

# Annex 30

Public

**From:** Trial Chamber X Communications  
**Sent:** 13 February 2021 11:15  
**To:** Al Hassan Prosecution Team; D28 Al Hassan Defence Team  
 (D28AlHassanDefenceTeam [REDACTED]); V43 Victims Al Hassan Team  
**Cc:** Associate Legal Officer-Court Officer; Chamber Decisions Communication; Trial Chamber X Communications  
**Subject:** Decision on Defence objections to List of Materials for P-0114

Dear counsel,  
 Dear colleagues,

The Chamber takes note of the Defence objections to four items the Prosecution intends to use during the examination of P-0114.

The Defence objects to these items on the basis that they have no relevance or probative value and that their use may constitute an impermissible form of leading by the Prosecution.

In accordance with previous decisions, the Chamber will not rule on these objections in the abstract. It will be for the Prosecution to establish the foundation for using these items during the examination-in-chief. The Chamber will determine at that point whether the items may be used, having regard to the manner in which the items are presented and also taking into account any objections raised in court by the Defence.

Kind regards,

[REDACTED]  
 On behalf of Trial Chamber X

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**From:** Luping, Dianne  
**Sent:** 12 February 2021 14:40  
**To:** [REDACTED]; Trial Chamber X Communications; Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer  
**Subject:** RE: List of Materials for Prosecution Witness MLI-OTP-P-0114

Dear Trial Chamber X,  
 Dear Colleagues,

The Prosecution does not seek to have the two notes below (and their respective translations) submitted, as the information contained in these documents is already found in the first witness statement of P-0014 ([REDACTED]), which is being submitted under rule 68(3).

The column of the list of materials where we ask for submission should therefore read "No".

Kind regards,

Dianne Luping  
 Trial Lawyer

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**From:** [REDACTED]  
**Sent:** 12 February 2021 12:32  
**To:** Trial Chamber X Communications <[REDACTED]>; Al Hassan Prosecution Team <[REDACTED]>; D28 Al Hassan Defence Team <[REDACTED]>; V43 Victims Al Hassan Team <[REDACTED]>; Associate Legal Officer-Court Officer <[REDACTED]>  
**Subject:** RE: List of Materials for Prosecution Witness MLI-OTP-P-0114

Dear Trial Chamber X,  
Dear Colleagues,

Pursuant to paragraph 60 of the [Directions on the Conduct of Proceedings](#), the Defence provides its objections to the Prosecution's List of Material related to Witness P-0114.

The Defence notes that the Prosecution provided its List of Material for Witness P-0114 on Tuesday, 9 February 2021, at 17:53 (that is, 6 days and 4 court days before the commencement of testimony for this witness). Pursuant to paragraph 57 of the [Directions on the Conduct of Proceedings](#), the calling party or participant is required to provide their List of Material by email to the Chamber and the other party and participants 'at least five days before a witness commences testifying'. The Defence considers that the Prosecution's calculation of the deadlines in relation to lists of material, consistently with such calculations under the Rules and Regulations, gives 'days' their ordinary meaning (i.e. including the weekend).

The Defence also adopts this interpretation in calculating the time limit for its objections by providing those objections today (that is, three days before the commencement of testimony, consistently with the two days required under the Directions) and in calculating the time limit for provision of the Defence's List of Material pursuant to paragraph 61 of the Directions.

#### **Objection: Investigators' notes**

These documents are investigation notes authored by the Office of the Prosecutor. As these are testimonial in nature (per the Appeals Chamber in [Bemba et al](#) at para 304), they have not been authored or signed by the witness, and have not been submitted through Rule 68 (and the Office of the Prosecutor has indicated in the List of Material that it will not be submitted through this witness), the Chamber should therefore assess it as having no relevance or probative value.

Furthermore, the investigators' notes are prejudicial as they can be suggestive to the witness and may constitute an impermissible form of leading by the Office of the Prosecutor. It is instead the duty of the Prosecutor to elicit such testimony orally (per the Appeals Chamber in [Bemba et al](#) at paras 305-306). In any event, the Defence, in accordance with paragraph 60 of the Directions on the Conduct of Proceedings, reserves its right to object, during P-0114's testimony, to the manner in which this document is presented to the witness, in particular to the reading of any quotes from this document by the Office of the Prosecutor. As the Appeals Chamber stated in [Bemba et al](#) at para 307, if the document itself is relied on, it needs to be submitted as evidence.

In circumstances in which the Office of the Prosecutor proposes to use an item which is itself inadmissible in order to elicit testimony from the witness, the prejudice occasioned by such use outweighs the low probative value of the document.

| Tab | Document ID | Title      | Type       |
|-----|-------------|------------|------------|
| 119 | [REDACTED]  | [REDACTED] | [REDACTED] |
| 120 | [REDACTED]  |            |            |
| 121 | [REDACTED]  |            |            |
| 122 | [REDACTED]  |            |            |

Best regards,  
[REDACTED] (on behalf of the Al Hassan Defence)

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**From:** Dutertre, Gilles [REDACTED] >  
**Sent:** 09 February 2021 17:53

**To:** Trial Chamber X Communications <[REDACTED]>; Al Hassan Prosecution Team [REDACTED]; D28 Al Hassan Defence Team <[REDACTED]>; V43 Victims Al Hassan Team <[REDACTED]>; Associate Legal Officer-Court Officer [REDACTED]; [REDACTED]; [REDACTED]  
**Cc:** [REDACTED]; Luping, Dianne [REDACTED]; Garcia, Lucio [REDACTED]; Coquillaud, Sarah [REDACTED]  
**Subject:** List of Materials for Prosecution Witness MLI-OTP-P-0114

Dear Trial Chamber X, Dear Colleagues,

The Prosecution attaches its list of materials for Prosecution Witness MLI-OTP-P-0114.

Kind regards,

Gilles Dutertre

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