

# Annex 1

# Public

[REDACTED]

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**From:** Trial Chamber I Communications  
**Sent:** 16 June 2022 11:16  
**To:** Abd Al Rahman Prosecution Team; D31 Abd-Al-Rahman Defence Team; V47AbdAlRahmanLRVTeam [REDACTED]  
**Cc:** FS Items Communication; Trial Chamber I Communications; Associate Legal Officer-Court Officer  
**Subject:** Decision on submission of evidence through P-0012  
**Attachments:** Defence Request for admission into evidence of the material tendered through witness P-0012; P-0012 - List o Material for Submission; Re: P-0012 - List o Material for Submission; RE: P-0012 - List of Material for Submission

Dear Counsel,  
Dear colleagues,

The Chamber notes the submission of 14 items by the Prosecution following the testimony of P-0012 (email of 13 June 2022 at 14:30 and annex). The Chamber notes the Defence's objections (e-mail of 13 June 2022 at 17:48 ), as well as the Prosecution's reply to the Defence's objections (e-mail of 14 June 2022 at 17:37). The Chamber also notes the submission of 2 items by the Defence (email of 13 June 2022 at 18:06).

Noting that the items submitted by the Defence were created by P-0012 during his testimony, and that their submission is unopposed, the Chamber hereby recognises the items as formally submitted.

As regards items 1-10 listed by the Prosecution, the Chamber notes these items were used and discussed during P-0012's testimony, and that their submission is unopposed. The Chamber also notes the Prosecution's clarification that in relation to item DAR-OTP-0220-3199 (item 10 on the list), the updated transcript and its English translation properly reflect the content of the video and, therefore, should be submitted in lieu of the original transcript and translation. Accordingly, the Chamber hereby recognised items 1-10 in the Prosecution's list as formally submitted.

As for the items 11-14 listed by the Prosecution, the Chamber notes that, despite the Chamber's clear ruling disallowing their use during the testimony of P-0012, the Prosecution initially sought their submission through this witness. However, in light of the objections correctly raised by the Defence, the Prosecution has withdrawn its request to submit items 11-14 in its list.

Consequently, items 11-14 in the Prosecution annex are not to be submitted on the record.

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:** Pallot, Paola [REDACTED]  
**Sent:** 13 June 2022 18:06  
**To:** Trial Chamber I Communications  
**Cc:** Abd Al Rahman Prosecution Team; V47 Abd Al Rahman LRV Team; Associate Legal Officer-Court Officer; D31 Abd-Al-Rahman Defence Team  
**Subject:** Defence Request for admission into evidence of the material tendered through witness P-0012

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-0012 listed below.

All the relevant material has been disclosed by the Registry.

1. DAR-REG-0001-0009 (Annotated map)
2. DAR-REG-0001-0010 (Annotated map)

Yours sincerely,

Paola Pallot, Assistant Evidence Reviewer (D31)  
 On behalf of Council Edwards



Paola Pallot  
 Assistant Evidence Reviewer  
 Defence Team for Mr. Abd-al-Rahman  
 [REDACTED]  
 [REDACTED]

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**From:** Jeremy, Edward  
**Sent:** 14 June 2022 17:37  
**To:** Edwards, Iain; 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-0012 - List of Material for Submission

Dear Trial Chamber I,  
Dear colleagues,

Pursuant to para. 31 (iii) of the Directions on the conduct of proceedings,<sup>1</sup> the Prosecution provides the below reply to the arguments raised by the Defence in relation to the submission of items listed in the Prosecution's List of Materials.

First, in relation to item DAR-OTP-0220-3199, the Prosecution notes that the updated transcript and its English translation properly reflect the content of the video and, therefore, should be submitted in lieu of the original transcript and translation.

In relation to the second video (DAR-OTP-0220-2879, DAR-OTP-0202-1377) and the Defence's submissions in relation to the same, the Prosecution notes that this video was (i) discussed in court,<sup>2</sup> (ii) played (in part) in court<sup>3</sup> and (iii) the witness appeared to make various references to its content (e.g. references to Rahad-Al-Berdi<sup>4</sup> and to Kushayb in a military uniform, surrounded by military people<sup>5</sup>) and references to the title of the video ("Ali Kushayb talking about prohibited weapons")<sup>6</sup>. However, the Prosecution withdraws the request to submit items 11 to 14 of its list of material through P-0012 and will seek to submit them into the record of the case at a later time.

Best regards,  
Edward Jeremy

<sup>1</sup> [ICC-02/05-01/20-478](#)

<sup>2</sup> [ICC-02/05-01/20-T-046-CONF ENG ET \(T-046\)](#), from p. 98, l. 25 to p. 108, l. 3; [ICC-02/05-01/20-T-047-CONF-ENG \(T-047\)](#), from p. 3, l. 14 to p. 7, l. 8.

<sup>3</sup> T-046, p. 106, l. 17 to p. 107, l. 16.

<sup>4</sup> T-046, p. 10, l. 11-15; p. 13, l. 13-16; p. 98, l. 11-13.

<sup>5</sup> T-046, p. 98, l. 10-14.

<sup>6</sup> T-047, p. 16, l. 1-2.

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**From:** Edwards, Iain [REDACTED]  
**Sent:** 13 June 2022 17:48  
**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-0012 - List of Material for Submission

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Dear Trial Chamber I,

Dear Colleagues,

The Defence does not object to the submission of items listed at 1 to 10 of the Prosecution's schedule in relation to witness P-0012.

The Defence takes this opportunity to place on the record, however, that the English translation of the transcript (DAR-OTP-0220-3199) is an updated version of an original translation of the transcript (DAR-OTP-0215-7148). This updated version purports to translate the transcription of an unknown speaker saying, "Long live, Ali Kushayb!", something that did not feature in the original transcript. The Defence cannot identify any speaker intelligibly saying "Long live, Ali Kushayb!". In the absence of intelligible audio, the Defence submits that the original transcript and translation must be preferred over the updated version. The clear prejudicial effect of maintaining such a contested entry in the transcript is outweighed by its probative value given the unintelligible nature of the audio.

The Defence objects in the strongest terms to the submission of items listed at 11 to 14 of the Prosecution's schedule. We are startled to see that the Prosecution has attempted to have these four items submitted given the Trial Chamber's clearest of rulings that the video could not be used in re-examination. The Defence fails to understand how the Prosecution can possibly suggest, in the sixth column of the schedule, that these items can be "Tendered through this witness". The video was not shown to the witness. The witness made no comment on the video. The fact that a short excerpt was played to the Chamber for what was no more than explanatory or informative purposes, at the Chamber's own request, does not legitimise the items' submission. The request should be denied.

Kind regards,

Iain Edwards

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**From:** Sabatini, Claire [REDACTED]  
**Sent:** 13 June 2022 14:30  
**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-0012 - List o 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-0012.

Thank you.

Kind regards,



**Claire Sabatini**  
 Case Manager  
 Office of the Prosecutor  
 International Criminal Court  
 Oude Waalsdorperweg 10, 2597 AK, The Hague

Mail address: PO Box 19519, 2500 CM, The Hague, The Netherlands

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**Prosecution's List of Material for Submission - Witness DAR-OTP-P-0012**

#	ERN (e-Court/Nuix)	Type	Title	Relevant Passages	Tendered through this witness	To be admitted under rule 68(3) (if applicable)
1.	<a href="#">DAR-OTP-0119-0503-R01</a>	WITNESS STATEMENT	ICC Statement - General		YES	YES
2.	<a href="#">DAR-OTP-0136-0009-R01</a>	ICC Statement - ICC investigator interview notes	NOTE TO THE FILE Meeting with [REDACTED]		YES	YES
3.	<a href="#">DAR-OTP-0220-4710</a>	Report	Annex A - corrections & clarifications		YES	YES
4.	<a href="#">DAR-OTP-0220-4713-R01</a>	Map	Annex B - RT - P-0012 north bindisi		YES	NO
5.	<a href="#">DAR-OTP-0220-4714-R01</a>	Map	Annex C - RT - P-0012 sat bindisi		YES	NO
6.	<a href="#">DAR-OTP-0220-4715-R01</a>	Map	Annex D - RT - P-0012 south bindisi		YES	NO
7.	<a href="#">DAR-OTP-0220-4716-R01</a>	Map	Annex E - RT - P-0012 mukjar		YES	NO
8.	<a href="#">DAR-OTP-0215-2697</a>	Audio / Video Material	Watch the last talk of Ali Kushayb, Berhid al-Bardi, before his arrest by the criminal court		YES	NO
9.	<a href="#">DAR-OTP-0220-3194</a>	Transcript	Transcript of Audio / Video Material / Watch the last talk of Ali Kushayb, Berhid al-Bardi, before his arrest by the criminal court		YES	NO
10.	<a href="#">DAR-OTP-0220-3199</a>	Translation - ENG	Translation / Transcript of Audio / Video Material / Watch the last talk of Ali Kushayb, Berhid al-Bardi, before his arrest by the criminal court		YES	NO
11.	<a href="#">DAR-OTP-0202-1377</a>	Audio / Video Material	Kushayb at Um-Sory		YES	NO

12.	<a href="#">DAR-OTP-0220-2879</a>	Audio / Video Material <sup>1</sup>	- Enhanced version of DAR-OTP-0202-1377.MP4		YES	NO
13.	<a href="#">DAR-OTP-0220-3227</a>	Transcript	Transcript of Audio/Video Material / Kushayb at Um-Sory		YES	NO
14.	<a href="#">DAR-OTP-0220-3233</a>	Translation - ENG	Translation / Transcript of Audio / Video Material / Kushayb at Um-Sory		YES	NO

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<sup>1</sup> This is the electronically enhanced version of DAR-OTP-0202-1377, part of which was played in the courtroom (ICC-02/05-01/20-T-046-CONF-ENG, draft version, p. 129, l. 1-11). The content of both videos (DAR-OTP-0202-1377 and DAR-OTP-0220-2879) is identical, but the transcript and translation make reference to the original video (DAR-OTP-0202-1377), so it has also been included in the present list.