

Annex 1

Public

From: [REDACTED]
Sent: 27 November 2023 12:02
To: 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; Trial Chamber I Communications
Subject: Decision on the submission of material through D-0011
Attachments: ICC-02-05-01-20-T-138-CONF-ENG ET 20-11-2023 T.doc.pdf; D-0011 - Prosecution's List of Material for Submission; D-11 List of Materials for Submission; RE: D-0011 - Prosecution's List of Material for Submission; D-0011 Defence Objections to the Prosecution List of Materials for Submission.pdf

[ICC] RESTRICTED

Dear counsel,
Dear colleagues,

The Chamber notes the submission of 4 items by the Defence following the testimony of D-0011 (see attached email of 23 November 2023 at 15:20). The Chamber notes that these are unopposed.

The Chamber further notes the submission of 33 items by the Prosecution following the testimony of D-0011 (see attached email of 21 November 2023 at 17:51). The Chamber notes the Defence's objections to six items and their corresponding translations (see attached e-mail of 21 November 2023 at 15:11). The Chamber also notes the Prosecution's reply (see attached e-mail of 24 November 2023 at 17:52).

Five of the objected items are media articles (DAR-OTP-00005652, DAR-OTP-00005676, DAR-OTP-00005668, DAR-OTP-00000510 and DAR-OTP-00000701). The Defence objects to its submission on the basis that no foundation was laid to allow D-0011 to speak about the alleged events described in the articles. Alternatively, the Defence reserves the right to make submissions on the admissibility of these press articles (limited weight and reliability). It is uncontested that all of these items were shown and discussed with D-0011 during his testimony. Moreover, as submitted by the Prosecution, sufficient foundation was laid to show all media articles to D-11 (as regards the tribal clashes in Rahad-Al-Berdi and in relation to the death of the accused's on, Salah). In fact, as noted by the Prosecution, at the time when the Prosecution posed these questions to D-11, the Defence did not object on the basis of 'no foundation'. Although for some of the items above D-0011 did not provide any comments on the events described therein, their submission is necessary for completeness of the record. Moreover, the submission of these items is necessary for the analysis of D-0011's testimony, particularly his credibility, which is challenged by the Prosecution (see T-138 CONF ENG at p. 98-99).

One item (DAR-OTP-00005152) is a Facebook page. The Defence objects to its submission on the basis that no foundation was laid to allow the witness to speak about the proposition that the OTP was interested in 'the reason why Sala calls himself Sala Bush Kushayb on this page is because he is the son of Ali Kushayb, correct?' (T-138 CONF ENG, p. 91, lines 4-5). As regards this item, and although the Defence objected to the question of the Defence on the basis of lack of foundation, the Presiding Judge then re-formulated the question, which was answered by the witness (T-138 CONF ENG, p. 91-92). Accordingly, its submission is necessary for the completeness of the record, and also, as stated above, to analyse D-0011's testimony, including his credibility.

The Chamber reiterates its previous rulings, pursuant to the submission system adopted in this trial, that any issue on the weight and reliability of these items raised by the Defence will be considered by the Chamber in the context of the Article 74 judgment.

Accordingly, the Chamber hereby authorises all items to be 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,



(on behalf of Trial Chamber I)

From: Velarde, Marcela [REDACTED]
Sent: 23 November 2023 15:20
To: 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: D-11 List of Materials for Submission
Attachments: D-11 List of Materials for Submission.pdf

[ICC] RESTRICTED

Dear Trial Chamber I,
Dear Parties,

Please find attached the Defence's List of Materials for Submission, following D-0011's testimony. The Defence apologises for this delay due to an oversight, and respectfully requests the Chamber to accept this submission. For ease of reference, the relevant transcript portions in which the items were used are indicated on the List.

Kind regards,
Marcela Velarde



Marcela Velarde

Assistant Evidence Reviewer
Defence Team for Mr. Abd-al-Rahman

[REDACTED]
[REDACTED]

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.

[ICC] RESTRICTED

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

Defence List of Materials for Submission: D-0011

| Count | ERN | Title | Document Type | Used at |
|-------|----------------------------------|--------------------------------|---|--|
| 1 | DAR-D31-00000143 | [REDACTED] | Identifying document | T-138 ENG ET, page 46, lines 22-25 and page 47, lines 1-4. |
| 2 | DAR-D31-00000222 | [REDACTED] | Translation - ENG | T-138 ENG ET, page 46, lines 22-25 and page 47, lines 1-4. |
| 3 | DAR-D31-00000144 | Driver's License | Administrative and travel related documents | T-138 ENG ET, page 46, lines 5-21. |
| 4 | DAR-D31-00000223 | Translation / Driver's License | Translation - ENG | T-138 ENG ET, page 46, lines 5-21. |

From: Whitford, Alison
Sent: 24 November 2023 17:33
To: Trial Chamber I Communications
Cc: Abd Al Rahman Prosecution Team; D31 Abd-Al-Rahman Defence Team; V47 Abd Al Rahman LRV Team; Associate Legal Officer-Court Officer; Kalb, Eva
Subject: RE: D-0011 - Prosecution's List of Material for Submission

[ICC] RESTRICTED

Dear Trial Chamber I
Dear colleagues

The Prosecution submits that the Defence's objections to the submission of items used during the testimony of D-11 should be rejected.

Media reports

The Defence objects to the submission into evidence of items 3-6 and 11-16 on the basis that "no foundation was laid to allow the witness to speak about the alleged events" referred to in these articles.

First, consistent with the established practice in this case, objections to the use of an item with a witness on the basis of a lack of foundation should be made at the time that the items are being shown to the witness. None was made in regard to these items and any objections on the basis of "no foundation" are untimely and should be denied on that basis.

Furthermore, in relation to items 3-6 and 11-12 (regarding tribal clashes between the Ta'aisha and the Salamat in Rahad Al-Berdi), there was a foundation to show these items to D-11 since:

- [REDACTED] (T-138-CONF ET, 47:12-13);
- [REDACTED] (T-138-CONF ET, 53:20-25);
- D-11 stated that he remembered the problems between the Ta'aisha and the Salamat in Rahad Al-Berdi in 2013 (T-138-CONF ET, 77:6-9) and, specifically, that he remembered "very well" the hostilities between the Salamat and Ta'aisha in Rahad Al-Berdi and subsequent peace agreement in April 2013 (T-138-CONF ET, 77:10-24);
- D-11 stated that when he returned to Rahad Al-Berdi from Khartoum, people told him that some events had happened [concerning the tribal conflict between the Ta'aisha and the Salamat] (T-138-CONF ET, 83:9-20);
- D-11 stated that he returned to Rahad Al-Berdi from Khartoum [REDACTED] (T-138-CONF ET, 84:3-5).

In relation to items 13-16 (regarding the death of Mr Abd-Al-Rahman's son, Salah, in Rahad Al-Berdi), there was a foundation to show these items to D-11 since:

- [REDACTED]
- D-11 stated that he knew that Salah had died (T-138-CONF ET, 87:8-11);
- [REDACTED]

The Defence also objects to the introduction of items 13-14 on the basis that they were not included on the Prosecution's list of evidence. As already held by the Chamber, there is no prohibition on the Prosecution using in the cross-examination of Defence witnesses items that were not included on its list of evidence (T-132 ET, 71:23-72:2). This objection should therefore be rejected.

Facebook screenshot

The Defence objects to the submission into evidence of items 22-23 on the basis that “no foundation was laid to allow the witness to speak about the proposition that the OTP was interested in [...]”.

The Prosecution notes that the Defence objected to the question put by the Prosecution on the basis of a lack of foundation. However, the Presiding Judge rejected this objection and re-formulated the question, which was then answered by the witness (T-138-CONF ET, 91:5-92:12). The Prosecution therefore submits that, since the witness commented on the item, it should form part of the evidentiary record.

Finally, the Defence’s submission that it “reserves the right to make submissions on the admissibility [of items 1-16 and 22-23] given the limited weight that can be attached to them, and reliability” is not compatible with the submission regime adopted by the Chamber for the reception of evidence in this case. According to this regime: “Generally, the Chamber will recognise the submissions of [documentary, digital or physical evidence] without a prior ruling on the admissibility of the evidence” and “will ultimately assess the relevance, probative value and potential prejudice of the evidence (the ‘standard evidentiary criteria’) as part of its 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” (Directions on the conduct of proceedings, ICC-02/05-01/20-478, para. 25. *See also* Decision on the Prosecution’s bar table motion, ICC-02/05-01/20-885-Red, paras. 24-26). As such, the Defence’s reference to “admissibility” is inapposite in this context.

Best regards
Alison Whitford

From: Kalb, Eva [REDACTED]
Sent: 23 November 2023 15:11
To: Trial Chamber I Communications [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED] V47 Abd Al Rahman LRV Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: RE: D-0011 - Prosecution's List of Material for Submission

[ICC] RESTRICTED

Dear Trial Chamber I,
Dear colleagues,

In accordance with paragraph 31(ii) of the “Directions on the conduct of proceedings” (ICC-02/05-01/20-478), the Defence is objecting to the submission into evidence of multiple items on the Prosecution’s List for Submission for Witness D-0011. For ease of reference, the Defence has indicated the nature of its objections; if any; in the attached List.

Kind regards,
Eva Kalb

From: Sabatini, Claire [REDACTED]
Sent: 21 November 2023 17:51
To: Trial Chamber I Communications [REDACTED]
Cc: Abd Al Rahman Prosecution Team [REDACTED] D31 Abd-Al-Rahman Defence Team [REDACTED]; V47 Abd Al Rahman LRV Team [REDACTED] Associate Legal Officer-Court Officer [REDACTED]
Subject: D-0011 - Prosecution's List of Material for Submission

[ICC] RESTRICTED

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 D-0011.

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

www.icc-cpi.int

This message contains information that may be privileged or confidential and is the property of the International Criminal Court. It is intended only for the person to whom it is addressed. If you are not the intended recipient, you are not authorized by the owner of the information to read, print, retain copy, disseminate, distribute, or use this message or any part hereof. If you receive this message in error, please notify the sender immediately and delete this message and all copies hereof.

Les informations contenues dans ce message peuvent être confidentielles ou soumises au secret professionnel et elles sont la propriété de la Cour pénale internationale. Ce message n'est destiné qu'à la personne à laquelle il est adressé. Si vous n'êtes pas le destinataire voulu, le propriétaire des informations ne vous autorise pas à lire, imprimer, copier, diffuser, distribuer ou utiliser ce message, pas même en partie. Si vous avez reçu ce message par erreur, veuillez prévenir l'expéditeur immédiatement et effacer ce message et toutes les copies qui en auraient été faites.

[CONFIDENTIAL]

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Prosecution's List of Material for Submission – Witness D-0011

| # | ERN (e-Court/JEM) | Type | Title | Transcript Reference/s |
|-----|----------------------------------|-----------------------|---|---------------------------|
| 1. | DAR-OTP-00006171 | Media / press article | F3FAC2E145D31A91F3457A166E6D45A6.png | T-138-ENG RT, 97:22-98:20 |
| 2. | DAR-OTP-00006771 | Translation - ENG | Translation of DAR-OTP-00006171.docx | T-138-ENG RT, 97:22-98:20 |
| 3. | DAR-OTP-00005652 | Media / press article | ترحيل (250) اسرة من اعيان السلامة من رهيد البردي إلى مدينة نيالا لحفظ سلامتهم وناظر التعايشة ينفي المضايقات | T-138-ENG RT, 88:25-91:13 |
| 4. | DAR-OTP-00006587 | Translation - ENG | Translation of DAR-OTP-00005652.docx | T-138-ENG RT, 88:25-91:13 |
| 5. | DAR-OTP-00005676 | Media / press article | ادارة قبيلة السلامة تدعو السلطات إلقاء القبض على (علي كوشيب) لارتكابه جرائم حرب | T-138-ENG RT, 92:6-95:13 |
| 6. | DAR-OTP-00006589 | Translation - ENG | Translation of DAR-OTP-00005676.docx | T-138-ENG RT, 92:6-95:13 |
| 7. | DAR-OTP-00005660 | Media / press article | على كوشيب يصاب بجراح خطيرة في مدينة نيالا ونقله الى الخرطوم ومقتل حارسه الخاص | T-138-ENG RT, 96:6-97:21 |
| 8. | DAR-OTP-00006581 | Translation - ENG | Translation of DAR-OTP-00005660.docx | T-138-ENG RT, 96:6-97:21 |
| 9. | DAR-OTP-00005650 | Media / press article | علي كوشيب ينسف بعد ساعات وثيقة وقف العدائيات الموقعة بين التعايشة والسلامات في رهيد البردي | T-138-ENG RT, 87:5-88:24 |
| 10. | DAR-OTP-00006582 | Translation - ENG | Translation of DAR-OTP-00005650.docx | T-138-ENG RT, 87:5-88:24 |
| 11. | DAR-OTP-00005668 | Media / press article | عودة علي كوشيب لرهيد البردي ينذر بتجدد الصراع بين التعايشة والسلامات ووفاة الملك رحمة الله محمود | T-138-ENG RT, 91:14-92:5 |
| 12. | DAR-OTP-00006583 | Translation - ENG | Translation of DAR-OTP-00005668.docx | T-138-ENG RT, 91:14-92:5 |
| 13. | DAR-OTP-00000510 | Media / press article | 2D8953AE03A77C8D98FC889FCFCF73E6.png | T-138-ENG RT, 99:2-101:1 |
| 14. | DAR-OTP-00000811 | Translation - ENG | Translation of Evidence | T-138-ENG RT, 99:2-101:1 |

[CONFIDENTIAL]

**Cour
Pénale
Internationale**



**International
Criminal
Court**

| | | | | |
|-----|----------------------------------|---------------------------|--|----------------------------|
| 15. | DAR-OTP-0000701 | Media / press article | 8C08C1D59DF303648CDC9A0C98A8D0AE.png | T-138-ENG RT, 101:5-103:5 |
| 16. | DAR-OTP-0000838 | Translation - ENG | Partial Translation of Evidence | T-138-ENG RT, 101:5-103:5 |
| 17. | DAR-OTP-00005886 | Photograph/s | salah Ali photo.jpg | T-138-ENG RT, 85:1-8 |
| 18. | DAR-OTP-00005950 | Photograph/s | Yasser.jpg | T-138-ENG RT, 86:2-5 |
| 19. | DAR-OTP-00006070 | Photograph/s | Image extracted from DAR-OTP-00005831.pdf | T-138-ENG RT, 86:6-10 |
| 20. | DAR-OTP-00005867 | Photograph/s | Image extracted from DAR-OTP-00000510.pdf | T-138-ENG RT, 85:9-12 |
| 21. | DAR-OTP-00005868 | Photograph/s | Image extracted from DAR-OTP-00005168.PDF | T-138-ENG RT, 84:11-24 |
| 22. | DAR-OTP-00005152 | Communication - E-message | FB293EFAB357AD11DFF16D1880794D04_1.1 - BUSH - mainpage - 3.pdf | T-138-ENG RT, 103:6-105:4 |
| 23. | DAR-OTP-00006014 | Translation - ENG | Translation of DAR-OTP-00005152 - FINAL - ENG.docx | T-138-ENG RT, 103:6-105:4 |
| 24. | DAR-OTP-00005733 | Communication - E-message | 67AC6889D8DF1D2631BC95AEA3CC41E8_D11 - 2 - mainpage - 1.pdf | T-138-ENG RT, 70:5-22 |
| 25. | DAR-OTP-00006081 | Communication - E-message | Translation of DAR-OTP-00005733 - FINAL - ENG.docx | T-138-ENG RT, 70:5-22 |
| 26. | DAR-OTP-00005741 | Communication - E-message | 7D402AC78704085593C17498A2F14DDA_D11 - 3 - mainpage - 1.pdf | T-138-ENG RT, 72:17-25 |
| 27. | DAR-OTP-00006071 | Translation - ENG | Translation of DAR-OTP-00005741 - FINAL - ENG.docx | T-138-ENG RT, 72:17-25 |
| 28. | DAR-OTP-00006603 | Communication - E-message | 61F9D7B353ECA0D99DDCD49388F7D47A_Post-1 of 15 Sep. 2023.pdf | T-138-ENG RT, 111:21-112:4 |
| 29. | DAR-OTP-00006721 | Translation - ENG | Translation of DAR-OTP-00006603.docx | T-138-ENG RT, 111:21-112:4 |

[CONFIDENTIAL]

**Cour
Pénale
Internationale**



**International
Criminal
Court**

| | | | | |
|-----|----------------------------------|---------------------------|---|----------------------------|
| 30. | DAR-OTP-00006849 | Communication - E-message | 67AC6889D8DF1D2631BC95AEA3CC41E8_Main_Page_18112023 | T-138-ENG RT, 110:14-111:7 |
| 31. | DAR-OTP-00006850 | Communication - E-message | 67AC6889D8DF1D2631BC95AEA3CC41E8_Post_15112023 | T-138-ENG RT, 111:9-20 |
| 32. | DAR-OTP-00006853 | Translation - ENG | Translation of DAR-OTP-00006849.docx | T-138-ENG RT, 110:14-111:7 |
| 33. | DAR-OTP-00006854 | Translation - ENG | Translation of DAR-OTP-00006850.docx | T-138-ENG RT, 111:9-20 |