

# Annex 1

## Public

**From:** Trial Chamber I Communications  
**Sent:** 15 July 2022 12:31  
**To:** Trial Chamber I Communications; 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  
**Subject:** RE: Decision on submission of evidence through P-0643

Dear colleagues,

Please note that item 13 in the Prosecution's table is already formally submitted. The decision below has been amended to reflect this.

Best regards,

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**From:** Trial Chamber I Communications [REDACTED]  
**Sent:** 14 July 2022 17:41  
**To:** Abd Al Rahman Prosecution Team [REDACTED]; D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV Team  
**Cc:** FS Items Communication [REDACTED]; Associate Legal Officer-Court Officer [REDACTED] Trial Chamber I Communications  
**Subject:** Decision on submission of evidence through P-0643

Dear counsel,

Dear colleagues,

The Chamber notes the submission of 18 items by the Prosecution following the testimony of P-0643 (email of 8 July 2022 at 16:55 and annex). The Chamber notes the Defence's response (e-mail of 13 July 2022 at 12:02), objecting to the submission of items at 8 and 9 and making further submissions as regards items 6, 7 and 17 of the list. The Chamber notes the Prosecution's reply (e-mail of 14 July 2022 at

The Chamber notes the submission of two items by the Defence (e-mail of 12 July 2022 at 15:44). The Chamber notes the Prosecution's response (e-mail of 13 July 2022 at 10:01), objecting to the submission of one item (DAR-OTP-0103-0564). The Chamber notes the Defence's reply thereto (e-mail of 13 July 2022 at 10:41) and Prosecution's further e-mail (e-mail of 14 July at 11:33).

#### **Objected items on the Prosecution's list**

Items 8 and 9 items are transcripts of the video used in court with P-0643 (DAR-OTP-0220-4835). The Defence submits that the transcripts contain a reference to Ali Kushayb that 'simply does not exist' and are thus inaccurate.

In principle, transcripts and translations related to audio-visual material are accessories to the main item of evidence. In this case, video DAR-OTP-0220-4835 is unopposed. However, the Defence has raised an objection as to the alleged inaccuracy of the transcripts. Although these are not issues that *per se* prevent the submission of the said items, it is more appropriate at this stage to have an uncontested transcript submitted on the record.

Accordingly, the parties are to liaise with the Registry's interpretation section in order to obtain a new transcript. This Registry transcript is to then be submitted on the record.

In relation to items 6, 7 and 17 on the Prosecution's list, the Defence does not object to their submission, but simply reiterates its oral submissions as to their probative value. As noted above, the Chamber will take the Defence's submissions into consideration in its judgment under Article 74 of the Statute.

**Item DAR-OTP-0103-0564 on the Defence list**

The objected item is the 'People's Defence Forces Act'. The Prosecution submits that the item cannot be considered as 'used' during the hearing, as the witness did not comment on it. Moreover, the Prosecution notes that the Presiding Judge instructed the Defence to refrain from asking any further questions regarding this item, following P-0643's response that he was not familiar with military laws (T-059).

The Chamber notes that, although the Defence showed this document to the witness during his testimony, P-0643 was unable to comment on it (T-059).

The Chamber notes the Defence's submission that the English translation of this item (DAR-OTP-0118-0075) is already submitted on the record through P-0120 (see e-mail decision of 10 May 2022 at 14:18). As noted above, translations are accessories of the main items (the original Arabic version being the disputed item DAR-OTP-0103-0564).

Accordingly, and although in principle the submission of the said item through P-0643 is not the appropriate avenue, the Chamber authorises, for the completeness of the record, its submission at this stage.

The Chamber notes that for all other items included in the Prosecution's and Defence's list, there are no objections. It further notes these were all used during the course of the testimony of P-0643.

The Chamber however notes that items 12 and 13 on the Prosecution list are already formally submitted as evidence through P-0547 (see e-mail decision of 28 June 2022 at 12:15). Formal submission can only occur once. However, the Registry shall reflect in e-court that the item was used with P-0643.

Accordingly, the Chamber hereby recognises items 1-7, 10, 11 and 14-18 in the Prosecution's list and the two items in the Defence's list as formally submitted.

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

Kind regards,



(on behalf of Trial Chamber I)

**From:** Mazzarella, Rachel  
**Sent:** 14 July 2022 11:33  
**To:** Laucci, Cyril; Trial Chamber I Communications; Issa Abdel Badih, Ahmad; D31 Abd-Al-Rahman Defence Team  
**Cc:** V47 Abd Al Rahman LRV Team; Associate Legal Officer-Court Officer; Abd Al Rahman Prosecution Team  
**Subject:** RE: Defence Request for admission into evidence of the material tendered through witness P-0643

Dear Trial Chamber I,  
 Dear Colleagues,

The Prosecution appreciates the clarification by the Defence regarding the submission of the English translation of the "*People's Defence Forces Act – 1986*" (DAR-OTP-0118-0075) through Witness P-0120 on 10 May 2022. The Prosecution agrees that the Arabic translation should also be submitted (DAR-OTP-0103-0564) and has no objection to this, but notes that it is more appropriate to submit this via the bar table, rather than through a witness who was not able to comment upon it, as set out below.

Best regards,  
 -Rachel Mazzarella



Cour  
Pénale  
Internationale  
International  
Criminal  
Court

#### Rachel Mazzarella

Office of the Prosecutor  
 International Criminal Court (ICC)  
 Oude Waalsdorperweg 10, 2597 AK, The Hague

**From:** Laucci, Cyril [REDACTED]  
**Sent:** 13 July 2022 10:41  
**To:** Mazzarella, Rachel [REDACTED] Trial Chamber I Communications  
 [REDACTED] Issa Abdel Badih, Ahmad [REDACTED] D31 Abd-Al-Rahman  
 Defence Team [REDACTED]  
**Cc:** V47 Abd Al Rahman LRV Team [REDACTED]; Associate Legal Officer-Court Officer  
 [REDACTED]; Abd Al Rahman Prosecution Team  
 [REDACTED]  
**Subject:** RE: Defence Request for admission into evidence of the material tendered through witness P-0643

Honourable Judges, Dear Colleagues,

The OTP objection below is manifestly erring in fact.

DAR-OTP-0103-0564 was shown and read to the witness, especially its Article 48 (c) and (f), as evidenced by RT Transcript ICC-02/05-01/20-T-059-ENG at page 53 line 24 to p. 55, line 20. The material was thus used during cross-examination.

In any case, the English translation of that document (DAR-OTP-0118-0075) was already admitted as evidence by decision of Trial Chamber dated 10 May 2022 at 14.18 in relation to witness P-0120. The Defence only aims at adding the Arabic version of that document for the sake of completeness only, but in case the Trial Chamber considers that the English translation is enough for the records, the Defence will not insist on the adding of the Arabic original version DAR-OTP-0103-0564.

Yours sincerely,

Cyril Laucci, Lead Counsel.

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**From:** Mazzarella, Rachel [REDACTED]  
**Sent:** 13 July 2022 10:01  
**To:** Trial Chamber I Communications [REDACTED]; Issa Abdel Badih, Ahmad [REDACTED]  
 [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED]  
**Cc:** V47 Abd Al Rahman LRV Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]  
 [REDACTED] Abd Al Rahman Prosecution Team [REDACTED]  
**Subject:** RE: Defence Request for admission into evidence of the material tendered through witness P-0643

Dear Trial Chamber I,  
 Dear Colleagues,

The Prosecution opposes the submission of DAR-OTP-0103-0564 (*People's Defence Forces Act – 1986*) on the basis that it was not “*used during a hearing*” with Witness P-0643 in any meaningful sense. (See Directions on the Conduct of Proceedings, ICC-02/05-01/20-478, para 31(i)).

As noted previously by the Prosecution, 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.

In the case of DAR-OTP-0103-0564, while the Defence briefly mentioned this item during its cross-examination of Witness P-0643, the witness declined to pass comment due to the fact that he was “not a military person so [he is] not familiar with military laws.” The Presiding Judge then instructed the Defence to ask no further questions regarding this item. (See ICC-02/05-01/20-T-059-ENG, p. 55, l. 1-2, 8-11).

Accordingly, the standard for submission (per para. 31(i) of the Directions on the Conduct of Proceedings) was not met in respect of item DAR-OTP-0103-0564.

Best regards,  
 -Rachel Mazzarella



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Internationale  
International  
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#### Rachel Mazzarella

Office of the Prosecutor  
 International Criminal Court (ICC)  
 Oude Waalsdorperweg 10, 2597 AK, The Hague




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**From:** Issa Abdel Badih, Ahmad [REDACTED]  
**Sent:** 12 July 2022 15:44  
**To:** Trial Chamber I Communications [REDACTED]  
**Cc:** Abd Al Rahman Prosecution Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED]  
 [REDACTED] Associate Legal Officer-Court Officer [REDACTED]  
 [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED]  
**Subject:** Defence Request for admission into evidence of the material tendered through witness P-0643

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-0643 listed below.

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

- **DAR-REG-0001-0011** : Annotated Satellite Image of DAR-OTP-0220-4781 marked by P-0643, T-58 RT ENG, p. 37 ln.7 to ln. 10.
- **DAR-OTP-0103-0564**: People's Defence Forces Act – 1986, T-59 RT ENG, p. 53 ln.22;

Kind regards,

Ahmad Issa,

Case Manager in the Defence team of Mr. Abd-Al Rahman

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**From:** Mazzarella, Rachel  
**Sent:** 14 July 2022 15:19  
**To:** Laucci, Cyril; Sabatini, Claire; Trial Chamber I Communications  
**Cc:** D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team; Abd Al Rahman Prosecution Team; Associate Legal Officer-Court Officer  
**Subject:** RE: P-0643 - List of Material for Submission

Dear Trial Chamber I,  
 Dear Colleagues,

The Prosecution maintains its request to submit the transcript of the video shown to Witness P-0643 for his comment during direct examination (Transcript: DAR-OTP-0223-0519 / Translation: DAR-OTP-0223-0525).

When ruling on the admissibility of the video (DAR-OTP-0220-4835), the Chamber stated that its intention was to “hear a witness who says I recognise Ali Kushayb the man [REDACTED] to -- to find out whether or not he maintains his opinion and his recognition of the accused as the man Ali Kushayb.” (See ICC-02/05-01/20-T-057-CONF-ENG, p. 38, l. 17-21).

The transcript and its accompanying translation form an integral part of this video that the Chamber has already deemed to be admissible and relevant. These items have been prepared by certified professionals in the Office of the Prosecutor’s Language Services Unit.

Notably, the Defence does not dispute the accuracy of the transcript as a whole except for the two words that tend to identify their client. As acknowledged by the Chamber, the question of whether Mr Abd-Al-Rahman is the man Witness P-0643 knew as Ali Kushayb is “clearly an important part of this trial.” (See ICC-02/05-01/20-T-057-CONF-ENG, p. 39, l. 7-8). The transcript and translation are therefore directly relevant to the proceedings. Moreover, the Chamber remains free to make an independent assessment of the weight that it will assign to the video, including its transcript and translation.

Best regards,  
 -Rachel Mazzarella



### Rachel Mazzarella

Office of the Prosecutor  
 International Criminal Court  
 Oude Waalsdorperweg 10, 2597 AK, The Hague



**From:** Laucci, Cyril [REDACTED]  
**Sent:** 13 July 2022 12:02  
**To:** Sabatini, Claire [REDACTED]; Trial Chamber I Communications [REDACTED]  
**Cc:** D31 Abd-Al-Rahman Defence Team [REDACTED]; V47 Abd Al Rahman LRV Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]  
 [REDACTED]

**Subject:** RE: P-0643 - List of Material for Submission

**Importance:** High

Dear Trial Chamber I,  
Dear Colleagues,

The Defence of Mr. Abd-Al Rahman objects to the admission of the transcripts in Tab 8 (ERN DAR-OTP-0223-0519) and Tab 9 (ERN DAR-OTP-0223-0525) of the Prosecution list for submission.

These transcripts contain a reference at 0531, line 176 (ERN DAR-OTP-0223-0519, ENGLISH) and at 0523, line 129 (ERN DAR-OTP-0223-0525, ARABIC) to the crowd shouting "Ali Kushayb". The Defence fails to locate that part of the transcript in the video and considers that this reference of the transcripts to the crowd shouting "Ali Kushayb" simply does not exist. These transcripts are thus inaccurate as far as this reference is concerned and cannot be admitted in evidence.

In addition, , the Defence of Mr. Abd Al Rahman has already made some oral submissions in relation to the probative value of the video (OTP Tab 7: DAR-OTP-0220-4835) and the photographs in Tab 6 (DAR-OTP-0222-0037) and 17 (DAR-OTP-0220-5589) during Witness P-0643's appearance and reserves its right to provide further submissions challenging their probative value in due course.

Yours Sincerely,

Cyril Laucci, Lead Counsel.

---

**From:** Sabatini, Claire [REDACTED]  
**Sent:** 08 July 2022 16:55  
**To:** Trial Chamber I Communications [REDACTED]  
**Cc:** D31 Abd-Al-Rahman Defence Team [REDACTED]; V47 Abd Al Rahman LRV Team [REDACTED] Abd Al Rahman Prosecution Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]  
**Subject:** P-0643 - List of Material for Submission

Dear Trial Chamber I,

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-0643.

Thank you.

Kind regards,



**Claire Sabatini**

Case Manager  
 Office of the Prosecutor  
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 Oude Waalsdorperweg 10, 2597 AK, The Hague  
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**Prosecution's List of Material for Submission – Witness DAR-OTP-P-0643**

| #   | ERN (e-Court/Nuix)                | Type                                              | Title                                                            | Tendered through this witness | To be admitted under rule 68(3) (if applicable) |
|-----|-----------------------------------|---------------------------------------------------|------------------------------------------------------------------|-------------------------------|-------------------------------------------------|
| 1.  | <a href="#">DAR-OTP-0218-0651</a> | Sketch                                            | ANNEX. A                                                         | YES                           | NO                                              |
| 2.  | <a href="#">DAR-OTP-0221-2132</a> | Non ICC Statement (Note / Screening / Transcript) | Attachment 1 - [REDACTED]                                        | YES                           | NO                                              |
| 3.  | <a href="#">DAR-OTP-0014-0213</a> | Report                                            | INFORMATION REPORT                                               | YES                           | NO                                              |
| 4.  | <a href="#">DAR-OTP-0216-0248</a> | Identifying document                              | [REDACTED]                                                       | YES                           | NO                                              |
| 5.  | <a href="#">DAR-OTP-0216-0782</a> | Translation - ENG                                 | Partial Translation of Evidence / [REDACTED]                     | YES                           | NO                                              |
| 6.  | <a href="#">DAR-OTP-0222-0037</a> | Photograph/s                                      | Photo shown to P-0885.                                           | YES                           | NO                                              |
| 7.  | <a href="#">DAR-OTP-0220-4835</a> | Audio / Video Material                            | DAR-OTP-0220-2879_Subt                                           | YES                           | NO                                              |
| 8.  | <a href="#">DAR-OTP-0223-0519</a> | Transcript                                        | Transcript of DAR-OTP-0220-4835 - FINAL - ARB.PDF                | YES                           | NO                                              |
| 9.  | <a href="#">DAR-OTP-0223-0525</a> | Translation - ENG                                 | Translation of Transcript of DAR-OTP-0220-4835 - FINAL - ENG.DOC | YES                           | NO                                              |
| 10. | <a href="#">DAR-OTP-0220-5453</a> | Audio / Video Material                            | DAR-OTP-0220-2879-Arrow.mp4                                      | YES                           | NO                                              |
| 11. | <a href="#">DAR-OTP-0220-5454</a> | Photograph/s                                      | 00-00-09-19.jpg                                                  | YES                           | NO                                              |
| 12. | <a href="#">DAR-OTP-0034-0260</a> | List / table                                      | [REDACTED]                                                       | YES                           | NO                                              |
| 13. | <a href="#">DAR-OTP-0219-8825</a> | Translation - ENG                                 | Translation of Evidence / [REDACTED]                             | YES                           | NO                                              |
| 14. | <a href="#">DAR-OTP-0224-0825</a> | List / table                                      | [REDACTED]                                                       | YES                           | NO                                              |
| 15. | <a href="#">DAR-OTP-0224-0829</a> | Sketch                                            | [REDACTED]                                                       | YES                           | NO                                              |

|     |                                   |                        |                                                                                                        |     |    |
|-----|-----------------------------------|------------------------|--------------------------------------------------------------------------------------------------------|-----|----|
| 16. | <a href="#">DAR-OTP-0220-5450</a> | Audio / Video Material | VID-20220628-WA0000.mp4                                                                                | YES | NO |
| 17. | <a href="#">DAR-OTP-0220-5589</a> | Photograph/s           | photograph of Abd-Al-Rahman (Ali Ksuhayb) in red shirt from Radio Dabanga article                      | YES | NO |
| 18. | <a href="#">DAR-OTP-0220-5596</a> | Photograph/s           | still from video of first appearance hearing in ICC-02/05-01/20 portraying Abd-Al-Rahman (Ali Kushayb) | YES | NO |