 28-29.

¹²⁰ P-0935, DAR-OTP-0218-0705 at 0716, para. 51.

¹²¹ P-0955, DAR-OTP-0220-0620 at 0629, para. 38 and 0633, para. 53.

¹²² These witnesses include, in particular, P-0643, P-0883, P-0885, P-0905, P-0987 and P-0994.

¹²³ These witnesses include P-0011, P-0012, P-0029, P-0131, P-0547, P-0643, P-0878, P-0883, P-0885, P-0905, P-0921, P-0992, P-0984, P-0994 and P-1021.

corroborative of, and cumulative to, evidence to be provided by *viva voce* witness P-0718.

C. The Prior Recorded Testimonies of the Five Witnesses are relevant, reliable and probative

43. As detailed above, the Prior Recorded Testimonies of the Five Witnesses are relevant to the case,¹²⁴ and their evidence is corroborative of, and cumulative to, evidence to be provided by *viva voce* witnesses.¹²⁵

44. In addition, the Prior Recorded Testimonies of the Five Witnesses contain sufficient indicia of reliability.¹²⁶ Each witness statement includes an acknowledgment signed by the witness indicating that the statement (i) was read back to the witness in their language, (ii) is true to the best of their knowledge and recollection, and (iii) was given voluntarily with the awareness that it may be used in legal proceedings before the Court.¹²⁷ The statements also contain a certification signed by the interpreter who participated in the interview indicating that (i) the interpreter orally translated the statement to the witness into a language the witness speaks and understands, (ii) the witness appeared to have heard and understood the translation, and (iii) the witness signed the statement attesting to the truth of its contents.¹²⁸

D. The introduction of the Prior Recorded Testimonies of the Five Witnesses would not be prejudicial to or inconsistent with the rights of the Accused

45. The introduction of the Prior Recorded Testimonies of the Five Witnesses into evidence would not be prejudicial to or inconsistent with the rights of the Accused

¹²⁴ See above, paras. 99-36 (Section A, Overview of the Prior Recorded Testimonies of the Five Witnesses).

¹²⁵ See above, paras. 3737-42. See also Bemba Rule 68 Appeals Judgment, [ICC-01/05-01/08-1386](#), para. 78.

¹²⁶ Ntaganda Rule 68(3) Preliminary Ruling, [ICC-01/04-02/06-1640-Red](#), para. 9.

¹²⁷ P-0092, DAR-OTP-0112-0175 at 0202; P-0591, DAR-OTP-0202-0026 at 0062; P-0714, DAR-OTP-0209-1916 at 1945; P-0935, DAR-OTP-0218-0705 at 0723; P-0955, DAR-OTP-0220-0620 at 0636.

¹²⁸ P-0092, DAR-OTP-0112-0175 at 0202-0203; P-0591, DAR-OTP-0202-0026 at 0062-0063; P-0714, DAR-OTP-0209-1916 at 1945-1946; P-0935, DAR-OTP-0218-0705 at 0724; P-0955, DAR-OTP-0220-0620 at 0637; P-0955, DAR-OTP-0220-0797 at 0797.

since, as required by rule 68(3), the witness will be present before the Trial Chamber, their evidence will only be introduced if he does not object, and the Defence will have an opportunity to examine the witness during the proceedings.¹²⁹

46. The Defence has been consulted and has indicated that it does not agree to the introduction of the Prior Recorded Testimonies of the Five Witnesses, but without providing specific reasons.¹³⁰ The mere lack of agreement from the Defence does not prevent the introduction of the Prior Recorded Testimonies, nor does it necessarily follow that this would be prejudicial to or inconsistent with the rights of the Accused.¹³¹

IV. CONCLUSION

47. For the above 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.



Karim A. A. Khan QC

Prosecutor

Dated this 16th day of March 2022

At The Hague, The Netherlands

¹²⁹ Rule 68(3) of the Rules. See also [First Rule 68\(3\) Decision](#), paras. 11-12.

¹³⁰ See Email from the Defence to the Prosecution, 23 February 2022 at 13:57 (in relation to P-0092, P-0591 and P-0935); Email from Defence to the Prosecution, 25 February 2022 at 09:47 (in relation to P-00714 and P-0955).

¹³¹ See e.g. *Ongwen* Rule 68(2)(b) Decision on Defence Witnesses, [ICC-02/04-01/15-1322-Red](#), paras. 6-7, 9-10.