

Annex 1

Public

[REDACTED]

From: Trial Chamber I Communications
Sent: 20 September 2022 12:57
To: Abd Al Rahman Prosecution Team; D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team
Cc: FS Items Communication; Trial Chamber I Communications; Associate Legal Officer-Court Officer
Subject: Decision on the submission of material through P-0916
Attachments: P-0916 - List of Material for Submission ; Re: P-0916 - Defence List of Material for Submission

Dear counsel,
Dear colleagues,

Following the testimony of P-0916, the Chamber notes the submission of 9 items by the Prosecution (email of 06 September 2022 at 08:57) and 1 item by the Defence (e-mail of 06 September 2022 at 09:46). The Prosecution objects to the submission of the aforesaid item by the Defence (e-mail of 09 September 2022 at 16:59). The Defence replied to this objection (e-mail of 11 September 2022 at 01:28).

Noting that the items identified by the Prosecution in the e-mail above were used and discussed with P-0916, and that these are unopposed, the Chamber hereby recognises them as formally submitted.

As regards the item identified by the Defence, screening note DAR-OTP-0215-7245, the Chamber notes that it was used during the cross-examination of P-0916. Specifically, the Defence used this screening note to question the witness about the [REDACTED] time he allegedly met Ali Kushayb (T-075). The Chamber therefore rejects the Prosecution's submissions that it would be inappropriate to submit the screening note through this witness. Moreover, submission of the screening note is necessary for the completeness of the record. The Chamber equally rejects the Prosecution's argument that only the portions read to the witness should be submitted. The Chamber reiterates its previous rulings that items are to be submitted as a whole. This is without prejudice to the parties reliance on only a part of the document (as stated by the Defence in its e-mail reply). The Chamber will also take into consideration these submissions when analysing the evidence for the purpose of its judgment pursuant to Article 74 of the Rome Statute. Accordingly, the Chamber recognises the item as formally submitted.

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

Kind regards,

[REDACTED]
(on behalf of Trial Chamber I)

[REDACTED]

From: Edwards, Iain [REDACTED]
Sent: 11 September 2022 01:28
To: Mazzarella, Rachel; Issa Abdel Badih, Ahmad; Trial Chamber I Communications; Abd Al Rahman Prosecution Team; V47 Abd Al Rahman LRV Team
Cc: D31 Abd-Al-Rahman Defence Team; Associate Legal Officer-Court Officer; [REDACTED]
Subject: Re: P-0916 - Defence List of Material for Submission

Dear Trial Chamber I

Dear colleagues,

The screening interview should be submitted as a whole. The Defence is only interested in those portions of P-0916's screening interview that deal with the witness's alleged encounters with *Ali Kushayb*. So much is, and should have been, clear from the witness's cross-examination. The Defence does not dispute that there were portions of the screening interview that were not put to him (eg, the first 11 lines and last 17 lines of Box 4 ("Summary of Information Received...")) and the Prosecution can rest assured that the Defence has no intention on relying on those portions in its final submissions. The Defence only seeks inclusion of the whole screening interview for the sake of practicality. The alternative approach would entail a time-consuming process of preparing a new, heavily redacted document for submission.

Practicality has been a consideration that the Trial Chamber has taken into account before when considering the submission of evidence (see eg. Decision on the submission of evidence through P-0877 (21 July 2022)). Similarly, the Trial Chamber has been prepared to take into account the submissions and any agreement of the parties when assessing evidence (see eg. Decision on the submission of evidence through P-0581 (2 August 2022)). The Trial Chamber is more than capable of appreciating which parts of the document were used with the witness and of disregarding the remainder.

Moreover, the screening interview is a short document of three pages, and only the second and third pages contain any information of substantive interest. That fact is ignored in the final paragraph of the OTP's email, but provides a good answer to the argument in that paragraph. References to directions on the conduct of proceedings adopted by other Trial Chambers in other cases are of little if any relevance. In any event, the Trial Chamber will, no doubt, appreciate that the OTP's real concern about the matter immediately at hand is not one of "unnecessary recourse to seeking admission of supplementary documents for the purposes of impeachment". The concern is transparently one of the limitation of damage to a discredited witness.

The witness preparation log was not sought to be tendered through the witness (see Prosecution's List of Material - Witness List DAR-OTP-0916) and the Prosecution, quite properly, does not seek its submission now. It is inappropriate therefore for the Prosecution to rely on portions of the preparation log in support of its arguments opposing the Defence's submission of the screening interview. But given the Prosecution has chosen to do so, and for the record, we make the following observations:

1. it is submitted that it is immaterial whether the screening interview was read back at the time it was undertaken. What is relevant is that the screening interview was read back in advance of the witness's testimony, that he was given the opportunity to comment on and make corrections to the screening interview, and that any comments or corrections are recorded in a written document. As the Prosecution acknowledges in its email, the screening interview was read back to

- him during witness preparation, he had the opportunity to make corrections, and those corrections were recorded in the witness preparation log;
- the Prosecution had the opportunity to adduce the witness's comments/corrections either preemptively or in re-examination. It chose not to;
 - it is most noteworthy that, in any event, none of the corrections or comments to the screening interview related to the witness's [REDACTED] alleged encounters with *Ali Kushayb* (per the screening interview) of [REDACTED] and [REDACTED]. The only correction or clarification related to the witness's [REDACTED] alleged encounter with *Ali Kushayb* of [REDACTED];
 - the witness did correct paragraphs 50 and 55-57 of his witness statement (see DAR-OTP-0000060) and the Trial Chamber can take those purported corrections into account;
 - more broadly, the Prosecution's submissions ignore the practicalities of advocacy. P-0916 was a witness who was wont to simply repeat his evidence when confronted with inconsistencies and contradictions rather than explain them. Repetition and denial were his reactions when his account of a [REDACTED] encounter was put to him. Repetition was his reaction when his account of an [REDACTED] encounter was put to him. It was obvious to all in the courtroom that further cross-examination on the point was merely going to elicit the same denials and repetition. Continued repetition would have added nothing to the trial record, and continued cross-examination on the point would likely have served only to irritate the witness and would not have represented the best use of limited court time.

It is appropriate for the screening interview to be submitted as a whole.

Kind regards,

Iain Edwards

From: Mazzarella, Rachel [REDACTED]

Sent: 09 September 2022 16:59

To: Issa Abdel Badih, Ahmad [REDACTED]; Trial Chamber I Communications

[REDACTED]; Abd Al Rahman Prosecution Team

[REDACTED]; V47 Abd Al Rahman LRV Team

Cc: D31 Abd-Al-Rahman Defence Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]; [REDACTED]

Subject: RE: P-0916 - Defence List of Material for Submission

Dear Trial Chamber I,

Dear Colleagues,

The Prosecution opposes the submission of the screening note for Witness P-0916 (DAR-OTP-0215-7245).

While the Defence did refer in general terms to portions of this document in its cross-examination for P-0916, the relevant passages of the screening note were not read aloud to the witness to openly confront. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition, there were other aspects of the screening note that were not raised by the Defence at all during its cross-examination, and as such the witness did not comment upon the entire note.

There is no foundation for the submission of the entire screening note for P-0916. Unlike the witness statement and clarifications/corrections, the screening note has been neither read back to, adopted nor signed by the witness. Indeed, when provided with an opportunity to comment upon the screening note in the witness preparation session, P-0916 disputed the accuracy of some of its contents based on his recollection of events, noting that the connection was poor when the screening was conducted (Preparation Log, DAR-OTP-0000080 at 000006, para. 10). Moreover, large portions of the screening note were not addressed by the Defence in its cross-examination of P-0916 and therefore cannot be considered as “used” during the hearing in any true sense (Directions on the Conduct of Proceedings, para. 31(i)).

The Prosecution observes that the proper means by which to use the screening note in cross-examination would be to read the relevant portions verbatim into the record and give the witness a fair opportunity to comment and respond in accordance with past practice in other ICC cases (*See e.g.*, “The relevant portion of the statement shall be read out loud *verbatim* in the record so that it is adequately reflected in the transcript of the witness’s testimony”, ICC-02/11-01/15-498-AnxA, para. 42; “[T]he parties ought to be conducting their examinations in a manner designed, to the extent possible, to create a clear and self-contained transcript record, without unnecessary recourse to seeking admission of supplementary documents for the purposes of impeachment on points of inconsistency with prior statements”, ICC-01/04-02/06-1070-Conf, para. 13; “The cross-examining party is required to put to the witness any facts or evidence, available at the time and upon which it intends to rely to impeach his or her credibility”, ICC-01/04-02/06-619, para. 28; ICC-01/04-02/06-1400-Red, para. 7). This procedure would thus provide the Chamber with the necessary context and the relevant text of the screening note would already be included in the record.

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: Issa Abdel Badih, Ahmad [REDACTED]

Sent: 06 September 2022 09:46

To: Trial Chamber I Communications [REDACTED]; Abd Al Rahman Prosecution Team [REDACTED]; V47 Abd Al Rahman LRV Team [REDACTED]

Cc: D31 Abd-Al-Rahman Defence Team [REDACTED]; Associate Legal Officer-Court Officer [REDACTED]

Subject: P-0916 - Defence List of Material for Submission

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-0916 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-OTP-0215-7245-R02, Screening interview, RT 75 page 54 line 9.

Kind regards,

Ahmad Issa,

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

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[REDACTED]

From: Sabatini, Claire
Sent: 06 September 2022 08:57
To: Trial Chamber I Communications
Cc: D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team; Associate Legal Officer-Court Officer; Abd Al Rahman Prosecution Team
Subject: P-0916 - List of Material for Submission
Attachments: P-0916 - List of Material for Submission.pdf

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-0916.

Thank you.

Kind regards,



Claire Sabatini

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

[REDACTED]
www.icc-cpi.int

Prosecution's List of Material for Submission – Witness DAR-OTP-P-0916

#	ERN (e-Court/JEM)	Type	Title	To be admitted under rule 68(3)
1.	DAR-OTP-0224-0023-R01	ICC Statement - General	WITNESS STATEMENT	YES
2.	DAR-OTP-0224-0047-R01	List / table	Annex 1	YES
3.	DAR-OTP-0224-0048-R01	List / table	Annex 2 / Headdress Board	YES
4.	DAR-OTP-0224-0049-R01	Notes (other)	Annex 3	YES
5.	DAR-OTP-0224-0050-R01	List / table	Annex 4	YES
6.	DAR-OTP-0224-0053-R01	Notes (other)	Annex 5	YES
7.	DAR-OTP-0222-0559	List / table		YES
8.	DAR-OTP-0220-1957	Translation - ENG	Translation of Evidence	YES
9.	DAR-OTP-00000060	ICC Statement - General	Clarifications/corrections to the statement of P-0916 (DAR-OTP-0224-0023)	YES