



**Original: English**

**No. ICC-02/05-01/20**

**Date: 27 February 2023**

**TRIAL CHAMBER I**

**Before:**

**Judge Joanna Korner, Presiding Judge  
Judge Reine Alapini-Gansou  
Judge Althea Violet Alexis-Windsor**

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF  
*THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI  
KUSHAYB')***

**Public redacted version of**

**Decision on the Prosecution's bar table motion**

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

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Participation/Reparations**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Procedural background

1. On 4 October 2021, Trial Chamber I (the ‘Chamber’) issued the ‘Directions on the conduct of proceedings’,<sup>1</sup> setting out the procedure for the submission of evidence other than through a witness.<sup>2</sup>
2. On 15 December 2022, the Chamber set the deadline of 31 January 2023 for the Prosecution to file any written application for introduction of evidence other than through a witness, including an indication of whether the other party consents or objects.<sup>3</sup>
3. On 31 January 2023, the Prosecution filed a request to submit evidence other than through a witness (the ‘Request’).<sup>4</sup>
4. On 10 February 2023, the Common Legal Representative of Victims notified the Chamber and parties that she has no objection to the Request; it does not negatively affect the interests of the participating victims; and that in her view the Request adequately and sufficiently justifies the *prima facie* reliability, relevance and probative value of the submitted items, and how they will assist the Chamber.<sup>5</sup>
5. On 13 February 2023, the Defence filed its response to the Prosecution’s Request (the ‘Response’).<sup>6</sup> It agrees to the submission of 23 items and opposes the remainder of the Request.<sup>7</sup>
6. On 22 February 2023, the Prosecution filed a reply to the Response (the ‘Reply’).<sup>8</sup>

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<sup>1</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478 with Annex A.

<sup>2</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478, paras 55-56.

<sup>3</sup> Second Directions on the conduct of proceedings, ICC-02/05-01/20-836, para.6.

<sup>4</sup> Prosecution’s second request to submit material from the bar table, ICC-02/05-01/20-860-Conf with a confidential annex. A public redacted version was notified on the same date, ICC-02/05-01/20-860-Red.

<sup>5</sup> Notification on behalf of Victims on the ‘Prosecution’s second request to submit material from the bar table’ (ICC-02/05-01/20-860-Conf), ICC-02/05-01/20-870.

<sup>6</sup> Defence response to Prosecution’s second request to submit material from the bar table of 31 January 2023, ICC-02/05-01/20-871-Conf with confidential annexes A and B.

<sup>7</sup> See Response, ICC-02/05-01/20-871-Conf, annex A.

<sup>8</sup> Prosecution’s reply to “Defence response to Prosecution’s second request to submit material from the bar table of 31 January 2023”, 13 February 2023, ICC-02/05-01/20-871-Conf, ICC-02/05-01/20-878-Conf. See E-mail from the Chamber, 20 February 2023, at 12:32, directing the Prosecution to file a reply by 22 February 2023.

## II. Prosecution's Request

7. The Prosecution has grouped its Request into the following categories of items:
8. Reports. The Prosecution seeks to submit 25 reports (and corresponding translations and transcripts for some of these), that may be subcategorised as follows: (a) reports published by United Nations bodies and specialised agencies; (b) reports published by non-governmental organisations (NGOs), such as Human Rights Watch, Amnesty International and INTERSOS; and (c) five lists of names and villages of origin of persons allegedly killed during the Deleig incident.
9. Media articles. The Prosecution seeks to submit 13 media articles (and corresponding translations for some of these), which it submits, are relied upon to corroborate evidence regarding the accused's link to the nickname 'Ali Kushayb', his background, authority as Militia/*Janjaweed* leader and his surrender to the Court.<sup>9</sup> The Chamber notes that, as pointed out by the Prosecution, most of these articles were published before the issuance of a warrant of arrest against the accused.<sup>10</sup> The Chamber further notes that in relation to four items, the Prosecution intends to rely on them to prove the contextual elements of the crimes and other discrete facts related to the incidents in Deleig and Bindisi.<sup>11</sup>
10. Legislation. The Prosecution seeks the submission of 12 documents (and corresponding translations for some of these) which it categorises as legislation. These include: five Sudanese legislative acts; one agreement between the Government of Sudan (the 'GoS'), and the Sudan Liberation Movement/Army (the 'SLM/A') and Justice and Equality Movement (the 'JEM'); 4 United Nations Security Council (the 'UNSC') resolutions; and two documents titled 'Decisions of the state's security committee from the beginning of March 2003 until November 2004' and 'Proposal by the JEM for Peace in Sudan in General & Darfur in Particular'.<sup>12</sup>
11. Alleged interview of the accused. The Prosecution seeks the submission of five documents (and corresponding translations) relating to the interview of the accused

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<sup>9</sup> Request, ICC-02/05-01/20-860-Conf, para. 15.

<sup>10</sup> Request, ICC-02/05-01/20-860-Conf, para. 15.

<sup>11</sup> Request, ICC-02/05-01/20-860-Conf, para. 16.

<sup>12</sup> Request, ICC-02/05-01/20-860-Conf, paras 17-24.

conducted by a GoS investigation committee on 28 and 29 November 2006. It states that this record of interview is part of a batch of materials that was provided to the Prosecution by the GoS in 2021.<sup>13</sup>

12. Material seized from the accused. The Prosecution seeks the submission of 11 items (and corresponding translations) relating to material seized from the accused following his surrender to the Court.<sup>14</sup> The Chamber notes that they include physical items, as well as data extracted from mobile phone devices and SIM cards, along with a corresponding forensic report, including eight documents relating to various certificates and identification cards containing biographical details of the accused and his family.<sup>15</sup>

13. Photographs. The Prosecution seeks the submission of four items: an image of a compact disc containing satellite imagery of Darfur provided to the Prosecution by the European Union Satellite Centre,<sup>16</sup> a Prosecution investigation report, and two photographs. The Chamber notes, as pointed out by the Prosecution, that the photographs are of persons allegedly killed during the charged incident in Deleig, and the investigation report relates to the source of these photographs and the identities of the persons depicted in them.<sup>17</sup>

14. Audio-visual material. The Prosecution seeks the submission of 13 items (and corresponding transcripts and translations) which include: 10 videos of meetings held between representatives of the GoS Ministry of Justice and the Prosecution in January/February 2007; two letters received by the Prosecution from the GoS Ministry

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<sup>13</sup> Request, ICC-02/05-01/20-860-Conf, para. 19.

<sup>14</sup> Request, ICC-02/05-01/20-860-Conf, paras 25-26. *See further* Decision on the Prosecution's request for evidence in the custody of the Registry (ICC-0205-01/20-Red2) and the Registry's request for instructions (ICC-02/05-01/07-86-US-Exp), 20 August 2020, ICC-02/05-01/02-123-Red, para. 9 and p. 10. A public redacted version was notified on 9 July 2021, ICC-02/05-01/20-123-Red. Decision on the "Prosecution's Report Relating to Items Obtained from the Registry Pursuant to Decision ICC-02/05-01/20-123-Conf", 12 October 2020, ICC-02/05-01/20-181, para. 7.

<sup>15</sup> Request, ICC-02/05-01/20-860-Conf, para. 27.

<sup>16</sup> The Prosecution states that this item is the reference Document ID for this satellite imagery, and for technical reasons (due to the size and format of the raw satellite imagery files, and the need to disclose associated files required to open and use the imagery), the raw satellite imagery files on this compact disc cannot be registered in Ringtail nor disclosed through eCourt. The relevant files were therefore extracted and disclosed on a physical CD.

<sup>17</sup> Request, ICC-02/05-01/20-860-Conf, para. 30.

of Justice; and one open source video of Ahmed Harun delivering a speech to a crowd of GoS Forces.<sup>18</sup>

15. Map Book. The Prosecution seeks the submission of 81 items comprising the Map Book that, upon instruction of the Chamber,<sup>19</sup> was prepared by the Prosecution and distributed to the Chamber, parties and participants during the trial proceedings as reference material.<sup>20</sup> The Chamber notes, as indicated by the Prosecution, that the Map Book contains: (i) overview maps showing the administrative division of West Darfur, and locations relevant to the charged crimes and contextual elements of crimes against humanity; (ii) satellite imagery of charged incident locations, namely Kodoom, Bindisi, Mukjar, Deleig, and surrounding areas; (iii) an aerial photograph showing key locations in Deleig town; and (iv) satellite imagery showing relevant locations in Garsila.<sup>21</sup>

### III. Defence's Response

16. The Defence opposes the submission of items on the basis, in overarching terms that some of them: (i) lack relevance;<sup>22</sup> (ii) are unreliable;<sup>23</sup> (iii) are not the original document;<sup>24</sup> (iv) lack authenticity;<sup>25</sup> (v) are not an official translation;<sup>26</sup> (vi) lack or have limited probative value;<sup>27</sup> (vii) the prejudice caused by their admission outweighs

<sup>18</sup> Request, ICC-02/05-01/20-860-Conf, para. 31.

<sup>19</sup> Transcript of hearing, 25 April 2022, ICC-02/05-01/20-T-034-Conf-ENG, pp. 26-27.

<sup>20</sup> Request, ICC-02/05-01/20-860-Conf, para. 34.

<sup>21</sup> Request, ICC-02/05-01/20-860-Conf, para. 34.

<sup>22</sup> DAR-OTP-0038-0060; DAR-OTP-0034-0166; DAR-OTP-0153-0778; DAR-OTP-0211-0326; DAR-OTP-0160-0885; DAR-OTP-0048-0045; DAR-OTP-0051-0205; DAR-OTP-0107-1474; DAR-OTP-0147-0659; DAR-OTP-0148-0002; DAR-OTP-0063-0399; DAR-OTP-0116-0549; DAR-OTP-0162-0042; DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0219-4294; DAR-OTP-0036-0348; DAR-OTP-0116-0380; DAR-OTP-0153-0295; DAR-OTP-0157-1344; DAR-OTP-0202-1355; DAR-OTP-0219-7105; DAR-OTP-0216-0244; DAR-OTP-0216-0778; DAR-OTP-0216-0245; DAR-OTP-0216-0780; DAR-OTP-0123-0002; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0122-0012; DAR-OTP-0202-0273; DAR-OTP-0123-0006; DAR-OTP-0122-0015; DAR-OTP-0202-0337; DAR-OTP-0122-0018; DAR-OTP-0202-0396; DAR-OTP-0193-0530; DAR-OTP-0219-9258; DAR-OTP-0219-9344.

<sup>23</sup> DAR-OTP-0107-1474; DAR-OTP-0139-0003.

<sup>24</sup> DAR-OTP-0115-0747.

<sup>25</sup> DAR-OTP-00001013.

<sup>26</sup> DAR-OTP-0139-0003.

<sup>27</sup> DAR-OTP-0038-0060; DAR-OTP-0063-0399; DAR-OTP-0116-0549; DAR-OTP-0211-0326; DAR-OTP-0115-0747; DAR-OTP-0002-0201; DAR-OTP-0001-0004; DAR-OTP-0020-0945; DAR-OTP-0153-0679; DAR-OTP-0160-0885; DAR-OTP-0162-0042; DAR-OTP-0090-0377; DAR-OTP-0053-0068; DAR-OTP-0218-0231; DAR-OTP-0219-7007; DAR-OTP-0218-0386; DAR-OTP-0219-6910; DAR-OTP-00001013; DAR-OTP-0216-0807; DAR-OTP-0216-0792; DAR-OTP-0215-6816; DAR-OTP-0215-6831; DAR-OTP-0123-0002; DAR-OTP-0122-0002; DAR-OTP-0202-0092; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0007; DAR-OTP-0202-0140; DAR-OTP-0122-0008; DAR-OTP-0202-0172; DAR-OTP-0122-0009; DAR-OTP-0202-0190; DAR-OTP-0122-0010;

their probative value;<sup>28</sup> (viii) contain information on fundamental issues in dispute;<sup>29</sup> (ix) are not on the Prosecution's latest List of Evidence (the 'LoE');<sup>30</sup> (x) should or could have been submitted through a witness;<sup>31</sup> (xi) are testimonial in nature;<sup>32</sup> (xii) are unnecessary as they contain facts already agreed upon by the parties or facts not in

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DAR-OTP-0202-0215; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0123-0006; DAR-OTP-0122-0018; DAR-OTP-0202-0396.

<sup>28</sup> DAR-OTP-0063-0399; DAR-OTP-0116-0549; DAR-OTP-0211-0326; DAR-OTP-0115-0747; DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0090-0377; DAR-OTP-0053-0068; DAR-OTP-0153-0211; DAR-OTP-0036-0348; DAR-OTP-0116-0380; DAR-OTP-0013-0119; DAR-OTP-0107-1474; DAR-OTP-0209-0593; DAR-OTP-0060-0222; DAR-OTP-0153-0917; DAR-OTP-0147-0659; DAR-OTP-0148-0002; DAR-OTP-0215-9038; DAR-OTP-0145-0237; DAR-OTP-0020-0945; DAR-OTP-0153-0679; DAR-OTP-0034-0166; DAR-OTP-0160-0885; DAR-OTP-0162-0042; DAR-OTP-0216-0807; DAR-OTP-0216-0792; DAR-OTP-0215-6816; DAR-OTP-0215-6831; DAR-OTP-0123-0002; DAR-OTP-0122-0002; DAR-OTP-0202-0092; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0007; DAR-OTP-0202-0140; DAR-OTP-0122-0008; DAR-OTP-0202-0172; DAR-OTP-0122-0009; DAR-OTP-0202-0190; DAR-OTP-0122-0010; DAR-OTP-0202-0215; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0123-0006; DAR-OTP-0122-0018; DAR-OTP-0202-0396.

<sup>29</sup> DAR-OTP-0122-0002; DAR-OTP-0202-0092; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0007; DAR-OTP-0202-0140; DAR-OTP-0122-0008; DAR-OTP-0202-0172; DAR-OTP-0122-0009; DAR-OTP-0202-0190; DAR-OTP-0122-0010; DAR-OTP-0202-0215; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0123-0006; DAR-OTP-0122-0018; DAR-OTP-0202-0396.

<sup>30</sup> DAR-OTP-0000-0510; DAR-OTP-0000-0811; DAR-OTP-0000-0701; DAR-OTP-0000-0838; DAR-OTP-0021-0353; DAR-OTP-0218-0350; DAR-OTP-00001010; DAR-OTP-0218-0431; DAR-OTP-00001011; DAR-OTP-00001013; DAR-OTP-0216-0244; DAR-OTP-0216-0778; DAR-OTP-0216-0245; DAR-OTP-0216-0780; DAR-OTP-0220-4200; DAR-OTP-0222-5202; DAR-OTP-0222-5203; DAR-OTP-0122-0002; DAR-OTP-0202-0092. *See* Response, ICC-02/05-01/20-871-Conf, annex B, p. 1.

<sup>31</sup> DAR-OTP-0034-0166; DAR-OTP-0153-0778; DAR-OTP-0063-0399; DAR-OTP-0116-0549; DAR-OTP-0002-0201; DAR-OTP-0053-0068; DAR-OTP-0153-0211; DAR-OTP-0051-0205; DAR-OTP-0219-4294; DAR-OTP-0036-0348; DAR-OTP-0116-0380; DAR-OTP-0013-0119; DAR-OTP-0209-0593; DAR-OTP-0202-1355; DAR-OTP-0218-0231; DAR-OTP-0219-7007; DAR-OTP-0218-0386; DAR-OTP-0219-6910; DAR-OTP-0220-4200; DAR-OTP-0222-5202; DAR-OTP-0222-5203; DAR-OTP-0122-0002; DAR-OTP-0202-0092; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0007; DAR-OTP-0202-0140; DAR-OTP-0122-0008; DAR-OTP-0202-0172; DAR-OTP-0122-0009; DAR-OTP-0202-0190; DAR-OTP-0122-0010; DAR-OTP-0202-0215; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0193-0530; DAR-OTP-0219-9258; DAR-OTP-0219-9344.

<sup>32</sup> DAR-OTP-0063-0399; DAR-OTP-0116-0549; DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0053-0068; DAR-OTP-0153-0211; DAR-OTP-0036-0348; DAR-OTP-0116-0380; DAR-OTP-0013-0119; DAR-OTP-0209-0593; DAR-OTP-0216-0702; DAR-OTP-0148-0002; DAR-OTP-0211-0326; DAR-OTP-0115-0747; DAR-OTP-0160-0885; DAR-OTP-0162-0042; DAR-OTP-0051-0205; DAR-OTP-0219-4294; DAR-OTP-0036-0348; DAR-OTP-0116-0380; DAR-OTP-0123-0002; DAR-OTP-0122-0002; DAR-OTP-0202-0092; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0007; DAR-OTP-0202-0140; DAR-OTP-0122-0008; DAR-OTP-0202-0172; DAR-OTP-0122-0009; DAR-OTP-0202-0190; DAR-OTP-0122-0010; DAR-OTP-0202-0215; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0122-0012; DAR-OTP-0202-0273; DAR-OTP-0122-0015; DAR-OTP-0202-0337; DAR-OTP-0122-0018; DAR-OTP-0202-0396; DAR-OTP-0157-1344.

dispute;<sup>33</sup> (xiii) are duplicative of evidence already heard by the Chamber;<sup>34</sup> and (xiv) rely on or relate to material already in evidence.<sup>35</sup>

17. As regards the alleged interview of the accused by the GoS, the Defence alleges that it never took place. It opposes the submission of these items for their lack of authenticity, probative value, prejudice to the accused, and because some of them are not on the Prosecution's latest LoE.<sup>36</sup> The Defence also submits that the Prosecution should have called a witness from the GoS to testify on this matter and submitted the items through that witness.

18. The Defence opposes the submission of the compact disc containing satellite imagery of Darfur as far as it contains non-annotated versions of satellite images which are already in evidence.<sup>37</sup> The Defence also opposes the submission of the Map Book, on grounds that some of them are not on the Prosecution's latest LoE; have previously been recognised by the Chamber as formally submitted or agreed upon by the parties; lack relevance and probative value; the prejudice caused outweigh their probative value; pertain to a fundamental issue in dispute; lack the sources of the annotations; could have been submitted through witnesses; are not available on Nuix under the specified ERNs; and are duplicates of other maps.<sup>38</sup>

19. The Defence further submits, in the alternative, that for some documents, only excerpts should be submitted, as relevance of the entire document is not evident.<sup>39</sup>

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<sup>33</sup> DAR-OTP-0034-0166; DAR-OTP-0153-0778; DAR-OTP-0160-0885; DAR-OTP-0162-0042; DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0053-0068; DAR-OTP-0153-0211; DAR-OTP-0048-0045; DAR-OTP-0051-0205; DAR-OTP-0219-4294; DAR-OTP-0001-0004; DAR-OTP-0060-0222; DAR-OTP-0153-0917; DAR-OTP-0153-0295; DAR-OTP-0202-1355.

<sup>34</sup> DAR-OTP-0147-0659; DAR-OTP-0034-0166; DAR-OTP-0153-0778; DAR-OTP-0160-0885; DAR-OTP-0162-0042; DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0053-0068; DAR-OTP-0153-0211; DAR-OTP-0048-0045; DAR-OTP-0051-0205; DAR-OTP-0219-4294; DAR-OTP-0001-0004; DAR-OTP-0060-0222; DAR-OTP-0153-0917; DAR-OTP-0116-0549.

<sup>35</sup> DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0048-0045.

<sup>36</sup> DAR-OTP-0218-0350; DAR-OTP-00001010; DAR-OTP-0218-0431; DAR-OTP-00001011; DAR-OTP-0218-0231; DAR-OTP-0219-7007; DAR-OTP-0218-0386; DAR-OTP-0219-6910; DAR-OTP-00001013.

<sup>37</sup> DAR-OTP-0135-0002.

<sup>38</sup> Response, ICC-02/05-01/20-871-Conf, annex B.

<sup>39</sup> DAR-OTP-0147-0659; DAR-OTP-0145-0237.



#### IV. Prosecution's Reply

20. In its Reply, the Prosecution withdrew its Request in relation to the items already formally submitted.<sup>40</sup>

21. The Prosecution also addresses the Defence's objections in relation to: (i) items not in the LoE;<sup>41</sup> (ii) items that should have been submitted through a witness;<sup>42</sup> (iii) items that are irrelevant in light of agreed facts;<sup>43</sup> (iv) reports and lists of victims;<sup>44</sup> (v) GoS interview with the accused;<sup>45</sup> and (vi) the Map Book.<sup>46</sup> The Reply contained no application for a late addition of material to the LoE.

#### V. Analysis

##### A. Chamber's approach on the submission of evidence

22. The Chamber recalls that in its Directions on the conduct of proceedings, it established that parties or participants wishing to tender evidence without it being introduced through a witness shall file an application containing: (i) a short description of the content of each item; (ii) in the case of a lengthy document, an index of the most relevant portions; and (iii) a short description of its relevance, and *prima facie* probative value.<sup>47</sup> It also directed the tendering party or participant to first inquire whether the opposing party or participant consents or objects to the submission and include this information in the table.<sup>48</sup>

23. Having reviewed the Request, the Chamber is satisfied that the Prosecution filed the Request in accordance with the Chamber's directions. The Chamber further observes that, as directed,<sup>49</sup> the Prosecution provided specific submissions on the relevance and probative value of each document submitted in Annex A of its Request.

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<sup>40</sup> Reply, ICC-02/05-01/20-878-Conf, para. 5.

<sup>41</sup> Reply, ICC-02/05-01/20-878-Conf, paras 6-12.

<sup>42</sup> Reply, ICC-02/05-01/20-878-Conf, para. 13.

<sup>43</sup> Reply, ICC-02/05-01/20-878-Conf, paras 14-16.

<sup>44</sup> Reply, ICC-02/05-01/20-878-Conf, paras 17-20.

<sup>45</sup> Reply, ICC-02/05-01/20-878-Conf, paras 21-24.

<sup>46</sup> Reply, ICC-02/05-01/20-878-Conf, paras 25-29.

<sup>47</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 55.

<sup>48</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 56.

<sup>49</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478, paras 55-56.

24. The Chamber also recalls that pursuant to Article 64(9)(a) of the Rome Statute (the ‘Statute’), the Chamber has the power to rule on the relevance or admissibility of any evidence. In accordance with Article 69(4) of the Statute, the Chamber ‘may take into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness’.<sup>50</sup>

25. However, in accordance with the Directions on the conduct of proceedings, and the now established practice of the Court,<sup>51</sup> the Chamber ‘will ultimately assess the 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, in its judgment pursuant to Article 74 of the Statute’.<sup>52</sup> This approach applies to the present bar table motion.<sup>53</sup>

26. In light of the Chamber’s approach on the submission of evidence, and although the Defence has made document-specific objections, the Chamber does not consider that all of the Defence’s objections warrant further discussion for the purpose of the present ruling.<sup>54</sup> These objections relate to relevance, reliability, authenticity and probative value of the items, *i.e.*, Defence’s objections (i) to (viii) summarised in paragraph 16 above. Further, the Defence’s submissions with references to decisions in the *Katanga and Ngudjolo*,<sup>55</sup> and *Ruto and Sang*<sup>56</sup> cases are also not applicable *vis-à-*

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<sup>50</sup> Decision on the Prosecution’s request to submit lists of victims from the bar table, 13 January 2023, ICC-02/05-01/20-846, para. 5.

<sup>51</sup> See Chambers Manual, Sixth Edition, 24 November 2022, para. 84 and confidential annex. See also Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Prosecution’s Request to Submit 1006 Items of Evidence, 28 March 2017, ICC-02/04-01/15-795 (hereinafter: the ‘Ongwen Decision on the submission of 1006 items of evidence’); Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the Prosecution’s fourth, fifth and sixth requests for the admission of evidence from the bar table, 23 February 2022, ICC-01/12-01/18-2127 (hereinafter: the ‘Al Hassan Decision on admission of evidence from the bar table’); Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the First Prosecution Submission Request from the Bar Table, (Sexual and Gender Based Violence), 12 April 2022, ICC-01/14-01/18-1359 (hereinafter: the ‘Yekatom and Ngaïssona Decision on submission from the bar table’).

<sup>52</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 25.

<sup>53</sup> See also Decision on the Prosecution’s request to submit lists of victims from the bar table, 13 January 2023, ICC-02/05-01/20-846, para. 15.

<sup>54</sup> *Al Hassan* Decision on admission of evidence from the bar table, ICC-01/12-01/18-2127, para. 22.

<sup>55</sup> Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Prosecutor’s Bar Table Motions, 17 December 2010, ICC-01/04-01/07-2635, paras 12-13, 22-24, 27-35; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Bar Table Motion of the Defence of Germain Katanga, 21 October 2011, ICC-01/04-01/07-3184, para. 17.

<sup>56</sup> Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Prosecution’s Request for Admission of Documentary Evidence, 10 June 2014, ICC-01/09-01/11-1353, paras 44, 85-87 (hereinafter: the ‘Ruto and Sang Decision on admission of documentary evidence’).

*vis* the present ruling, on the basis that in these cases the Chambers adopted a different approach to the reception of materials into evidence, *i.e.*, that of ‘admission’ rather than ‘submission’. The Chamber will consider objections related to the standard evidentiary criteria during its deliberations for the judgment pursuant to Article 74 of the Statute.<sup>57</sup>

27. The Chamber notes the Defence’s objection that some items relate to fundamental issues in dispute, *i.e.*, Defence’s objection (viii) at paragraph 16 above. The Chamber also notes, as indicated by the Defence, the indirect nature of some of the reports submitted, and its objections relating generally to the media articles. All such objections will be taken into account and fully considered when deciding upon the evidentiary weight of these items at the judgment stage of proceedings. The Chamber finds that at this stage there is no bar on the submission of such items.<sup>58</sup>

28. The Defence objects to the submission of some of the items on the basis that the incident of the killings in Deleig is a fundamental issue in dispute.<sup>59</sup> The Chamber notes that, during its cross-examination of witnesses, the Defence has never suggested that the killings in Deleig did not take place, nor has the Defence in any of its submissions disputed the killings; the Defence has so far only disputed the presence of the accused at the site of the incidents. The Chamber therefore defers its consideration of these objections until its deliberation for the judgment pursuant to Article 74(2) of the Statute.<sup>60</sup> At this stage, the Chamber will only consider the admissibility of items in the context of the statutory exclusionary rules, including procedural bars, obstacles and preconditions.<sup>61</sup>

### **B. Items already submitted on the record**

29. The Chamber notes that some of the exhibits submitted by the Prosecution were already recognised as formally submitted by the Chamber through a witness.<sup>62</sup> The

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<sup>57</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 25.

<sup>58</sup> *See Ongwen* Decision on the submission of 1006 items of evidence, ICC-02/04-01/15-795; *Al Hassan* Decision on admission of evidence from the bar table, ICC-01/12-01/18-2127.

<sup>59</sup> Response, ICC-02/05-01/20-871-Conf, annex A.

<sup>60</sup> *See Yekatom and Ngaiisona* Decision on submission from the bar table, ICC-01/14-01/18-1359, para. 11.

<sup>61</sup> *See Yekatom and Ngaiisona* Decision on submission from the bar table, ICC-01/14-01/18-1359, para. 12.

<sup>62</sup> DAR-OTP-0219-3235; DAR-OTP-0220-3702; DAR-OTP-0220-3705; DAR-OTP-0220-3707; DAR-OTP-0220-4778; DAR-OTP-0220-4740; DAR-OTP-0215-2766.

Chamber also notes that Prosecution's withdrawal of these items.<sup>63</sup> Accordingly, this aspect of the Request is moot.

### C. Agreed items

30. The Chamber notes that for a number of items, the Defence has no objection to their submission.<sup>64</sup> Accordingly, the Chamber formally recognises their submission.

### D. Items not in the LoE

31. The Chamber notes that a number of items, as noted by the Defence, are not in the LoE,<sup>65</sup> *i.e.*, Defence's objection (ix) at paragraph 16 above. As already noted,<sup>66</sup> the Prosecution has failed to apply for their inclusion pursuant to Regulation 35 of the Regulations of the Court, nor provided any explanation for its failure so to do.<sup>67</sup> Such omission may result in rejection of material sought to be tendered via a bar table motion.<sup>68</sup>

32. Nonetheless, the Chamber, notes, as indicated by the Prosecution, that the majority of the items (78 of the 96) are part of the Map Book used during the trial proceedings.<sup>69</sup> The Chamber will rule on these items below, in the context of the objections to the Map Book.

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<sup>63</sup> Reply, ICC-02/05-01/20-878-Conf, para. 5.

<sup>64</sup> These are items: DAR-OTP-0118-1135, DAR-OTP-0021-0412, DAR-OTP-0035-0109, DAR-OTP-0219-5715, DAR-OTP-0152-0189, DAR-OTP-0080-0024, DAR-OTP-0080-0041, DAR-OTP-0080-0047, DAR-OTP-0103-0598, DAR-OTP-0116-0895, DAR-OTP-0216-0807, DAR-OTP-0216-0234, DAR-OTP-0216-0763, DAR-OTP-0216-0235, DAR-OTP-0216-0765, DAR-OTP-0216-0237, DAR-OTP-0216-0767, DAR-OTP-0216-0239, DAR-OTP-0216-0770, DAR-OTP-0216-0241, DAR-OTP-0216-0773, DAR-OTP-0216-0243, DAR-OTP-0216-0776. *See* Response, ICC-02/05-01/20-871-Conf, annex A.

<sup>65</sup> DAR-OTP-0000-0510; DAR-OTP-0000-0811; DAR-OTP-0000-0701; DAR-OTP-0000-0838; DAR-OTP-0021-0353; DAR-OTP-0218-0350; DAR-OTP-00001010; DAR-OTP-0218-0431; DAR-OTP-00001011; DAR-OTP-00001013; DAR-OTP-0216-0244; DAR-OTP-0216-0778; DAR-OTP-0216-0245; DAR-OTP-0216-0780; DAR-OTP-0220-4200; DAR-OTP-0222-5202; DAR-OTP-0222-5203; DAR-OTP-0122-0002; DAR-OTP-0202-0092. *See* Response, ICC-02/05-01/20-871-Conf, annex B, p. 1. *See also* Response, ICC-02/05-01/20-871-Conf, para. 22.

<sup>66</sup> *See* para. 21 *above*.

<sup>67</sup> Reply, ICC-02/05-01/20-878-Conf, para. 6.

<sup>68</sup> *See Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision on 'Prosecution's Fifth Request for the Admission of Evidence from the Bar Table', 14 December 2015, ICC-01/05-01/13-1524, para. 6.

<sup>69</sup> Reply, ICC-02/05-01/20-878-Conf, para. 7.

33. As regards two items,<sup>70</sup> the Chamber notes the Prosecution's submission that one item is the transcript of a video already in the LoE, and its translation.<sup>71</sup> As foreseen in the Directions on the conduct of proceedings, transcripts and translations of items duly disclosed and included in the LoE are formally submitted, irrespective of their inclusion in the LoE.<sup>72</sup> Accordingly, the formal submission of transcript DAR-OTP-0122-0002 and its translation DAR-OTP-0202-0092 is authorised.

34. In respect of the remainder of the items, and although the Prosecution submits that their probative value outweighs any prejudicial effect to the Defence,<sup>73</sup> in the light of the matters discussed at paragraph 31 above the Chamber rejects their formal submission.<sup>74</sup>

### **E. Submission through a witness**

35. In its Response, the Defence objects to several items that in its view, should have been submitted through a witness that either testified in Court or should have been called to testify,<sup>75</sup> *i.e.*, Defence's objection (x) at paragraph 16 above.

36. The Prosecution submits that there is no principle requiring that an item that could be submitted through a witness must be so submitted or cannot be submitted from the bar table.<sup>76</sup> It also argues that contrary to the Defence's submission, P-0718 and P-0584

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<sup>70</sup> DAR-OTP-0122-0002; DAR-OTP-0202-0092.

<sup>71</sup> Reply, ICC-02/05-01/20-878-Conf, para. 8, *referring to* DAR-OTP-0202-0092 (related to video DAR-OTP-0122-0002).

<sup>72</sup> Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 33.

<sup>73</sup> Reply, ICC-02/05-01/20-878-Conf, paras 9-12.

<sup>74</sup> *See The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision on 'Prosecution's Fifth Request for the Admission of Evidence from the Bar Table', 14 December 2015, ICC-01/05-01/13-1524, para. 6.

<sup>75</sup> DAR-OTP-0034-0166; DAR-OTP-0153-0778; DAR-OTP-0063-0399; DAR-OTP-0116-0549; DAR-OTP-0002-0201 (through P-0718 or P-0584); DAR-OTP-0053-0068 (through a member of the NCOI); DAR-OTP-0051-0205; DAR-OTP-0219-4294; DAR-OTP-0036-0348 (through P-0643); DAR-OTP-0116-0380 (through P-0643); DAR-OTP-0013-0119 (through a member of the International Commission of Inquiry); DAR-OTP-0209-0593 (through a member of the NCOI); DAR-OTP-0218-0231; DAR-OTP-0219-7007; DAR-OTP-0218-0386; DAR-OTP-0219-6910; DAR-OTP-0220-4200 (through P-0883, P-0931, P-0994, or P-0060); DAR-OTP-0222-5202 (through P-0883, P-0931, P-0994, or P-0060); DAR-OTP-0222-5203 (through P-0883 or P-0994); DAR-OTP-0122-0002; DAR-OTP-0202-0092; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0007; DAR-OTP-0202-0140; DAR-OTP-0122-0008; DAR-OTP-0202-0172; DAR-OTP-0122-0009; DAR-OTP-0202-0190; DAR-OTP-0122-0010; DAR-OTP-0202-0215; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0193-0530 (through P-0769); DAR-OTP-0219-9258 (through P-0769); DAR-OTP-0219-9344 (through P-0769).

<sup>76</sup> Reply, ICC-02/05-01/20-878-Conf, para. 13.

were not in a position to speak about the victims lists the Defence submits should have been submitted through them.<sup>77</sup>

37. Although the said items could have been submitted through a witness, the Chamber notes that this possibility does not preclude their submission at this stage.<sup>78</sup> Further, such submission does not relieve the Prosecution of its burden of proof or shift that burden to the Defence. The method of submission of documentary evidence has no bearing on how the Chamber will eventually evaluate the evidence. The Chamber will fully consider the Defence objections, particularly objections relating to the standard evidentiary criteria and the lack of opportunity to ask questions of witnesses designed to test same, in its judgment pursuant to Article 74 of the Statute. Accordingly, seeing that there is no procedural bar to the submission of the items at this stage, the Chamber authorises their formal submission.

#### **F. Testimonial nature of evidence**

38. The Defence objects to the submission of several items, which it submits are testimonial in nature,<sup>79</sup> *i.e.*, Defence's objection (xi) at paragraph 16 above. The Defence submits that these cannot be submitted pursuant to a bar table motion. Referring to the *Ruto and Sang*,<sup>80</sup> *Yekatom and Ngaïssona*,<sup>81</sup> and *Gicheru* cases,<sup>82</sup> the Defence suggests that Rule 68 of the Rules of Procedure and Evidence (the 'Rules') is the appropriate avenue for the submission of what it argues is a 'compilation of witness statements'.<sup>83</sup>

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<sup>77</sup> Reply, ICC-02/05-01/20-878-Conf, para. 20.

<sup>78</sup> *Ongwen* Decision on the submission of 1006 items of evidence, ICC-02/04-01/15-795, para. 49.

<sup>79</sup> DAR-OTP-0063-0399; DAR-OTP-0116-0549; DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0053-0068; DAR-OTP-0153-0211; DAR-OTP-0036-0348; DAR-OTP-0116-0380; DAR-OTP-0013-0119; DAR-OTP-0209-0593; DAR-OTP-0216-0702; DAR-OTP-0148-0002; DAR-OTP-0211-0326; DAR-OTP-0115-0747; DAR-OTP-0160-0885; DAR-OTP-0162-0042; DAR-OTP-0051-0205; DAR-OTP-0219-4294; DAR-OTP-0123-0002; DAR-OTP-0122-0002; DAR-OTP-0202-0092; DAR-OTP-0122-0003; DAR-OTP-0202-0108; DAR-OTP-0122-0007; DAR-OTP-0202-0140; DAR-OTP-0122-0008; DAR-OTP-0202-0172; DAR-OTP-0122-0009; DAR-OTP-0202-0190; DAR-OTP-0122-0010; DAR-OTP-0202-0215; DAR-OTP-0122-0011; DAR-OTP-0202-0241; DAR-OTP-0122-0012; DAR-OTP-0202-0273; DAR-OTP-0122-0015; DAR-OTP-0202-0337; DAR-OTP-0122-0018; DAR-OTP-0202-0396; DAR-OTP-0157-1344.

<sup>80</sup> *Ruto and Sang* Decision on admission of documentary evidence, ICC-01/09-01/11-1353, paras 85-87.

<sup>81</sup> *Yekatom and Ngaïssona* Decision on submission from the bar table, ICC-01/14-01/18-1359, para. 16.

<sup>82</sup> Trial Chamber III, *The Prosecutor v. Paul Gicheru*, Decision on the Prosecution's Second Request to Introduce Evidence Other than Through a Witness, 15 March 2022, ICC-01/09-01/20-299, para. 16.

<sup>83</sup> Response, ICC-02/05-01/20-871-Conf, paras 14-16, 33.

39. The Prosecution submits that the Defence misstates the nature of certain reports as being ‘not sourced’. The Prosecution argues that these relate to the methodology for the collection of information and are overall reliable.<sup>84</sup> As regards the testimonial nature argument of the Defence, the Prosecution submits that the fact that a report is informed by witness statements does not bar its submission from the bar table.<sup>85</sup> The Prosecution further contends that the amount of relevant information contained in a report has no bearing on its admissibility.<sup>86</sup>

40. Although the Chamber acknowledges that reports such as those submitted by the Prosecution are based, at least in part on interviews with witnesses to events, these reports are not prior recorded testimonies. The Chamber also fully appreciates the Defence’s objections relating to the reports and will take these objections into account when assessing these reports for relevance, probative value and potential prejudice, as part of the holistic assessment of all evidence submitted, in its judgment pursuant to Article 74 of the Statute. The same criteria will be applied to other documents which the Defence claims are testimonial in nature, such as minutes of meetings and media articles. The Chamber notes that, whilst such documents summarise or narrate a person’s accounts or discussions, they are not a ‘compilation of witness statements’, as submitted by the Defence, or in any other way a prior recorded testimony in the sense of Rule 68 of the Rules.<sup>87</sup> Accordingly, seeing that there is no procedural bar to the submission of the items at this stage, the Chamber authorises their formal submission.<sup>88</sup>

### **G. Corroborative or cumulative items**

41. The Defence submits that some items are corroborative or cumulative of evidence on the record or agreed facts,<sup>89</sup> *i.e.*, Defence’s objections (xii) to (xiv) at paragraph 16 above.

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<sup>84</sup> Reply, ICC-02/05-01/20-878-Conf, para. 17.

<sup>85</sup> Reply, ICC-02/05-01/20-878-Conf, para. 18.

<sup>86</sup> Reply, ICC-02/05-01/20-878-Conf, para. 19.

<sup>87</sup> *See Yekatom and Ngaiissona* Decision on submission from the bar table, ICC-01/14-01/18-1359, paras 15-16.

<sup>88</sup> *See Yekatom and Ngaiissona* Decision on submission from the bar table, ICC-01/14-01/18-1359, paras 17-20.

<sup>89</sup> DAR-OTP-0001-0004; DAR-OTP-0002-0201; DAR-OTP-0003-0099; DAR-OTP-0034-0166; DAR-OTP-0048-0045; DAR-OTP-0051-0205; DAR-OTP-0053-0068; DAR-OTP-0060-0222; DAR-OTP-0116-0549; DAR-OTP-0147-0659; DAR-OTP-0153-0211; DAR-OTP-0153-0295; DAR-OTP-0153-

42. The Prosecution submits that, while some contextual elements of war crimes have been agreed, the items to be submitted provide further relevant information that will assist the Chamber in understanding and assessing the context in which the alleged crimes occurred.<sup>90</sup> It contends that the agreed facts do not satisfy the contextual elements of crimes against humanity.<sup>91</sup>

43. As regards the lists of victims, which the Defence argues are duplicative of evidence already on the record, the Prosecution contends that although the Chamber has already authorised the submission of several lists of alleged Deleig victims, these lists do not duplicate or are repetitive, but are corroborative in nature.<sup>92</sup>

44. The Chamber reiterates that it will analyse the evidentiary criteria of the items submitted in its judgment pursuant to Article 74 of the Statute. Bearing that in mind, the fact that an item is corroborative or cumulative to evidence on the record or agreed facts does not prevent its submission. On the contrary, it limits potential prejudice to the accused. Accordingly, seeing that there is no procedural bar to the submission of the items at this stage, the Chamber authorises their formal submission

#### **H. Alleged interview of the accused**

45. As noted above, the Defence submits that the alleged interview of the accused by the GoS never took place. The Defence opposes the submission of these items for their lack of authenticity, probative value and prejudice to the accused. The Defence submits that the Prosecution should have called a member of the GoS to testify on this matter and submitted the items through that witness.

46. The Prosecution submits that the Defence's assertion, that the interview is fake, is speculative and has no evidentiary support. The Prosecution argues that the interview was received directly from the GoS and is part of a larger, chronological set of interviews [REDACTED].<sup>93</sup> The Prosecution submits that the lack of a stamp or

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0778; DAR-OTP-0153-0917; DAR-OTP-0160-0885; DAR-OTP-0162-0042; DAR-OTP-0202-1355; DAR-OTP-0219-4294. *See* Response, ICC-02/05-01/20-871-Conf, para. 28.

<sup>90</sup> Reply, ICC-02/05-01/20-878-Conf, paras 14-15.

<sup>91</sup> Reply, ICC-02/05-01/20-878-Conf, para. 16.

<sup>92</sup> Reply, ICC-02/05-01/20-878-Conf, para. 20.

<sup>93</sup> Reply, ICC-02/05-01/20-878-Conf, para. 22; Request, ICC-02/05-01/20-860-Conf, para. 20 [REDACTED].



identity of specific interviewer does not bar its submission.<sup>94</sup> It further submits that the interview took place in 2006, thus before the issuance of the arrest warrant by the Court.<sup>95</sup>

47. The Chamber has already rejected the submission of items in this category, which are not in the Prosecution's latest LoE. As regards the remaining items,<sup>96</sup> namely the excerpt of the alleged interview, the Chamber notes that, pursuant to paragraph 17 of the Directions on the conduct of proceedings, the Prosecution duly notified the Defence that it would (and did) rely on this interview, in its opening statements.<sup>97</sup> The Chamber further notes that, at that time, the Defence had the opportunity — and that would have been the appropriate time — to object to the use of this interview based on the claim that it 'never happened'. However, the Defence failed to do so, even though, it successfully objected to the use of a video in opening on the same list of material notified by the Prosecution.<sup>98</sup>

48. The Chamber has already dealt with the Defence's objection that the items relating to the interview could have been submitted through a witness. The Chamber notes the Defence's objections regarding the reliability, relevance, probative value and potential prejudice. As stated above, the Chamber will take such objections to the admissibility criteria, into account at the judgment stage pursuant to Article 74 of the Statute. Accordingly, seeing that there is no procedural bar to the submission of these items at this stage, the Chamber authorises their formal submission.<sup>99</sup>

### **I. Map Book**

49. The Chamber notes that six items have already been recognised by the Chamber as formally submitted.<sup>100</sup> As noted above, several of the items contained in the Map Book are not in the LoE. The Chamber also notes that three items are not available on

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<sup>94</sup> Reply, ICC-02/05-01/20-878-Conf, paras 22-23.

<sup>95</sup> Reply, ICC-02/05-01/20-878-Conf, para. 24.

<sup>96</sup> DAR-OTP-0218-0231; DAR-OTP-0219-7007; DAR-OTP-0218-0386; DAR-OTP-0219-6910.

<sup>97</sup> Material for use in opening statements, Email from the Prosecution, 28 March 2022, at 19:43. See Transcript of hearing, 5 April 2022, ICC-02/05-01/20-T-026, pp. 33-34, 53, 56.

<sup>98</sup> See Objection en vertu du paragraphe 17 des « Directions on the Conduct of the Proceedings » (ICC-02/05-01/20-478), 31 March 2022, ICC-02/05-01/20-657.

<sup>99</sup> DAR-OTP-0218-0231; DAR-OTP-0219-7007; DAR-OTP-0218-0386; DAR-OTP-0219-6910.

<sup>100</sup> DAR-OTP-0219-3235; DAR-OTP-0220-3702; DAR-OTP-0220-3705; DAR-OTP-0220-3707; DAR-OTP-0220-4778; DAR-OTP-0220-4740.

NUIX/JEM.<sup>101</sup> The Chamber instructs the Prosecution to upload the items in eCourt within two days of notification of the present decision.

50. Notwithstanding, as already noted,<sup>102</sup> the Chamber recalls that it was at its request, that the Prosecution prepared and provided the Map Book to the parties. The Defence agreed to the use of the Map Book throughout the trial, and indeed, it was so used without objection.<sup>103</sup> As pointed out by the Prosecution, to the extent that certain maps contain annotations, this is without prejudice to the Chamber's ultimate findings on the material facts in its judgment.<sup>104</sup> Therefore, the Chamber authorises the submission of the Map Book for the completeness of the record of the case. The Chamber also notes the Defence's submissions on the reliability, relevance and probative value of specific maps in the Map Book, and will consider them as part of the holistic assessment of all evidence in its judgment pursuant to Article 74 of the Statute.

#### **J. Submission of excerpts**

51. The Chamber notes the Defence's submission that, alternatively, for some documents only excerpts should be submitted, since the relevance of the entire document is not evident. In line with previous decisions by the Chamber, documents should be submitted in their entirety for completeness of the record.<sup>105</sup> The Chamber will however take into consideration the parts identified by the Prosecution as relevant for the purpose of the judgment.

#### **VI. Conclusion**

52. For these reasons, the Chamber:

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<sup>101</sup> These are items DAR-OTP-0224-0576, DAR-OTP-0224-0577 and DAR-OTP-0224-0578. The Prosecution submits that they are duplicates of DAR-OTP-0223-0513, DAR-OTP-0223-0514 and DAR-OTP-0223-0515, but have not sought the submission of these originals.

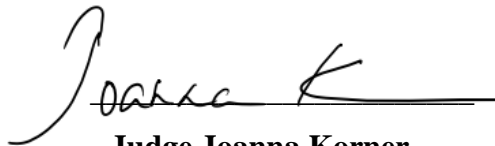
<sup>102</sup> See para. 31 above.

<sup>103</sup> See Transcript of hearing, 25 April 2022, ICC-02/05-01/20-T-034, p. 27; Transcript of hearing, 17 June 2022, ICC-02/05-01/20-T-052, p. 94; Transcript of hearing, 25 April 2022, ICC-02/05-01/20-T-034, p. 27. See also Transcript of hearing, 7 July 2022, ICC-02/05-01/20-T-058, p. 28; Transcript of hearing, 21 July 2022, ICC-02/05-01/20-T-067, p. 13; Transcript of hearing, 27 September 2022, ICC-02/05-01/20-T-081, pp. 55, 124, 203; Transcript of hearing, 9 November 2022, ICC-02/05-01/20-T-094, p. 46.

<sup>104</sup> Reply, ICC-02/05-01/20-878-Conf, para. 26.


<sup>105</sup> See for example Decision on the submission of evidence through witness P-0877, E-mail from the Chamber, 20 July 2022, at 12:58; Decision on the submission of material through P-0916, E-mail from the Chamber, 20 September 2022, at 12:57.

- i. authorises the submission of items listed in the annex to this decision, and any corresponding translations and transcripts;
- ii. directs the Prosecution to upload items DAR-OTP-0224-0576, DAR-OTP-0224-0577 and DAR-OTP-0224-0578 in eCourt within two days of notification of the present decision; and
- iii. directs the Registry to reflect the formal submission of the items in the eCourt metadata.

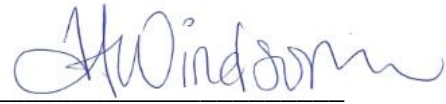


**Judge Joanna Korner**

**Presiding Judge**



**Judge Reine Alapini-Gansou**



**Judge Althea Violet Alexis-Windsor**

Dated this 27 February 2023

At The Hague, The Netherlands