

Annex 1

Public Redacted

[REDACTED]

From: Trial Chamber I Communications
Sent: 09 April 2024 16:29
To: Abd Al Rahman Prosecution Team; D31AbdAlRahmanDefenceTeam [REDACTED]
V47AbdAlRahmanLRVTeam [REDACTED]
Cc: Associate Legal Officer-Court Officer; Trial Chamber I Communications; FS Items Communication
Subject: Decision on the submission of evidence through D-0026
Attachments: RE: D-0026 - CLRV's List of Material for Submission; RE: D-26 List of Materials for Submission

Dear counsel,
Dear colleagues,

Following the testimony of D-0026, the Chamber notes the submission of 5 items by the Defence (e-mail of 22 March 2024, at 17:14) and of 11 items by the CLRV (e-mails of 22 March 2024, at 15:44 and 25 March 2024, at 10:40).

Regarding items 1, 2 and 5 on the Defence's list, the Chamber recalls that their introduction into evidence was authorised pursuant to Rule 68(3) of the Rules of Procedure and Evidence (see T-147, p. 29, line 21 to p. 30, line 6).

Considering that all remaining items, submitted by the Defence and the CLRV, were used and discussed with D-0026, and that their submission is unopposed (e-mail of 25 March 2024, at 11:49), the Chamber hereby recognises them as formally submitted.

Finally, the Chamber notes that none of the parties seeks the submission into evidence of most of the associated material to D-0026's statements, consisting of more than 400 items. Noting the parties' agreement in this respect, the type and amount of material concerned, as well as the fact that their content is not systematically discussed by D-0026 in his statements, which can be read and understood on their own, the Chamber finds that the submission into evidence of the aforesaid items is not necessary.

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: Morris, Laura
Sent: 25 March 2024 15:40
To: Edwards, Iain; Velarde, Marcela; 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
Subject: RE: D-26 List of Materials for Submission

[ICC] RESTRICTED

Dear Trial Chamber I,

Dear colleagues,

For clarity, the Prosecution is not opposing the submission of the diary, it is simply noting that only limited parts of this exhibit were commented on by D-0026. The Prosecution also notes that previously, when Mr Edwards opposed the submission of the entirety of four documents shown by the Prosecution to D-0027 (e-mail dated 22/11/2023, 06:19), the Chamber recognised the entirety of these documents to be formally submitted, but stated it would consider the Defence submissions when “analysing the evidence for the purpose of its judgment pursuant to Article 74 of the Rome Statute.” (Decision on the submission of evidence through D-0027, e-mail dated 28/11/2023).

In this context, and in order to assist the Chamber, the Prosecution indicated the passages of the diary commented on by D-0026.

Based on the testimony of D-0026, the Prosecution is unable to agree to Mr Edwards’ request for the OTP to “stipulate that ‘*Ali Kushayb*’ figures nowhere in the witness’s notes”. In particular, the Prosecution notes that D-0026 testified as follows (T-147-CONF-ENG ET, page 55, lines 1-6):

55: 1 Q. [12:49:06] No, that’s fine. That’s fine. Well, talking about names, during your

2 time in Darfur, did you ever come across the name Ali Kushayb?

3 A. [12:49:17] I came across a name that sounded similar to it, but I’m not certain

4 that I recollect that name that you’re mentioning.

5 Q. [12:49:29] Okay.

6 A. [12:49:36] It could be in my notes, but I would have to read them again.

D-0026 also stated in the diary clarification document that “some of the words I wrote remain illegible to me” (DAR-D31-00000297, para. 1).

Accordingly, the Prosecution cannot agree to this stipulation.

Kind regards,

Laura Morris

From: Edwards, Iain [REDACTED]
Sent: Monday, March 25, 2024 12:56 PM
To: Morris, Laura [REDACTED]; Velarde, Marcela [REDACTED]; 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]; Associate Legal Officer-Court Officer [REDACTED]
Subject: Re: D-26 List of Materials for Submission

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber I,

Dear colleagues,

The Trial Chamber has indicated on numerous occasions in the course of this trial that a document in its entirety should be submitted for the Chamber's consideration, not just the extracts to which a given witness has been taken during his/her evidence (see eg. email of 28 November 2023 at 13:56, Decision on the submission of evidence through D-0027: "The Chamber reiterates its previous rulings that items are to be submitted as a whole. This is without prejudice to the party's reliance on only a part of the document..."). This amounts, in our submission, to a line of rulings, not merely "the Chamber's preference".

In any event, the rationale for having the entirety of Col. Markey's diary and not simply extracts is that it will permit the Defence to make the point that nowhere in his diary is there any reference to "*Ali Kushayb*" (see the witness's evidence at T-147, 21 March 2024, p.55 line 6).

Of course, were the OTP to stipulate that "*Ali Kushayb*" figures nowhere in the witness's notes, the Defence may be content to support the Prosecution's position, notwithstanding the Trial Chamber's previous rulings.

Kind regards,

Iain Edwards

From: Morris, Laura [REDACTED]

Sent: 25 March 2024 11:49

To: Velarde, Marcela [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: D-26 List of Materials for Submission

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Trial Chamber I,

Dear Colleagues,

In respect of item 3, Diary (DAR-OTP-0109-0183) referenced in the Defence list of materials for submission, while the Prosecution notes the Chamber's preference for submission of items as a whole, the Prosecution notes that only the entries referred to by D-26 in his witness statements (DAR-OTP-0109-0111 at paras. 23, 24 and 54 and DAR-D31-00000279 at paras. 33 to 37), diary clarification document (DAR-D31-00000297) and testimony (see, T-147-CONF-ENG ET, page 45, line 9 to page 55, line 22) are relevant to the Chamber's analysis of the evidence, not the diary in its entirety.

Below are the relevant pages of the Diary (DAR-OTP-0109-0183):

DAR-OTP-0109-0192

DAR-OTP-0109-0197

DAR-OTP-0109-0199

DAR-OTP-0109-0200

DAR-OTP-0109-0201

DAR-OTP-0109-0205

DAR-OTP-0109-0206

DAR-OTP-0109-0207

The Prosecution has no objections to the remainder of the Defence list, nor the list of materials submitted by the CLRV.

Kind regards,
Laura Morris

From: Velarde, Marcela [REDACTED]
Sent: Friday, March 22, 2024 5:14 PM
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] Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED]
Subject: D-26 List of Materials for Submission

[ICC] RESTRICTED

Dear Trial Chamber I,
Dear Parties,

Please find attached the Defence's List of Materials for Submission, following D-0026's testimony. It is our understanding, as per oral submissions during the hearing, that D-0026's two witness statements and the diary clarifications document *[ERNs at DAR-D31-00000279, DAR-OTP-0109-0111-R01, and DAR-D31-00000297]* were admitted into evidence under Rule 68(3) *[See T-147-CONF-ENG ET at page 29, line 13 to page 30, line 6]*. The Defence is conscious that Col. Markey refers, directly or indirectly, to hundreds of documents and photographs in his 2006 OTP statement. We have not included all these additional documents in our request, but are ready to discuss the matter with the OTP and CLRV before the Chamber makes a final determination.

Kind regards,
Marcela Velarde



 Cour Pénale Internationale
 International Criminal Court



Marcela Velarde
 Legal Assistant
 Defence Team for Mr. Abd-Al-Rahman
 [REDACTED]
 [REDACTED]

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From: Shah, Anand [REDACTED]
Sent: 25 March 2024 10:40
To: 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
Subject: RE: D-0026 - CLRV's List of Material for Submission

[ICC] RESTRICTED

Dear Trial Chamber I,
 Dear Colleagues,

In view of the Defence's communication of 22 March, advising that all of the materials annexed to D-0026's Prosecution statement were not included in the Defence's Rule 68(3) request, the CLRV amends its below request and seeks submission of the eleven items listed in the CLRV's List of Material for Submission, all of which were used during the CLRV's questioning of the witness.

The CLRV appreciates the Defence's offer to discuss with the Prosecution and CLRV the possibility of requesting submission of additional items annexed to D-0026's Prosecution witness statement, and respectfully advises that the CLRV does not seek the submission of any further items.

Kind regards,
 Anand

From: Shah, Anand
Sent: Friday, March 22, 2024 3:44 PM
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: D-0026 - CLRV's List of Material for Submission

Dear Trial Chamber I,
 Dear Colleagues,

Please find attached the CLRV's List of Material for Submission in respect of D-0026, concerning one item ([DAR-V47-00000241](#)).

For sake of completeness of the record, the list also includes the items used by the CLRV during questioning of the witness that were attached to the witness' statement to the Prosecution ([DAR-OTP-0109-0111](#)), which was submitted pursuant to Rule 68(3). The CLRV understands that the submitted statement includes all items that were attached as an integral part thereof, and accordingly that no separate request is necessary in respect of these items.

Kind regards,
 Anand

 Anand A. Shah
 Associate Counsel
 CLRV Team – *Abd-Al-Rahman* case

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Prosecutor v. Abd-Al-Rahman**Case No. ICC-02/05-01/20****Common Legal Representative of Victims' List of Material for Submission:
Witness D-0026**

No.	ERN Reference	Title / Description	Transcript reference
1.	DAR-V47-00000241	AMIS Sector Map (OCHA)	T-147-ET, p. 61, line 24 to p. 63, line 18
Items referenced from annexures to D-0026's Statement to the Prosecution (DAR-OTP-0109-0111) submitted pursuant to Rule 68(3)¹			
2.	DAR-OTP-0109-0943	Power Point – Briefing for visiting General	T-147-ET, p. 61, lines 5-22
3.	DAR-OTP-0109-0142	Attachment 14 – Photo Log – “Pictures Darfur”	T-147-ET, p. 64, line 23 to p. 65, line 14
4.	DAR-OTP-0109-1421	Picture July 044.jpg (Sept-Dec 2004; east of Al Geneina, just outside the town; “IDP camp in poor condition; without established UNHCR presence”)	T-147-ET, p. 65, line 15 to p. 67, line 8
5.	DAR-OTP-0109-1422	Picture July 045.jpg (Sept-Dec 2004; east of Al Geneina, just outside the town; “IDP camp”)	T-147-ET, p. 65, line 15 to p. 67, line 8
6.	DAR-OTP-0109-1291	El Genina 10 May 015.jpg (10 May 2005; Sisi; “IDP Camp”)	T-147-ET, p. 67, line 9 to p. 68, line 15
7.	DAR-OTP-0109-1300	El Genina 10 May 045.jpg (10 May 2005; Sisi; “IDP Camp”)	T-147-ET, p. 68, line 16 to p. 69, line 11
8.	DAR-OTP-0109-1304	El Genina 10 May 062.jpg (10 May 2005; Sisi; “IDP Camp”)	T-147-ET, p. 69, line 12 to p. 70, line 6

¹ T-147-ET, p. 29, line 21 to p. 30, line 4.

9.	DAR-OTP-0109-1310	IDP Camp,Darfur.jpg (Sept-Dec 2004; El Fasher; “Zam Zam IDP camp; tightly controlled ‘model camp’”)	T-147-ET, p. 70, line 10 to p. 72, line 21
10.	DAR-OTP-0109-1338	P1010015.jpg (approximately March 2005; south of Al Geneina; “typical African village”)	T-147-ET, p. 73, line 18 to p. 74, line 19
11.	DAR-OTP-0109-1438	Typical Scenery Darfur.jpg (date unknown; north of Al Geneina; “typical African village”)	T-147-ET, p. 74, line 20 to p. 75, line 15

Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
Case No. ICC-02/05-01/20

Defence List of Materials for Submission: Bernard Markey (D-0026)

Count	ERN	Title	Document Type	Used at
1	DAR-D31-00000279	Witness Statement	ICC Statement - General	T-147-CONF-ENG ET, page 27, line 24 to page 28, line 24 and page 29, line 13 to page 30, line 6.
2	DAR-OTP-0109-0111-R01	WITNESS STATEMENT	ICC Statement - General	T-147-CONF-ENG ET, page 27, line 9 to page 28, line 24 and page 29, line 13 to page 30, line 6.
3	DAR-OTP-0109-0183	DIARY	Calendar / Diary	T-147-CONF-ENG ET, page 45, line 9 to page 55, line 22.
4	DAR-OTP-0109-1332		Photograph/s	T-147-CONF-ENG ET, page 41, line 24 to page 43, line 5.
5	DAR-D31-00000297	CLARIFICATIONS REGARDING ENTRIES IN MY DIARY (DAR-OTP-0109-0183)	ICC Statement - General	T-147-CONF-ENG ET, page 28, line 25 to page 30, line 6.