

Annex 1

Public

From: Trial Chamber I Communications
Sent: 02 May 2022 12:12
To: Abd Al Rahman Prosecution Team; D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team
Cc: FS Items Communication; Associate Legal Officer-Court Officer; Trial Chamber I Communications
Subject: Decision on submission of evidence through P-0903
Attachments: Defence submission - material tendered through Witness P-0903; RE: Defence submission - material tendered through Witness P-0903; P-0903 List of Material for Submission

Dear counsel,
 Dear colleagues,

The Chamber has taken note of the Defence's email dated 15 April 2022, seeking the submission of document DAR-OTP-0155-0010 (UNSC Resolution 1769 (2007), 31 July 2007) into evidence.

On 21 April 2022, the Prosecution objected to the submission of said document on the basis that it had not been 'used during a hearing'. The Prosecution argues that the mere mention of an item by counsel during the examination of the witness, without the item being shown to the witness, cannot amount to the item being 'used', since such an approach would overlap with the procedure already identified for '[i]ntroduction of evidence other than through a witness' pursuant to paras 55-56 of the Directions on the Conduct of Proceedings (ICC-02/05-01/20-478).

On the same day, the Defence replied that the Prosecution relied on a restrictive interpretation of the word 'used', without providing any legal authority in support of that interpretation. The Defence argued that it did specifically rely on UNSC Resolution 1769 in the course of P-0903's cross-examination.

The Chamber is unpersuaded by the Prosecution's objection to the submission of the aforesaid document. Whilst technically the Prosecution may be correct, it is encouraged to adopt a less narrow approach to the submission of evidence.

The Directions on the Conduct of Proceedings provide two alternative ways of submission of evidence by the parties: one for items used during a hearing, and another for submission other than through a witness. Notably, the deferral of evidentiary consideration applies to both procedures for submission. The Chamber observes that there is no strict legal rule mandating either of the procedures for submission. Consequently, there is no reason mandating a restrictive interpretation of the term 'used during a hearing' and no risk of 'inappropriate overlap'. The document proposed for submission by the Defence should thus not be rejected for this reason.

Moreover, the submission of the document in question is pertinent for the completeness of the record of the case.

Finally, the Chamber notes the Prosecution's willingness to stipulate that the United Nations Security Council decided 'to authorise and mandate the establishment [...] of an AU/UN Hybrid operation in Darfur (UNAMID)' by means of UNSC Resolution 1769 and encourages the parties to engage in consultations in order to reach an agreement on the facts in question.

Considering the above, the Chamber rejects the Prosecution's objection and hereby recognises item DAR-OTP-0155-0010 as formally submitted.

Further, noting that the Defence did not object to the items identified by the Prosecution for submission (see email of 14 April 2022 at 17:51), the Chamber hereby recognises items DAR-OTP-0219-5103, DAR-OTP-0219-5104 and DAR-REG-0001-0001 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 (ICC-02/05-01/20-478).

Kind regards,



(on behalf of Trial Chamber I)

From: Sachithanandan, Pubudu
Sent: 21 April 2022 15:44
To: Gree, Vanessa; Trial Chamber I Communications
Cc: D31 Abd-Al-Rahman Defence Team; Abd Al Rahman Prosecution Team; V47 Abd Al Rahman LRV Team; Associate Legal Officer-Court Officer; Nowak, Antonia
Subject: RE: Defence submission - material tendered through Witness P-0903

Dear Trial Chamber I,

The Prosecution opposes the submission of DAR-OTP-0155-0010 (*UNSC Resolution 1769 (2007), 31 July 2007*) by means of the procedure adopted by the Defence (i.e. submission via email, with no description of relevance and prima facie probative value). The Prosecution takes this position since the procedure of submission by “*sending an email to the Chamber and the other parties and participants [...] after the conclusion of the testimony of the relevant witness*” is only intended for items “*used during a hearing*”. (See ICC-02/05-01/20-478, para 31(1)).

An item can only reasonably be considered as “*used*” during the course of witness testimony if it was shown to the witness, and if the witness has commented on it. The mere mention of an item by counsel during witness examination, without the item being shown to the witness, cannot amount to the item being “*used*”, since such an approach would inappropriately overlap with the procedure already identified for “[i]ntroduction of evidence other than through a witness” (See ICC-02/05-01/20-478, para 55-56).

Notably, the Prosecution is also willing to stipulate that the United Nations Security Council decided “to authorise and mandate the establishment [...] of an AU/UN Hybrid operation in Darfur (UNAMID)” by means of UNSC Resolution 1769 (2007) dated 31 July 2007 (*see para. 1, page 3 of UNSC Resolution 1769 (2007)*). This stipulation may obviate the need to submit DAR-OTP-0155-0010.

Best regards,
 Pubudu Sachithanandan

From: Gree, Vanessa [REDACTED]
Sent: 15 April 2022 07:45
To: Trial Chamber I Communications [REDACTED]
Cc: D31 Abd-Al-Rahman Defence Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Defence submission - material tendered through Witness P-0903

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 following material used through Witness P-0903:

DAR-OTP-0155-0010 (UNSC Resolution 1769 (2007), 31 July 2007)

Yours sincerely,

Vanessa Grée

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[REDACTED]

From: Sabatini, Claire
Sent: 14 April 2022 17:51
To: 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; Nowak, Antonia
Subject: P-0903 List of Material for Submission
Attachments: P-0903 List of Material for Submission.pdf

Dear all,

Please see attached the List of Material for Submission for witness P-0903.

Best,



Claire Sabatini

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[REDACTED]
www.icc-cpi.int

Prosecution's List of Material for Submission - Witness DAR-OTP-P-0903

#	ERN (e-Court/Nuix)	Type	Title	Tendered through this witness
1.	DAR-OTP-0219-5103	Photograph/s	DAR-OTP-P-0903 [REDACTED]	YES
2.	DAR-OTP-0219-5104	Photograph/s	DAR-OTP-P-0903 [REDACTED]	YES
3.	DAR-REG-0001-0001	Satellite image	Witness annotated version of Annex 15, Prosecution's Trial Brief	YES