

Annex 33

Public

From: Trial Chamber X Communications
Sent: 17 February 2021 14:28
To: [REDACTED]; Trial Chamber X Communications; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; [REDACTED]; Chamber Decisions Communication
Cc: Al Hassan Prosecution Team
Subject: RE: Defence objections to list of material related to witness P-0081

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-0081.

Specifically, the Chamber notes the Defence objects to the use of an open source video and its respective transcripts as well as one photo.

As regards the video and the transcripts ([REDACTED]), the Defence submits that its use during the testimony of P-0081 should not be allowed as it is irrelevant to the scope of the charges. It also submits that its use would be prejudicial to the accused as it was only shown to the witness during the preparation session. The Defence further submits that P-0081 cannot comment on the video as he did not create the video, which comes from an open source and is a 'collage of segments'.

The Chamber notes, as stated by the Defence in their submissions below, that the video (albeit with a different ERN number) was already identified as material that would be used by the Prosecution in the course of P-0081's testimony ([REDACTED]), the video is identified in P-0081's summary with the ERN number [REDACTED]. Accordingly, the Defence was provided with sufficient notice as to the use of this video with P-0081 and the Chamber does not consider, as suggested by the Defence, that the Prosecution cannot be authorised to use the video because it did not 'give notice of how the video will be used'.

As regards the objections of the Defence on the relevance of the video and the personal knowledge of P-0081 to comment on the video, the Chamber, in accordance with previous decisions, will not rule on these objections in the abstract. It will be for the Prosecution to establish the foundation for using these items, or parts thereof, during the examination-in-chief. The Chamber will determine at that point whether excerpts, if any, may be used, having regard to the manner in they are presented and also taking into account any objections raised in court by the Defence.

As regards the photograph [REDACTED], the Chamber notes the Defence has not made any specific submission on the basis of its objection. The Chamber however notes that this photograph is already formally submitted on the record via [REDACTED] who recognised Omar Ould Hama.

Accordingly, the Chamber rejects the objections raised by the Defence.

Kind regards,

[REDACTED]
 (on behalf of Trial Chamber X)

From: [REDACTED]
Sent: 16 February 2021 16:24
To: [REDACTED]; Trial Chamber X Communications ; D28 Al Hassan Defence Team ; V43 Victims Al Hassan Team ;

Associate Legal Officer-Court Officer ; [REDACTED]
Cc: Al Hassan Prosecution Team
Subject: Defence objections to list of material related to witness P-0081

Dear Trial Chamber X,
 Dear Colleagues,

Pursuant to paragraph 60 of the Directions on the Conduct of Proceedings (filing #789-AnxA), the Defence provides its objections to the list of material related to witness P-0081. The Defence objects to the use of items [REDACTED].

[REDACTED]. The Trial Chamber should not permit it to be presented due to the prejudice this would create to the Defence. The Directions on the Conduct of Proceedings indicates that the party presenting a video must establish the relevance of video material by for example demonstrating the "the witness has personal knowledge of the making of the recording or its contents". The video was not created by P-0081 and there is no indication that P-0081 has ever viewed it until the Prosecution showed it to him during his preparation session ('Preparation Log for Witness P-0081' sent by email 16 February 2021 at 11h41 subject 'Witness preparation log for Witness MLI-OTP-P-0081'). The video should not be permitted because no relevance has been made out.

Even if the Trial Chamber considers the video relevant, it would still be prejudicial and unfair to permit the Prosecution to present it. Until the preparation log for P-81 was provided two days before his testimony, there was no notice or indication that the Prosecution considered [REDACTED]. The Prosecution summary of witnesses [REDACTED] does not give notice of how the video will be used. The chain of custody of the video indicates that it has been in the Prosecution's possession since 2014. This meant that the Prosecution could and should have put this video to the witness during earlier interviews. It is prejudicial to do so only on the eve of the witness's testimony particularly given that the log was disclosed less than 48 hours before the witness's testimony. The video is 12 minutes and 26 seconds long. Only the preparation log indicates indirectly what the Prosecution might plan to show P-0081 (Preparation Log, paras 42-4). Therefore to permit the presentation of this material, when the Defence has limited opportunity to investigate the video, and no notice as to its use, prejudices the Defence ability to cross-examine P-0081, is unfair to the Accused, and should not be condoned by the Trial Chamber.

Irrespective of the propriety of presenting it, the presentation of the video should be denied due to its content and nature. The video is comprised of a collage of segments. As noted, P-0081 is not in a position to authenticate these segments. It is also not clear what the segments depict nor whether they are assembled from the same events. It thus cannot be presumed that they have relevance or reliability. Moreover, there is no witness who is being called who can authenticate this video and P-0081 is not in a position to do so. As has been previously noted by the Defence if it is not possible for an item to be authenticated, then this should act as procedural bar preventing submission [REDACTED]. For also these reasons the Trial Chamber should not permit the Prosecution to present this video.

[REDACTED] and therefore should not be permitted to be used with the witness if the Trial Chamber rejects the use of [REDACTED].

Finally, in respect to the above items, the Defence notes its prior objections to the introduction of the material related to P-0081 in its response to the Rule 68(3) request by the Prosecution as referring to incidents which "falls outside of the scope of the confirmed charges" [REDACTED]. The Defence re-iterates that it considers the material falling outside the temporal jurisdiction and outside of the charges should not be presented. This is true of material covered by the Rule 68(3) decision but also the material the Prosecution seeks to present which is not covered by that decision. The material is irrelevant and moreover prejudicially creates the impression that Mr Al Hassan is charged and responsible for matters that have no connection to him or the charges.

Kind regards,
 [REDACTED] on behalf of Counsel

From: [REDACTED]
Sent: 12 February 2021 11:04
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]; D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]; V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED]; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]; [REDACTED]
Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]
Subject: P-0081 - Court Binder - Al Hassan Trial Witness Court Binder 5 in Stored Lists in eCourt

Dear all,

16 pieces of evidence from P-0081 List of Materials are stored in **Court Binder 5** in eCourt.

To view this binder and to sort evidence in the requested order, please use **Court Binder 5 Tab** and follow the steps from the Guide sent on 29 January 2021 at 17:03.

Thank you and kind regards,
 [REDACTED]

From: Dutertre, Gilles <[Gilles.Dutertre](#)> [REDACTED]
Sent: 08 February 2021 11:48
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]; D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]; V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED]; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]; [REDACTED]
Cc: [REDACTED]; Luping, Dianne [REDACTED]; Huck Florie [REDACTED]
Subject: List of Materials for Prosecution Witness MLI-OTP-P-0081

Dear Trial Chamber X, Dear Colleagues,

The Prosecution attaches its list of materials for Prosecution Witness MLI-OTP-P-0081.

Kind regards,

Gilles Dutertre

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