

Annex 11

Public

From: Trial Chamber I Communications
Sent: 30 June 2022 13:18
To: Abd Al Rahman Prosecution Team; D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team
Cc: Chamber Decisions Communication; Trial Chamber I Communications; Associate Legal Officer-Court Officer
Subject: Decision on use of Rule 68(3) for witnesses testifying in July 2022
Attachments: Annex A.pdf

Dear counsel,
 Dear colleagues,

On 21 June 2022, the Chamber instructed the parties to make submissions on the potential use of Rule 68(3) of the Rules of Procedure and Evidence (the 'Rules') for upcoming witnesses P-0877, P-0919, P-0986 and P-0984 (*see* e-mail below).

On 23 and 24 June 2022, the parties and the common legal representatives for victims (the 'CLRV') made submissions (*see* e-mails below and Annex A attached). While the Prosecution and the CLRV support the use of Rule 68(3) for the aforesaid witnesses, the Defence objects to the introduction of their prior recorded testimony pursuant to this provision.

Bearing in mind the objections raised and the imminent start of P-0877's testimony, the Chamber informed the parties that the testimony of P-0877 would remain *viva voce* (*see* e-mail below).

As regards the remainder of the witnesses, and in light of the objections raised and the content and nature of their testimony and potential prejudice to the accused, the Chamber decides that P-0919 and P-0984 shall remain *viva voce*.

In relation to P-0986, the Chamber deems that this is a purely crime base witness. Although P-0986 allegedly met the accused before the time of the charges and later interacted with him at the time of the charges, these and other issues can be explored during cross-examination, which remains unaffected by the use of Rule 68(3) of the Rules. Moreover, the Chamber notes the Prosecution plans to explore these issues during its supplementary examination. The Chamber is thus satisfied that the introduction of P-0986's prior recorded testimony will not occasion any prejudice to the accused.

Accordingly, the Chamber instructs the Prosecution to introduce the prior recorded testimony of P-0986 and related material identified in Annex A attached, pursuant to Rule 68(3) of the Rules. The Chamber's preliminary ruling is subject to witnesses' appearance before the Chamber and their consent to the introduction of their testimony pursuant to this provision.

Best regards,

(on behalf of Trial Chamber I)

From: Trial Chamber I Communications
Sent: 28 June 2022 20:33
To: Gree, Vanessa; Trial Chamber I Communications; Abd Al Rahman Prosecution Team; V47 Abd Al Rahman LRV Team
Cc: D31 Abd-Al-Rahman Defence Team; Associate Legal Officer-Court

Officer [REDACTED]

Subject: RE: Defence Response re- potential use of Rule 68(3) of the Rules next block of witnesses

Dear colleagues,
Dear counsel,

Considering the objections below, and that the start of P-0877's testimony is scheduled to commence this Thursday, the Chamber hereby informs the parties and participants that P-0877 will remain a *viva voce* witness. The Chamber will decide on the remaining witnesses in due course.

Best regards,

[REDACTED]
(on behalf of Trial Chamber I)

From: Gree, Vanessa [REDACTED]

Sent: 27 June 2022 17:07

To: Trial Chamber I Communications [REDACTED] Abd Al Rahman Prosecution Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED]

Cc: D31 Abd-Al-Rahman Defence Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]

Subject: Defence Response re- potential use of Rule 68(3) of the Rules next block of witnesses

Dear Trial Chamber I,
Dear Colleagues,

On 21 June 2022, Trial Chamber I (the "Chamber") instructed the Parties and Participants to make submissions on the introduction of the prior recorded testimonies of Witnesses P-0877, P-0919, P-0986, and P-0984 ("Four Witnesses") pursuant to Rule 68(3) of the Rules of Procedure and Evidence ("Rules").

On 23 June 2022, the Prosecution requested the introduction into evidence of the statements and associated material of the Four Witnesses pursuant to Rule 68(3) of the Rules in lieu of their *viva voce* examination-in-chief and requested the Chamber to grant time for limited supplementary questioning.

On 27 June 2022, the Common Legal Representative of Victims ("CLRv") submitted its observations whereby it indicated its support for the introduction into evidence of the statements and associated material of the Four Witnesses.

As instructed by the Chamber, the Defence of Mr. Ali Muhammad Ali Abd-Al-Rahman hereby provides its position on the introduction of the prior recorded testimonies of the Four Witnesses pursuant to Rule 68(3) of the Rule.

The Defence makes the following submission of general application. A common feature of the Prosecution's eleven previous Rule 68(3) applications – as well as the pending twelfth application (ICC-02/05-01/20-706-Conf + Conf-AnxA) – is that potential Rule 68(3) witnesses give evidence that is merely "cumulative to and corroborative of" other witnesses on the list who are expected to testify *viva voce* ("Viva Voce Pool"). Thus, suggests the Prosecution, it is unnecessary to take up Court time by calling potential Rule 68(3) witnesses to give their evidence in chief *viva voce*. An inevitable, and troubling, consequence of ever more Rule 68(3) applications being made and granted is that the *Viva Voce* Pool shrinks. The Prosecution's appetite for making Rule 68(3) applications is such that, before long, the witnesses that testify *viva voce* about events underpinning the DCC will soon be outnumbered by the "cumulative and corroborative" Rule 68(3) witnesses. The few remaining *viva voce* witnesses will in essence be cumulative to and corroborative of the increasing number of Rule 68(3) witnesses. This is entirely the inverse of how the Prosecution's evidence should be called.

An additional issue to which the Trial Chamber, it is submitted, should be alive is the very real risk that, as the trial proceeds, the Prosecution will decide to start dropping outstanding *viva voce* witnesses due to the fact that enough evidence of a given incident or charge has been adduced and that additional evidence would be otiose. Such a decision may be made on the Prosecution's own initiative or at the invitation (or even direction) of the Chamber itself. Of course, the Defence would be entirely at the mercy of such a decision and would have no standing to object to this course. Let

it be suggested that if such a course is speculative, this very possibility was raised by the Presiding Judge many months before even the opening of the trial (see ICC-02/05-01/20-T-022-CONF-ENG CT, p.38, lines 9-25). Of course, the Defence would welcome any reasonable steps taken by the Prosecution to “trim the fat” but not if it involved throwing away *viva voce* witnesses; this would further reduce the *Viva Voce* Pool, thereby creating even greater imbalance as between *viva voce* witnesses and mere “cumulative and corroborative” witnesses heard under Rule 68(3). As was made clear on numerous occasions in its Rule 68(3) decisions, the Trial Chamber held that prejudice to the Defence was mitigated by the very fact that potential Rule 68(3) witnesses were merely “cumulative and corroborative” of *viva voce* witnesses. Prejudice will result if that imbalance were to crystallise.

In this regard, the Defence notes that the evidence of the Four Witnesses was cited by the Chamber as being in the *Viva Voce* Pool to justify the introduction into evidence under Rule 68(3) of the Rules of the cumulative and corroborative testimonies of 29 witnesses: P-0012 (ICC-02/05-01/20-699-Conf, fn 27); P-0675, P-0720, P-0892, and P-0041 (ICC-02/05-01/20-651-Conf, par. 17, fn. 24-25, par. 24, fn 35; par. 31, fn 43-45; par. 10, fn 11-12); P-0955 (ICC-02/05-01/20-649-Conf, par. 36, fn 79); P-0015 and P-0918 (ICC-02/05-01/20-635-Conf, fn 31, 33-34; par. 19, fn 37-38; fn 54-56; par. 29, fn 56); P-0119, P-0060, P-0697, P-0106, P-0850, P-0736, P-0726, P-0980, P-0059, P-0091 (ICC-02/05-01/20-630-Conf, par. 29, fn 51; paras 38-39, fn 70, 73; fn 75; par. 57, fn 112; par. 58, fn 115, 119; par. 66, fn 132; par. 70, fn; 133, 137 par. 88, fn 88; par. 118, fn 230; par. 139, fn 258; par. 147, fn 277 ; fn 282 ; par. 155, fn 298; par. 201, fn 403); P-0917, P-0991, P-0601, P-0922, and P-0581 (ICC-02/05-01/20-602-Conf, par. 26, fn 35; fn 54 ; par. 41, fn 55 ; par. 49, fn 69 ; par. 57, fn 80 ; par. 65, fn 94 ; par. 73, fn 102 ; fn 104); P-0755, P-0008, P-0114, P-0044, and P-0657 (ICC-02/05-01/20-588-Conf, par. 23, fn. 24; par. 31, fn 36; par. 45, fn 56 ; par. 52, fn 65 ; par. 58, fn 77); and P-0717 (ICC-02/05-01/20-559-Conf, par. 22, fn 26). The Defence therefore expresses its deep concern about the potential change of the mode of introduction of the evidence of the Four Witnesses and on its potential impact on the legality of the introduction into evidence of the 29 aforementioned witnesses as well as on the right of Mr. Ali Muhammad Ali Abd-Al-Rahman to a fair trial.

With regard to the Four Witnesses, the Defence submits that it is essential that they testify *viva voce* to ensure that the Chamber obtains the best possible evidence relating to the purported identification of “*Ali Kushayb*” as Mr Abd-Al-Rahman, based on what each of the witnesses independently recall.

Pursuant to Regulation 23bis(2) of the Regulations of the Court (“RoC”), this response is classified “Confidential”.

P-0877

P-0877 should be directed to provide his evidence in chief *viva voce*. He gives testimony and produces associated exhibits (in Annex A (A1)) that is both highly prejudicial and highly contested. At the outset, the Defence notes that, according to the CLRV, P-0877 seems to have expressed a preference for testifying pursuant to Rule 68(3). Whilst the Trial Chamber may wish to take that expression of preference into account, the Defence takes this opportunity to submit that a witness’s preference carries little if any weight and can under no circumstances be determinative of the Chamber’s ultimate decision. Preference is not the test to be applied. After all, giving evidence can be a stressful and disagreeable experience; it is reasonable to suppose that most if not all witnesses would prefer for their time answering questions and reliving sometimes traumatic events to be as short as possible.

Witness P-0877 places the man he describes as *Ali Kushayb* at the Mukjar municipality building at the same time he saw Al-Dayf Samih, Commissioner Abdallah Al-Tayeb Torshein and Ahmed Harun (paras 46-48 of witness statement DAR-OTP-0217-0211). He states that he heard *Ali Kushayb* address a large group of Janjaweed in a way suggestive of his giving orders (par. 52). Even if not strictly speaking unique, this is highly prejudicial material in reference to which the Prosecution is put to strict proof.

Similarly, P-0877 places *Ali Kushayb* at the Mukjar Police Station the following day, 1 March 2004, holding a Thuraya satellite phone and carrying an axe (paras 91-93). Later he purportedly saw *Ali Kushayb* in company with Harun (paras 96-99). All of this he purportedly saw from a distance [REDACTED]. P-0877 also describes *Ali Kushayb* striking detainees with the axe and overseeing the loading of detainees on to vehicles that were driven away (paras 110-116). The witness believes these detainees were later shot dead. Finally, the witness purports to identify the *Ali Kushayb* of a pharmacy in Garsilla as the same *Ali Kushayb* he saw at Mukjar Police Station (par. 144).

P-0877’s evidence directly implicates *Ali Kushayb* (Mr Abd-Al-Rahman, if the Prosecution’s submissions are to be believed) in some of the most serious incidents of which the Accused is charged. The witness is not a peripheral or minor player in the case against Mr Abd-Al-Rahman. His evidence is not merely “cumulative and corroborative” of other more central, key witnesses. He is a central, key witness. His testimony matters. And his evidence is hotly contested. It is respectfully submitted that, just as it would be unconscionable for such an important witness to testify under analogous circumstances in a domestic trial for murder and torture, so would it be unconscionable for his testimony to be introduced pursuant to Rule 68(3) before this Court.

P-0919

Similarly, P-0919 should be directed to give his evidence in chief *viva voce*. He too provides testimony and other associated evidence (in Annex A (A2)) that is both highly prejudicial and highly contested. At paragraph 41 of his witness statement (DAR-OTP-0217-0423), he purports to place the man he identifies as *Ali Kushayb* in a cell at the Mukjar Police Station and introducing himself by name. The witness states that *Ali Kushayb* demonstrated his premeditated intention to kill or have killed, or at least torture or have tortured, the Mukjar detainees: [REDACTED]

[REDACTED] The Prosecution in their submissions do not suggest that this evidence is not highly controversial or indeed unique.

Witness P-0919 also provides exceptionally vivid evidence of how *Ali Kushayb* purportedly beat the detainees, [REDACTED] and of the brutal treatment of some detainees by “Kushayb’s men” (eg. paras 44-45, 48-49).

[REDACTED]. In common with P-0877, his evidence directly implicates *Ali Kushayb* (Mr Abd-Al-Rahman, if the Prosecution’s submissions are to be believed) in some of the most serious incidents of which the Accused is charged. As with P-0877, this witness is not a peripheral or minor player, nor is his evidence merely “cumulative and corroborative” of other more central, key witnesses. He is another central, key witness whose evidence is very much contested. It would be unconscionable for his testimony to be introduced pursuant to Rule 68(3) before this Court.

P-0984

Similarly, P-0984 should be directed to give his evidence in chief *viva voce*. The nature and content of P-0984 single witness statement and associated evidence (in Annex A (A3)) demonstrate that the witness provides unique evidence on the alleged events in Mukjar, including on the training of Janjaweed by forces of the Government of Sudan and on the nature of the relationship of the man known to the witness as “*Ali Kushayb*” with the local civilian authorities in Mukjar in 2003-2004, due in particular to the witness’ presence there at the time of the charges and [REDACTED] (DAR-OTP-0222-0084-R01, paras 12-13, 82).

The witness claims *inter alia* to [REDACTED] a base in Mukjar in 2004 where Janjaweed, led by Al Samih, received training from the joint forces (paras 34-37). The witness further claims to have seen the man known to him as “*Ali Kushayb*” come to the Mukjar locality building for meetings with Commissioner Torshein in 2003 (par. 59) as well as on another instance at the Police Headquarters in Mukjar early 2004 with Torshein and the commander of the mobile force (par. 82).

The Defence submits that the aforementioned issues are fundamental issues in dispute and that the nature of the evidence that P-0984 purports to provide against Mr Abd-Al-Rahman as “*Ali Kushayb*” fulfil the uniqueness criterion applied by the Chamber, as applied by the Chamber. The Defence further submits that [REDACTED] at a time of relevance to the charges, [REDACTED] (par. 78), militates in favour of hearing his evidence *viva voce*.

P-0986

Similarly, P-0986 should be directed to give his evidence in chief *viva voce*. The nature and content of P-0986 single witness statement and associated evidence (in Annex A (A4)) demonstrate that the witness provides unique evidence on the role of a man known to him as “*Ali Kushayb*” in the alleged attack against Kodoom on 15 August 2003 (DAR-OTP-0222-0437-R01, paras 49-51).

The witness claims that the man known to him as “*Ali Kushayb*” [REDACTED] during the attack on Kodoom on 15 August 2003 (paras 34, 39-41, 49-51). The witness claims he recognized this man to be “*Ali Kushayb*”, whom he had met in Garsila in 2001 while getting medication in his shop for his donkey (paras 50-51). The witness further states that [REDACTED] “*Ali Kushayb*” called him “*abid*” and asked him about the whereabouts of the people of his village (par. 49). Prior to “*Ali Kushayb*”’s arrival, the witness [REDACTED] (par. 49). The witness recalled being terrified and added that he was beaten and whipped by the Arabs afterwards (par. 49). The witness claims that “*Ali Kushayb*” told the others “ [REDACTED]”. He added that the “Arabs” complied with his instructions (par. 53). The witness further added that “*Ali*

Kushayb” was present [REDACTED] (par. 53). After this, the witness heard “*Ali Kushayb*” saying: “ [REDACTED]” (par. 55). The witness recalls seeing “*Kushayb*” leaving in his car and estimates he stayed a total of 10-15 minutes (par. 59).

The Defence submits that the aforementioned issues are fundamental issues in dispute and that the nature of the evidence that P-0986 purports to provide against Mr Abd-Al-Rahman as “*Ali Kushayb*”, in particular its identification at a moment during which the witness was not free of his movements and claims to have been the subject of various physical abuses, fulfil the uniqueness criterion applied by the Chamber, as applied by the Chamber. It is the Defence position that the witness should be called to provide the entirety of his testimony *viva voce*.

For the foregoing reasons, the Defence requests that the Chamber dismiss the Prosecution’s request with regard to the admission into evidence of the statements and associated material of the Four Witnesses.

Vanessa Grée

On behalf of the Defence of Mr Ali Muhammad Ali Abd-Al-Rahman

From: Wistinghausen, Natalie [REDACTED]
Sent: 27 June 2022 08:23
To: Nicholls, Julian [REDACTED] Trial Chamber I Communications
 [REDACTED] Abd Al Rahman Prosecution Team
 [REDACTED] D31 Abd-Al-Rahman Defence Team
 [REDACTED] V47 Abd Al Rahman LRV Team
Cc: Associate Legal Officer-Court Officer [REDACTED]; Shah, Anand [REDACTED]
Subject: AW: Potential use of Rule 68(3) of the Rules next block of witnesses

Dear Trial Chamber I,
 Dear Colleagues,

The Common Legal Representative of Victims (CLRV) supports the Prosecution’s application to introduce the written statements and associated materials (“prior recorded testimonies”) of four witnesses – P-0877, P-0919, P-0984 and P-0986 – pursuant to Rule 68(3) of the Rules of Procedure and Evidence. Two of these witnesses – P-0877 and P-0986 – are dual status individuals.

The CLRV agrees with the Prosecution’s assessment that the prior recorded testimonies of the four witnesses have the necessary indicia of reliability, and are cumulative and corroborative of evidence provided by other listed *viva voce* witnesses in respect to core and material issues relevant to the charged crimes in these proceedings.

Importantly, the utilisation of Rule 68(3) in respect of these witnesses will promote the expeditiousness of the proceedings, which is in the interests of all parties and participants. In this respect, the CLRV advises that during recent consultations with a group of participating victims, the victims strongly highlighted the need for an efficient and expeditious judicial process in the *Abd-Al-Rahman* case. The victims explained that an efficient judicial process was of importance not only for the sake of the victims themselves in view of the time that has passed since the events of 2003 and 2004, but also to demonstrate the international community’s commitment to justice and accountability in a situation that has been marked by their absence, and to set an example in light of the continuing mass violence and potential atrocity crimes that continue to plague Darfur to the present day.

The CLRV further advises that it was able to consult with P-0877 on the Prosecution's application. After explaining the Rule 68(3) procedure and its implications to P-0877, he informed the CLRV that his preference was to testify pursuant to the Rule 68(3) process as this would shorten the overall length of his testimony before the Court. The CLRV notes, of course, that the Prosecution will also consult with P-0877 regarding the Rule 68(3) process, and that ultimately, should the Chamber grant the Prosecution's request, this is subject to the witness' agreement when appearing in-court to testify.

The CLRV also wishes to note that while evidence admitted via Rule 68(3) is of equal weight and value to *viva voce* testimony, the public judicial process, and the testimonial process for witnesses themselves, is inevitably impacted in some respect when witnesses do not provide their full account to the Judges and public during examination-in-chief. The CLRV, on behalf of the victims, wishes to highlight this reality, and suggests that the Court's public acknowledgement of this reality is important, which nonetheless does not diminish the credibility and fairness of the proceedings, nor witnesses' contribution to the judicial process.

Sincerely,

Natalie v. Wistinghausen
CLRV

From: Nicholls, Julian [REDACTED]
Sent: 23 June 2022 17:23
To: Trial Chamber I Communications [REDACTED] Abd Al Rahman Prosecution Team [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED] [V47AbdAlRahmanLRVTeam](#) [REDACTED]
Cc: Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: Potential use of Rule 68(3) of the Rules next block of witnesses

Dear Trial Chamber I,
Dear colleagues,

The Prosecution respectfully requests the introduction into evidence of the statements and associated material ("Prior Recorded Testimonies") of Witnesses P-0877, P-0919, P-0984 and P-0986 ("Four Witnesses"). Granting the request would reduce the length of the Four Witnesses' in-court testimony from at least 19.5 hours to 5.5 hours, thus saving at minimum 14 hours of in-court time.

The Prosecution relies on its previous submissions on 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.

The introduction of the Prior Recorded Testimonies of the Four Witnesses is cumulative and corroborative of the evidence provided by other *viva voce* witnesses, including in relation to the charged crimes of (i) murder, pillaging and destruction of property in Kodoom on 15 August 2003; and (ii) persecution, torture, other inhumane acts, and outrages upon personal dignity regarding the arrest and conditions of detention of men perceived to be associated with or supportive of rebel armed groups, and the murder and attempted murder in Mukjar in February/March 2004.

The Prior Recorded Testimonies of the Four Witnesses are relevant, reliable and probative. They contain sufficient indicia of reliability, as the witnesses have signed their witness statements, attesting their testimonies were voluntarily given and record their best recollection of events. The Prior Recorded Testimonies also bear the interpreters' signature and certification that each witness heard and understood the translation.

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 Four Witnesses will be present before the Chamber, their evidence will only be introduced if they do not object to it, and the Defence, along with the victims' representatives and the Chamber, will have an opportunity to fully examine the witnesses during the proceedings.

Overview of the Prior Recorded Testimonies of P-0877

The Prosecution seeks to submit into evidence P-0877's prior recorded testimony, including the associated material listed in Annex A (A1) to this request.

P-0877 provides evidence in relation to the attacks on villages surrounding Mukjar in August 2003 and February 2004. He also provides eyewitness evidence on [REDACTED] of detention in Mukjar in March 2004. P-0877 further recalls Mr Abd-Al-Rahman hitting and striking detainees with his axe, prior to their loading on vehicles and driving to execution sites. [REDACTED]

The Prosecution seeks one hour and a half to conduct a focused supplementary examination of P-0877 on topics including: (i) the [REDACTED] provided by P-0877 to the Prosecution; (ii) the relationship between the [REDACTED] produced by P-0877; (iii) P-0877's knowledge of, and encounters with, a number of case-relevant persons of interest; and (iv) P-0877's basis of knowledge regarding the detention and execution of certain victims.

Overview of the Prior Recorded Testimony of P-0919

The Prosecution seeks to submit into evidence P-0919's prior recorded testimony, including the associated material listed in Annex A (A2) to this request.

P-0919 provides evidence on [REDACTED]. He also provides eyewitness evidence on Mr Abd-Al-Rahman's presence in Mukjar at the relevant time, including in relation to the selection of detainees, prior to being loaded on vehicles, and the hitting of detainees with his axe. He also provides evidence regarding the execution of detainees.

The Prosecution seeks one hour and a half to conduct a focused supplementary examination of P-0919 on topics including: (i) [REDACTED]; (ii) the loading and execution of predominantly Fur males in Mukjar; and (iii) Mr Abd-Al-Rahman's essential contribution to the Mukjar common plan.

Overview of the Prior Recorded Testimony of P-0984

The Prosecution seeks to submit into evidence P-0984's prior recorded testimony, including the associated material listed in Annex A (A3) to this request.

P-0984 provides evidence on the contextual elements of crimes against humanity, including in relation to the supply of weapons and funding of Militia/*Janjaweed*. He provides eyewitness evidence on the arrest and detention of displaced Fur males in Mukjar at the relevant time. Furthermore, P-0984 describes the loading of detainees on a vehicle at the Mukjar police station, in the presence of Mr Abd-Al-Rahman, prior to their execution.

The Prosecution seeks one hour and a half to conduct a focused supplementary examination of P-0984 on topics including: (i) Harun's visit to Mukjar in August 2003; (ii) the supply of weapons and salaries to Militia/*Janjaweed*; (iii) the identity and leadership of Mr Abd-Al-Rahman; (iv) the checkpoints in Mukjar, manned by GoS Forces, where displaced young Fur males were targeted; (v) the detention of displaced males, considered to be rebels, at the Mukjar police station; (vi) the loading of detainees onto a vehicle at the Mukjar police station, in the presence of Mr Abd-Al-Rahman and Torshein; and (vii) the execution of detainees.

Overview of the Prior Recorded Testimony of P-0986

The Prosecution seeks to submit into evidence P-0986's prior recorded testimony, including the associated material listed in Annex (A4) to this request.

P-0986 provides direct evidence on the crimes committed during the attack on Kodoom on or about 15 August 2003 by Militia/*Janjaweed* and GoS Forces, including murder, pillaging, destruction of property, persecution, and the forcible transfer of predominantly Fur individuals to Mukjar and other villages. P-0986 also recalls his encounter with Mr Abd-Al-Rahman during the attack in Kodoom, [REDACTED]. The Witness

also observed the accused give orders to Militia/*Janjaweed* and GoS Forces. P-0986 also provides evidence on the accused's identity and his background. Finally, P-0986 also details crimes which occurred in Mukjar in 2003 and 2004.

The Prosecution seeks one hour to conduct a focused supplementary examination of P-0986 on topics including: (i) the attack on Kodoom on or about 15 August 2003 by Militia/*Janjaweed* and GoS Forces with Mr Abd-al-Rahman's participation; (ii) the identity and background of Mr Abd-al-Rahman, including his ownership of a veterinary pharmacy in Garsila; and (iii) Mr Abd-Al-Rahman's position of authority at the relevant time.

For the foregoing reasons, the Prosecution requests that the Chamber grant this request, subject to the fulfilment of the further conditions of rule 68(3) of the Rules.

Best regards,

Julian Nicholls

From: Trial Chamber I Communications [REDACTED]
 Sent: 21 June 2022 16:30
 To: Abd Al Rahman Prosecution Team [REDACTED]; D31 Abd-Al-Rahman Defence Team [REDACTED] [V47AbdAlRahmanLRVTeam](#) [REDACTED]
 Cc: Associate Legal Officer-Court Officer [REDACTED]; Trial Chamber I Communications [REDACTED]
 Subject: Potential use of Rule 68(3) of the Rules next block of witnesses

Dear colleagues,
 Dear counsel,

As indicated previously in Court, the Chamber will consider the use of Rule 68(3) for upcoming witnesses currently scheduled to testify entirely *viva voce*.

It appears to the Chamber that the prior recorded testimonies of P-0877, P-0919, P-0986, P-0984 could be introduced pursuant to Rule 68(3) of the Rules.

Accordingly, the parties and participants are instructed to make submissions on this possibility by COB Monday, 27 June 2022 (by way of filing or e-mail).

Kind regards,

[REDACTED]
 (on behalf of Trial Chamber I)

Annex A

Confidential

ANNEX A to Prosecution's thirteenth application under rule 68(3) of the Rules

ANNEX A – A1

P-0877				
I. PRIOR RECORDED TESTIMONY THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE		TITLE	
DAR-OTP-0217-0211	ICC Statement - General		WITNESS STATEMENT	
DAR-OTP-0224-0142	ICC Statement – General		WITNESS STATEMENT	
II. ASSOCIATED MATERIAL THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE	TITLE	DESCRIPTION	REFERENCE IN PRIOR RECORDED TESTIMONY
DAR-OTP-0217-0244	List / table	Annexure A1, A2, A3 / LIST OF COMMUNITY LEADERS IN MUKJAR AREA OF 11 VILLAGES IN YEARS 2003-2004	List of community leaders in Mukjar in 2003-2004.	DAR-OTP-0217-0211 at 0214, para. 18 and 0240, para. 156
DAR-OTP-0220-5135	Translation – ARB	Translation of DAR-OTP-0217-0244 – final – ARB.DOCX	Arabic translation of DAR-OTP-0217-0244.	N/A
DAR-OTP-0217-0248	Sketch	Annexure B1, B2	Sketch of the layout of Mukjar town, accompanied by a list of buildings as marked in the sketch.	DAR-OTP-0217-0211 at 0214, para. 21 and 0219, para. 45 and 0240, para. 156
DAR-OTP-0217-0479	Translation - ENG	Translation of Evidence / Annexure B1, B2	English translation of DAR-OTP-0217-0248.	N/A

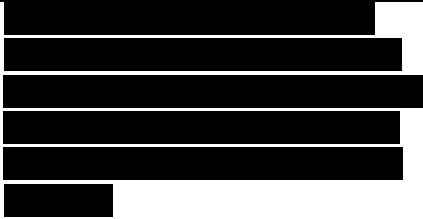
DAR-OTP-0217-0251	Sketch	Annexure C1, C2	Sketch of Mukjar police station and offices therein.	DAR-OTP-0217-0211 at 0224-0226, paras. 80-81, 88, 102 and 0240, para. 156; DAR-OTP-0224-0142 at 0145, paras. 17-18 and 0150, para. 29 and 0155, para. 48
DAR-OTP-0219-0490	Translation – ENG	Translation of Evidence / Annexure C1, C2	English translation of DAR-OTP-0217-0251.	N/A
DAR-OTP-0217-0254	Sketch	Annexure D	Sketch of [REDACTED] Mukjar police station.	DAR-OTP-0217-0211 at 0226, para. 87 and 0240, para. 156.
DAR-OTP-0217-0256	Sketch	Annexure E	Sketch of the execution site n. 1, relating to executions in Mukjar in March 2004.	DAR-OTP-0217-0211 at 0233, para. 126 and 0240, para. 156
DAR-OTP-0217-0483	Translation – ENG	Translation of Evidence / Annexure E	English translation of DAR-OTP-0217-0256.	N/A
DAR-OTP-0217-0258	Sketch	Annexure F	Sketch of execution site n. 2, relating to executions in Mukjar in March 2004.	DAR-OTP-0217-0211 at 0234, para. 131 and 0240, para. 156.
DAR-OTP-0217-0486	Translation – ENG	Translation of Evidence / Annexure F	English translation of DAR-OTP-0217-0258.	N/A
DAR-OTP-0217-0260	Sketch	Annexure G	Sketch of execution site n. 3, relating to executions in Mukjar in March 2004.	DAR-OTP-0217-0211 at 0235, para. 136 and 0240, para. 156; DAR-OTP-0224-0142 at 0157, para. 51
DAR-OTP-0217-0489	Translation – ENG	Translation of Evidence / Annexure G	English translation of DAR-OTP-0217-0489.	N/A

DAR-OTP-0217-0262	Sketch	Annexure H	Sketch of execution site n. 4, relating to executions in Mukjar in March 2004.	DAR-OTP-0217-0211 at 0236, para. 138 and 0240, para. 156
DAR-OTP-0217-0492	Translation – ENG	Translation of Evidence / Annexure H	English translation of DAR-OTP-0217-0262.	N/A
DAR-OTP-0220-3138	Translation - ENG	Translation of Evidence	Revised translation of DAR-OTP-0217-0492.	N/A
DAR-OTP-0217-0264	Sketch	Annexure I	Sketch of depicting all four executions sites, relating to executions in Mukjar in March 2004.	DAR-OTP-0217-0211 at 0240, para. 156
DAR-OTP-0217-0495	Translation – ENG	Translation of Evidence / Annexure I	English translation of DAR-OTP-0217-0264.	N/A
DAR-OTP-0217-0272		Annexure J /  		DAR-OTP-0217-0211 at 0237, para. 143 and 0240, para. 156; DAR-OTP-0224-0142 at 0157, para. 52
DAR-OTP-0217-0273	List / table	Annexure K / IMG-20201019-WA0003	List of victims of executions in Mukjar in March 2004, many of whom located in mass graves at execution sites 1 and 3.	DAR-OTP-0217-0211 at 0239-0240, paras. 155-156
DAR-OTP-0217-0498	Translation – ENG	Translation of Evidence / Annexure K / IMG-20201019-WA0003	English translation of DAR-OTP-0217-0273.	N/A
DAR-OTP-0217-0274	List / table	Annexure K / IMG-20201019-WA0016	List of victims of executions in Mukjar in March 2004, many of whom located in mass graves at execution sites 1 and 3.	DAR-OTP-0217-0211 at 0239-0240, paras. 155-156

DAR-OTP-0217-0500	Translation – ENG	Translation of Evidence / Annexure K / IMG-20201019-WA0016	English translation of DAR-OTP-0217-0500.	N/A
DAR-OTP-0217-0276	List / table	Annexure K / IMG-20201019-WA0018	██████████ including in relation to execution sites 1 and 3.	DAR-OTP-0217-0211 at 023-0240, paras. 155-156; DAR-OTP-0224-0142 at 0154, para. 45
DAR-OTP-0217-0504	Translation – ENG	Translation of Evidence / Annexure K / IMG-20201019-WA0018	English translation of DAR-OTP-0217-0276.	N/A
DAR-OTP-0217-0278	Audio / Video Material	video location 1.mp4	██████████ ██████████	DAR-OTP-0224-0142 at 0156-0157, para. 49
DAR-OTP-0215-8889	Transcript	Transcript of Audio / Video Material / video location 1.mp4	Transcript of audio/video material at DAR-OTP-0217-0278.	N/A
DAR-OTP-0215-8891	Translation – ENG	Translation / Transcript of Audio / Video Material / video location 1.mp4	English translation of DAR-OTP-0215-8889.	N/A
DAR-OTP-0217-0279	Audio / Video Material	video location 3.mp4	Video showing a reporter mentioning a mass grave in Mukjar containing the corpses of victims of Mr Abd-Al-Rahman.	DAR-OTP-0224-0142 at 0157, paras. 50-53
DAR-OTP-0220-3841	Transcript	Transcript of Audio / Video Material / video location 3.mp4	Transcript of audio/video material at DAR-OTP-0217-0279.	N/A
DAR-OTP-0220-3846	Translation - ENG	Translation / Transcript of Audio / Video Material / video location 3.mp4	English translation of DAR-OTP-0220-3846.	N/A
DAR-OTP-0224-0161	List / table	Witness Colour Chart	Colour Chart used by P-0877 to identify the colours of the ██████████	DAR-OTP-0224-0142 at 0144, para. 14 and 0158, para. 45

DAR-OTP-0224-0164	Photograph/s	photo 1 cropped		DAR-OTP-0224-0142 at 0144-0145, para. 15 and 0158, para. 45
DAR-OTP-0224-0165	Photograph/s	photo 2 cropped		DAR-OTP-0224-0142 at 0144-0145, para. 15 and 0158, para. 45
DAR-OTP-0224-0166	Photograph/s	photo 3 cropped		DAR-OTP-0224-0142 at 0144-0145, para. 15 and 0158, para. 45
DAR-OTP-0224-0167	Photograph/s	photo 4 cropped		DAR-OTP-0224-0142 at 0144-0145, para. 15 and 0158, para. 45
DAR-OTP-0224-0168	Sketch		Sketch map of the execution locations related to Mukjar in March 2004.	DAR-OTP-0224-0142 at 0152-0153, paras. 40-41
DAR-OTP-0224-0169	Satellite images and related reports	Annex D – Google Earth Pro screenshot related to	A Google earth screenshot depicting the	DAR-OTP-0224-0142 at 0153, para. 44
DAR-OTP-0220-2937	Translation - ARB	Translation of Evidence / Annex D - Google Earth Pro screenshot related to	Arabic translation of DAR-OTP-0224-0169.	N/A
DAR-OTP-0219-4005	List / table	Document 5	List of in Bindisi and Mukjar, including names of victims.	DAR-OTP-0224-0142 at 0154, paras. 46-48

DAR-OTP-0219-4767	Translation – ENG	Translation of Evidence / Document 5	English translation of DAR-OTP-0219-4005.	N/A
DAR-OTP-0219-4109	Media / press article	DOCUMENT 8	Intelligence report concerning the destruction of mass graves in West Darfur.	N/A
DAR-OTP-0219-4772	Translation - ENG	Translation of Evidence / Document 8	English translation of DAR-OTP-0219-4772.	N/A
DAR-OTP-0219-4180	List / table	Document 11	List of wounded and killed in Bindisi, Mukjar and Kodoom.	N/A
DAR-OTP-0219-8795	Translation - ENG	Partial Translation of Evidence / Document 11	English translation of DAR-OTP-0219-4180.	N/A
III. MATERIAL NECESSARY TO UNDERSTAND THE WITNESS'S PRIOR RECORDED TESTIMONY WHICH THE PROSECUTION DOES NOT SEEK TO INTRODUCE INTO EVIDENCE				
ERN	TYPE	TITLE	DESCRIPTION	REFERENCE IN PRIOR RECORDED TESTIMONY
DAR-OTP-0219-3990	Correspondence – Letter	Document 1	[REDACTED]	N/A
DAR-OTP-0219-4748	Translation - ENG	Translation of Evidence / Document 1	English translation of DAR-OTP-0219-3990.	N/A
DAR-OTP-0219-3992	Legislation / government instruction / public guidelines	Document 2	Document titled [REDACTED]	N/A

				
DAR-OTP-0219-4751	Translation - ENG	Translation of Evidence / Document 2	English translation of DAR-OTP-0219-3992.	N/A
DAR-OTP-0219-3994	List / table	Document 3	List provided by P-0877 of people wounded and killed between 2016-2017 in Mukjar, Bindisi, Deleig, Garsila, Geneinah and other areas.	N/A
DAR-OTP-0219-4754	Translation - ENG	Translation of Evidence / Document 3	English translation of DAR-OTP-0219-4751.	N/A
DAR-OTP-0219-4001	Correspondence – Letter	Document 4		N/A
DAR-OTP-0219-4762	Translation - ENG	Translation of Evidence / Document 4	English translation of DAR-OTP-0219-4762.	N/A
DAR-OTP-0219-4009	List / table	Document 6	List of names of SGBV victims in Mukjar, Deleig, and Bindisi between 2007 and 2017.	N/A
DAR-OTP-0219-4068	List / table	Document 7	List of victims and wounded for events occurring after 2004.	N/A

DAR-OTP-0219-4112	Media / press article	Document 9 / [REDACTED] [REDACTED]	Associated press article concerning [REDACTED]	N/A
DAR-OTP-0219-4118	Forensic Records or Reports	Document 10	Criminal examination forms and medical reports relating to wounded in Mukjar between 2007 and 2020.	N/A
DAR-OTP-0219-4271	Correspondence - Letter	Document 12 / MukJar IDPS Application	[REDACTED] [REDACTED] [REDACTED]	N/A
DAR-OTP-0219-4776	Translation - ENG	Translation of Evidence / Document 12	English translation of DAR-OTP-0219-4271.	N/A
DAR-OTP-0220-5119	Victim application – ICC	Application form for individuals	Victim application form of P-0877.	N/A
DAR-OTP-0220-5143	Legal, Administration and Court document – non ICC	Victim Application	Arabic version of the victim application form of P-0877.	N/A

ANNEX A – A2

P-0919				
I. PRIOR RECORDED TESTIMONY THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE		TITLE	
DAR-OTP-0217-0423	ICC Statement - General		WITNESS STATEMENT	
II. ASSOCIATED MATERIAL THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE	TITLE	DESCRIPTION	REFERENCE IN PRIOR RECORDED TESTIMONY
DAR-OTP-0217-0441	List / table	Annex A Witness Colour Chart	Chart used by P-0919 to identify the colour of uniforms worn by attackers in Abirla in March 2004.	At 0427, para. 21
DAR-OTP-0217-0442	List / table	ANNEX B Headdress Board	Chart used by P-0919 to identify the headdress worn by attackers in Abirla in March 2004.	At 0427, para. 21
DAR-OTP-0217-0444	Photograph/s	Annex C	Photograph of █████ injury sustained by P-0919 in Mukjar in March 2004.	At 0431, para. 44
DAR-OTP-0217-0445	Photograph/s	Annex D (i)	Photograph of injury sustained by P-0919 ███	

ANNEX A – A3

P-0984				
I. PRIOR RECORDED TESTIMONY THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE		TITLE	
DAR-OTP-0222-0084	ICC Statement - General		WITNESS STATEMENT	
II. ASSOCIATED MATERIAL THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE	TITLE	DESCRIPTION	REFERENCE IN PRIOR RECORDED TESTIMONY
DAR-OTP-0219-4788	ICC Statement – ICC screening	SCREENING NOTE	Screening note of P-0984. The information therein was later clarified by the witness during his interview with Prosecution investigators.	At 0101-0102, paras. 107-110

ANNEX A – A4

P-0986				
I. PRIOR RECORDED TESTIMONY THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE		TITLE	
DAR-OTP-0222-0437	ICC Statement - General		WITNESS STATEMENT	
II. ASSOCIATED MATERIAL THE PROSECUTION SEEKS TO INTRODUCE UNDER RULE 68(3)				
ERN	TYPE	TITLE	DESCRIPTION	REFERENCE IN PRIOR RECORDED TESTIMONY
DAR-OTP-0222-0467	Photograph/s	IMG_1182.JPG	Picture of the [REDACTED] injury suffered by P-0986 during Kodoom attack in August 2003.	At 0447, para. 50 and 0460, para 113
DAR-OTP-0222-0468	Photograph/s	IMG_1183.JPG	Picture of the [REDACTED] injury suffered by P-0986 during Kodoom attack in August 2003.	At 0447, para. 50 and 0460, para 113
DAR-OTP-0222-0469	Photograph/s	IMG_1184.JPG	Picture of the [REDACTED] injury suffered by P-0986 during Kodoom attack in August 2003.	At 0447, para. 47 and 0460, para 113
DAR-OTP-0222-0470	Photograph/s	IMG_1185.JPG	Picture of the [REDACTED] injury suffered by P-0986 during Kodoom attack in August 2003.	At 0447, para. 47 and 0460, para 113
DAR-OTP-0222-0471	Photograph/s	IMG_1186.JPG	Picture of the medical report concerning the injuries the witness sustained [REDACTED] [REDACTED]	At 0447, para. 54 and 0460, para 114
DAR-OTP-0219-9092	Translation – ENG	Translation of Evidence / IMG_1186.JPG	English translation of DAR-OTP-0222-0471.	N/A
DAR-OTP-0222-0472	Photograph/s	IMG_1187.JPG	Picture of the medical report concerning the injuries the witness sustained [REDACTED] [REDACTED].	At 0447, para. 54 and 0460, para 114
DAR-OTP-0219-9094	Translation – ENG	Translation of Evidence / IMG_1187.JPG	English translation of DAR-OTP-0222-0472.	N/A
DAR-OTP-0222-0473	Photograph/s	IMG_1188.JPG	Picture of the medical report concerning the injuries the witness sustained to [REDACTED] [REDACTED]	At 0447, para. 54 and 0460, para 114
DAR-OTP-0219-9083	Translation – ENG	Translation of Evidence / IMG_1188.JPG	English translation of DAR-OTP-0222-0473.	N/A

DAR-OTP-0222-0474	Photograph/s	IMG_1189.JPG	Picture of the medical report concerning the injuries the witness sustained to [REDACTED] [REDACTED] [REDACTED]	At 0447, para. 54 and 0460, para 114
DAR-OTP-0219-9085	Translation - ENG	Translation of Evidence / IMG_1189.JPG	English translation of DAR-OTP-0222-0474.	N/A