

Annex VII

Public

[REDACTED]

From: [REDACTED]
Sent: 26 May 2021 11:46
To: Trial Chamber X Communications
Cc: D28 Al Hassan Defence Team (D28AlHassanDefenceTeam[REDACTED]); V43 Victims Al Hassan Team (V43LRVTeam[REDACTED]); Al Hassan Prosecution Team
Subject: RE: List of material for submission regarding witness MLI-OTP-P-0602

Dear Trial Chamber X,

The Prosecution reiterates that it is not seeking to “tender ‘new excerpts’ of material already submitted” as the entirety of video MLI-OTP-0015-0495 is already submitted through P-0065. It is simply wanting to ensure that in *eCourt*, an accurate record of the excerpts used with P-0602, including an excerpt not specifically used with P-0065, are noted for the record, for the ultimate admission of these relevant excerpts as evidence and when assessing P-0602’s evidence in this regard.

The Prosecution observes that the Defence’s submissions relate to the ultimate issue of admissibility of the video evidence, including probative value and weight to be ascribed to the witness’s testimony regarding her identification of clothing (and thus to what organs of the armed groups the individuals coming to her home belonged), and are not relevant to the issue of the submission of the video evidence.

However, the Prosecution observes that contrary to the Defence arguments, the two video excerpts and Witness P-0602’s identification of clothing used by the perpetrators in her case, are reliable and should be accorded due probative value and weight, for the following reasons.

Witness P-0602 stated during her testimony, in examination-in-chief, that the individuals who came to her house (one of whom was her husband), wore clothing like the ones seen in the video excerpt. [ICC-01/12-01/18-T-086-CONF-FRA RT 19-05-2021, p.51, l.23-26]. The Defence has suggested below that the Witness might have been mistaken (or “tainted”) in her identification because she was shown one video of members of the armed groups wearing vests during her interview.

However, P-0602’s identification of individuals who came to her home is not the same as the identification procedure involving identification of an accused person. Additionally, it was during cross-examination, when shown a video excerpt by the Defence, with an individual wearing extremely similar clothing, that the witness made it very clear that she was well able to distinguish between the blue and white vests (i.e. that were worn by the Islamic police), from blue vests with red writing (i.e. that were worn by members of the *Hesbah*). P-0602 said the vest was not the same because the individuals who came to her home wore vests with white writing on the blue vest, whilst the individual in the video shown by the Defence was not wearing the same vest, as it had red writing on it. [ICC-01/12-01/18-T-086-CONF-FRA RT 20-05-2021, p. 72, l. 4-7]. Therefore, P-0602 demonstrated that in spite of being shown two video clips with such similar clothing of the two different organs (of the Islamic police and the *Hesbah*) she could clearly distinguish for herself, the differences in items of clothing worn by members of the groups.

The Defence in cross-examination only chose to put to witness P-0602 that during her first interview with the Prosecution she made this identification “during” an interview in which a video with the vests was shown. [ICC-01/12-01/18-T-086-CONF-FRA RT 20-05-2021, p. 72, l. 4-7]. Even after the Defence was put on notice by the Prosecution that P-0602 made the identification before being shown the video, as seen in her original witness statement, the Defence chose not to explicitly put to the witness that she only made her identification after being shown the video, so was somehow mistaken or wrongly influenced, or “tainted” in her identification. There is no evidence on the record to support such a contention. Nor was that contention ever put to the witness.

For all of these reasons, the Prosecution submits that all video excerpts used with P-0602 should be ultimately admitted as evidence. Moreover, contrary to what the Defence asserts, when the Chamber assesses P-0602’s evidence regarding identification of clothing of the individuals who came to her home – including in the two video

excerpts - it should assess this as being reliable. She made her clear identification of clothing during her testimony after being shown (by the Defence and Prosecution) *two video clips* with extremely similar clothing of two different organs (the Islamic police and of Hesbah) of the armed groups. She could differentiate for herself the differences between both, and thus identified the individuals coming to her home as being members of the Islamic Police.

Kind regards,

[REDACTED]
Trial Lawyer

From: [REDACTED]
Sent: 25 May 2021 17:19
To: [REDACTED] Trial Chamber X Communications; Al Hassan Prosecution Team
Cc: Dutertre, Gilles; [REDACTED]
[REDACTED] D28 Al Hassan Defence Team; [REDACTED] Doumbia, Seydou;
[REDACTED] Kassongo, Mayombo; [REDACTED] Nsita Luvengika, Fidel
Subject: RE: List of material for submission regarding witness MLI-OTP-P-0602

Honourable Trial Chamber X,
Dear Colleagues,

In light of the Prosecution's assertion that it holds the right to tender 'new excerpts' of material already submitted (email from OTP at 17:45 on 21 May 2021), the Defence objects to the submission of MLI-OTP-0015-0495 through Witness P-0602 on the basis that this extract cannot be tendered for the purposes of identification. It has not been alleged that this was the actual clothing worn by P-0602's husband. Nor has it been established that the persons shown in video MLI-OTP-0015-0495 were known to the witness, or alleged to be part of the incident/s she described. Further, contrary to the recommendations of VWS, the video was shown to the witness in a highly suggestive and leading manner. It cannot therefore be used for the purposes of identification.

The Prosecution has not demonstrated that it met minimum procedural standards in interview.

During her examination in chief, P-0602 was shown only one video, which depicts individuals wearing Islamic Police vests. She was not shown a variety of images of people wearing clothing that matched her volunteered descriptions, such that she could select freely that which best matched her claimed recollection.

Upon questioning by the Defence, she stated that she had not been shown other images or videos during her interviews with the Prosecution (Transcript 86-Conf-Eng, p. 9, lines 7-12). In accordance with article 67(1)(i), the burden falls on the Prosecution to demonstrate that the process used by the Prosecution team during the interviews with Witness P-0602 respected the minimum standards for the taking of such evidence and did not taint her future testimony. The Prosecution asserted, but did not demonstrate to the requisite standard or at all, that (i) P-0602 had described 'vests' prior to being shown the clip in question), and (ii) was shown videos (Transcript 86-Conf-Eng, p. 62 lns 17-25, p. 63 ln. 1).

The statement prepared by the Prosecution states that the Witness was also shown video MLI-OTP-0041-0616, a video showing individuals without vests (MLI-OTP-0059-0401-R02 at 0412 para 68). There is no indication that the Witness was shown a variety of 'vests' for her to select which one was similar to the one allegedly worn by her husband. Because the Prosecution has not disclosed the transcript of the interview to the Defence, the Defence cannot assess the specific methodology employed. In the absence of such information it is not possible to assess if the in-court identification by the Witness on the basis of the same video was the result of the Witnesses recollection of the events in 2012, or a consequence of her 2018 Prosecution interview and Witness Preparation session.

According to the information available to the Defence, the required process was not followed during her Prosecution interviews and therefore the tendered excerpt from MLI-OTP-0015-0495 should not be accepted for submission through Witness P-0602.

Kind regards,

Al Hassan Defence

From: [REDACTED]
Sent: 21 May 2021 17:45
To: [REDACTED] Trial Chamber X Communications; Al Hassan Prosecution Team
Cc: Dutertre, Gilles; [REDACTED] D28 Al Hassan Defence Team; [REDACTED] Doumbia, Seydou; [REDACTED] Kassongo, Mayombo; [REDACTED] Nsita Luvengika, Fidel
Subject: RE: List of material for submission regarding witness MLI-OTP-P-0602

Dear Trial Chamber X, Dear Colleagues,

The Prosecution agrees that in accordance with the Chamber's previous decision on 18 December 2020 regarding this item the entirety of the video MLI-OTP-0015-0495 has already been submitted as evidence, via P-0065.

However, the Prosecution observes, as a matter of practicality, that the current timestamps recorded in eCourt, are only those that were used with P-0065. Moreover, the Prosecution recalls the Chamber's observation, that "in assessing the evidence it would only consider those extracts actually used with a particular witness."

Accordingly, Prosecution requests that it is noted in eCourt, that the additional timestamps 00:27:12:00 - 00:27:21:04 have been used with P-0602. The Prosecution notes that whilst in total the timestamps used from this video with P-0602 were 00:27:12:00 to 00:27:52:00, there is some overlap in the excerpt used with P-0065 (00:27:21:04- 00:31:11:00 were previously used with P-0065). Accordingly, timestamps 00:27:12:00 – 00:27:21:04 is the only new excerpt to be recorded in eCourt.

Kind regards

[REDACTED]
 On behalf of the Prosecution

From: [REDACTED]
Sent: 21 May 2021 15:53
To: [REDACTED]; Trial Chamber X Communications
 <[TrialChamberXCommunications](#)[REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)[REDACTED]>
Cc: Dutertre, Gilles <[Gilles.Dutertre](#)[REDACTED]>; [REDACTED]
 [REDACTED]
 [REDACTED] D28 Al Hassan Defence Team
 <[D28AlHassanDefenceTeam](#)[REDACTED]>; [REDACTED] Doumbia, Seydou <[sdoumbia](#)[REDACTED]> Kassongo, Mayombo <[mkassongo](#)[REDACTED]>; [REDACTED]
 [REDACTED]; Nsita Luvengika, Fidel <[FNsitaLuvengika](#)[REDACTED]>
Subject: RE: List of material for submission regarding witness MLI-OTP-P-0602

Honourable Trial Chamber X,
 Dear Colleagues,

The Defence objects to the submission by the Prosecution of item MLI-OTP-0015-0495 on the basis that the item was previously formally submitted on 18 December 2020 (Decision sent by the Trial Chamber at 10:05). There is no ground for submitting the item a second time through Witness P-0602 as the Trial Chamber specifically indicated in the email referred above that:

"For the sake of practicality and to avoid potential submission of the same video/transcript/translation multiple times for different witnesses with different extracts, the Chamber considers it more appropriate to authorise submission of the entire video and related transcript and translation. Obviously in assessing the evidence the Chamber would only consider those extracts actually used with a particular witness."

With kind regards,

[REDACTED] on behalf of the Al Hassan Defence

From: [REDACTED]

Sent: 21 May 2021 12:07

To: Trial Chamber X Communications; Taylor, Melinda; [REDACTED] Kassongo, Mayombo; Doumbia, Seydou

Cc: Dutertre, Gilles; [REDACTED]

[REDACTED] D28 Al Hassan Defence Team; V43 Victims Al Hassan Team

Subject: List of material for submission regarding witness MLI-OTP-P-0602

Chère Chambre de Première Instance X et Chers Collègues,

Conformément au paragraphe 34. ii. de l'annexe ICC-01/12-01/18-789-AnnA, l'Accusation vous prie de bien vouloir trouver en pièce jointe un tableau contenant une vidéo dont la soumission est requise concernant le témoin P-0602. La vidéo MLI-OTP-0015-0495 a déjà été soumise par le biais du témoin P-0065. Cependant, l'Accusation souhaite préciser qu'elle soumet ici cette vidéo avec les horodatages allant de 00:27:12:00 à 00:27:52:00.

Respectueusement,

[REDACTED]

Pour l'Accusation

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