

Annex 1

Public

[REDACTED]

From: Trial Chamber I Communications
Sent: 19 October 2022 16:20
To: D31AbdAlRahmanDefenceTeam [REDACTED];
V47AbdAlRahmanLRVTeam [REDACTED]; Abd Al Rahman Prosecution Team
Cc: Associate Legal Officer-Court Officer; FS Items Communication; Trial Chamber I
Communications
Subject: Decision on the submission of evidence through P-0007
Attachments: RE: P-0007 - Defence List of Material for Submission; P-0007 - List of Material for
Submission

Dear counsel,
Dear colleagues,

Following the testimony of P-0007, the Chamber notes the submission of 11 items by the Prosecution (email of 11 October 2022 at 15:11) and 5 items by the Defence (email of 13 October 2022 at 09:13).

Noting that the items identified by the Prosecution were used and discussed with P-0007, and that these are unopposed, the Chamber hereby recognises them as formally submitted.

In relation to the items identified by the Defence, the Chamber notes the Prosecution's objection to the submission of 4 items (email of 14 October 2022 at 11:45). The Chamber further notes the Defence's response thereto (email of 14 October 2022 at 12:22).

The Chamber recalls that for items to be submitted on the basis of the testimony of a witness, they must have been used or otherwise discussed with the witness during testimony. The Chamber notes that all items identified by the Defence were used and discussed with the witness.

With regard to the Prosecution's arguments on the relevance of the items identified by the Defence, the Chamber considers that this is not an issue that should impede the submission of the item at this stage but one that can properly be taken into account by the Chamber in due course, and particularly in its judgment under Article 74 of the Statute. This is in line with the approach taken by the Chamber in its Directions on the conduct of proceedings, adopting a system that recognises submission of items of evidence 'without a prior ruling on the admissibility of the evidence' and considering 'relevance, probative value and potential prejudice of the evidence (the 'standard evidentiary criteria') as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused' (see ICC-02/05-01/20-478, para. 25). Accordingly, the Chamber rejects the Prosecution's arguments and hereby recognises all items identified by the Defence as formally submitted.

The Registry is therefore directed to proceed in accordance with paragraph 31(iv) of the Directions on the conduct of the proceedings (filing 478).

Kind regards,

[REDACTED]
(on behalf of Trial Chamber I)

From: Laucci, Cyril [REDACTED]
Sent: 14 October 2022 12:22
To: Elkholy, Mohanad; Issa Abdel Badih, Ahmad; Trial Chamber I Communications
Cc: Abd Al Rahman Prosecution Team; V47 Abd Al Rahman LRV Team; D31 Abd-Al-Rahman Defence Team; Associate Legal Officer-Court Officer; [REDACTED]
Subject: RE: P-0007 - Defence List of Material for Submission
Importance: High

Honourable Judges,

Dear Colleagues,

By seeking the admission of the documents objected by the OTP in the below email, the Defence is doing no more than trying to fill a major gap in the Prosecution's evidence so far, i.e. clear information as to the colours of the uniforms worn by the various armed groups of relevance for the case. The Defence finds highly regrettable that the OTP is not able to see the relevance of that information. The OTP should actually have provided it in the first place and failed to do so. The Defence aims at assisting the Chamber in clarifying this aspect and is convinced that the proposed documents will be of some assistance. Up to the OTP to provide better documents and evidence related to the period of the charges in the future, should it eventually come to find it useful for the presentation of its case. The documents found by the Defence may be too recent indeed. The Defence does not dispute that. But this is what we found.

They are nevertheless fully relevant because they correspond to Witness P-0007's descriptions:

1/ P-0007 had an experience within the PDF (DAR-OTP-0088-0060, para.7) and confirmed that the PDF uniform (DAR-D31-00000005 and DAR-D31-00000007) was similar to those on the picture shown to him (ICC-02/05-01/20-T-089-ENG RT, p.39, l.2-12.) .

2/ P-0007 did not recognize the brown and white uniforms shown on the other picture (DAR-D31-00000004 and DAR-D31-00000006) as CRF uniforms, but confirmed that these were similar to the uniform he saw the person he calls Ali Kushayb wearing (ICC-02/05-01/20-T-089-ENG RT, p.52, l.21 to p.53, l.16). This is a relevant information for the assessment of his identification of the person he calls Ali Kushayb.

The Defence therefore prays the Chamber to admit the proposed documents into evidence.

Yours Sincerely,

Cyril Laucci, Lead Counsel for the Defence of Mr Ali Muhammad Ali Abd-Al-Rahman.

From: Elkholy, Mohanad [REDACTED]
Sent: 14 October 2022 11:45
To: Issa Abdel Badih, Ahmad [REDACTED] Trial Chamber I Communications
Cc: Abd Al Rahman Prosecution Team [REDACTED] V47 Abd Al Rahman LRV Team
[REDACTED] D31 Abd-Al-Rahman Defence Team
[REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: P-0007 - Defence List of Material for Submission

Dear Trial Chamber I,

Pursuant to the procedure set out in paragraph 31 (i) and (ii) of the Directions on the conduct of proceedings (ICC-02/05-01/20-478), the Prosecution opposes the admission into evidence of the following material, which were put to Witness P-0007:

1. DAR-D31-00000004, Media article, RT T-89 page 53;
2. DAR-D31-00000005, Media article, Translation of Media article, RT T-089 page 38;

3. DAR-D31-00000006, Translation of Media article, RT T-89 page 53 ;
4. DAR-D31-00000007, Translation of DAR-D31-00000005.

An item can only reasonably be considered as “of relevance” during the course of witness testimony, if it was relevant to the witness’ account. P-0007’s testimony was mainly focused on an attack that took place in 2003 and the uniform of the Popular Defence Force (“PDF”) and Central Reserve Force (“CRF”) at the time. In contrast, the abovementioned items allegedly shows the uniform of these forces in 2021 and 2022, which is almost twenty years after the attack to which P-0007’s evidence relates. Furthermore, P-0007 when shown the images during his testimony did not accept that the uniforms depicted were the same as those worn by the attackers in 2003 and further stated that “If the government had changed the uniform, that is not something that I would know about”. (See ICC-02/05-01/20-T-089-ENG RT, p. 54, l. 17-18).

During P-0007’s testimony, the Prosecution also made the observation to the Chamber that these items were not relevant, as the photographs shown are dated 2021 and 2022. (See ICC-02/05-01/20-T-089-ENG RT, p. 59, l. 19-25). The Trial Chamber also commented on these items saying “(a), they're way, way out of date, and (b), he didn't adopt any of them”. (See ICC-02/05-01/20-T-089-ENG RT, p. 60, l. 10-11). The Defence also agreed that there’s “[n]o challenge, we accept that these pictures are dated” (See ICC-02/05-01/20-T-089-ENG RT, p. 60, l. 17-18).

The mere usage of an item by counsel during witness examination, without showing the relevance of the item to the witness or the witness’ adoption of the item, should not necessarily make the item admissible.

The Prosecution respectfully requests the Chamber to reject the submission of the items being sought to be admitted into the case record by the Defence.

Best regards,
Mohanad Elkholy

From: Issa Abdel Badih, Ahmad [REDACTED]
Sent: 13 October 2022 09:13
To: Trial Chamber I Communications [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED]; D31 Abd-Al-Rahman Defence Team [REDACTED]
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]
Subject: P-0007 - Defence List of Material for Submission

Dear Trial Chamber I,

Pursuant to the procedure set out in paragraphs 31-33 of the Directions on the conduct on proceedings (ICC-02/05-01/20-478), the Defence hereby seeks the admission into evidence of the material used through Witness P-0007 listed below.

For ease of reference, the relevant Transcript pages indicating the ERN of the material where the material was discussed are also identified below:

- DAR-OTP-0194-0104-R01, Screening note, RT T-089 page 44 and page 56
- DAR-D31-00000004, , Media article ; RT T-89 page 53;
- DAR-D31-00000005, Media article ; Translation of Media article, RT T-089 page 38;
- DAR-D31-00000006, Translation of Media article, RT T-89 page 53 ;
- DAR-D31-00000007, Translation of DAR-D31-00000005.

Kind regards,
Ahmad Issa,
Case Manager in the Defence team of Mr. Abd-Al Rahman

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From: Elkholy, Mohanad
Sent: 11 October 2022 15:11
To: Trial Chamber I Communications
Cc: D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team; Associate Legal Officer-Court Officer; Abd Al Rahman Prosecution Team
Subject: P-0007 - List of Material for Submission
Attachments: P-0007 - List of Material for Submission.pdf

Dear Trial Chamber I,
Dear colleagues,

In accordance with paragraph 31 of the “Directions on the conduct of proceedings” (ICC-02/05-01/20-478), the Prosecution respectfully requests the submission of the items included in the attached list in relation to witness P-0007. Thank you !

Best regards,
Mohanad Elkholy



Prosecution's List of Material for Submission - Witness DAR-OTP-P-0007

#	ERN (e-Court/JEM)	Type	Title	Relevant passages	To be admitted under rule 68(3)
1.	DAR-OTP-0088-0060-R02¹	ICC Statement - General	WITNESS STATEMENT	N/A	YES
2.	DAR-OTP-0088-0076-R01	Sketch	Exhibit B	N/A	YES
3.	DAR-OTP-0219-8861-R01	Translation - ENG	Translation of Evidence / Exhibit B	N/A	YES
4.	DAR-OTP-0088-0077	List / table	Bendisi, Mukjar, Artala	N/A	YES
5.	DAR-OTP-0119-0475	Translation - ENG	Translation of Evidence / Bendisi, Mukjar, Artala	N/A	YES
6.	DAR-OTP-0088-0081	List / table	The women who were raped by Arabs in Bendisi	N/A	YES
7.	DAR-OTP-0119-0480	Translation - ENG	Translation of Evidence / The women who were raped by Arabs in Bendisi	N/A	YES

¹ ICC-02/05-01/20-T-089-ENG RT, p. 2, l. 24-p. 3, l. 1 and p. 3, l. 15-18.



8.	DAR-OTP-00000312²	Satellite images and related reports	Annex 9 - Key locations in Bindisi town (Dec 2005)	N/A	YES
9.	DAR-OTP-00000311³	List/Table	DAR-OTP-P-0007 - List of persons raped and killed in Bindisi	N/A	YES
10.	DAR-OTP-00000314⁴	Statement	Corrections and Clarifications	N/A	YES
11.	DAR-OTP-00000316⁵	Statement	Witness Log	at 000004-000005, para 10	YES

² ICC-02/05-01/20-T-089-ENG RT, p. 4, l. 12-p. 5, l. 4, p. 7, l. 16-p. 10, l. 17.

³ ICC-02/05-01/20-T-089-ENG RT, p. 3, l. 19-24, p. 63, l. 23-25-p. 64, l. 1.

⁴ ICC-02/05-01/20-T-089-ENG RT, p. 4, l. 12-p. 5, l. 4.

⁵ ICC-02/05-01/20-T-089-ENG RT, p. 4, l. 12-p. 5, l. 4.