

Annex I

Public

From: [REDACTED]
Sent: 18 September 2020 18:36
To: [REDACTED]; Dutertre, Gilles; Taylor, Melinda; [REDACTED]; Nsita Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou; [REDACTED]
Cc: 'D28AlHassanDefenceTeam [REDACTED]'; 'V43LRVTeam [REDACTED]'; Trial Chamber X Communications
Subject: Decision on submitted material for P-0007
Attachments: RE: Prosecution response to the submission of items by Defense regarding Witness MLI-OTP-P-0007; List of material for submission regarding Witness MLI-OTP-P-0007; Prosecution response to the submission of items by Defense regarding Witness MLI-OTP-P-0007; RE: List of material for submission regarding Witness MLI-OTP-P-0007; RE: List of material for submission regarding Witness MLI-OTP-P-0007; RE: List of material for submission regarding Witness MLI-OTP-P-0007

Dear Counsel,
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution dated 9 September 2020 at 11:06 and corresponding attachment), as well as by the Defence (Email from the Defence dated 9 September 2020 at 12:03 and corresponding attachment) following the testimony of P-0007.

It is noted that the Defence objects to the submission of most of the items by the Prosecution (Email from the Defence dated 14 September 2020 at 13:09). The Prosecution submits that the Defence's objection should be rejected (Email from the Prosecution dated 15 September 2020 at 14:34).

It is further noted that the Prosecution objects to the submission of all items by the Defence (Email from the Prosecution dated 11 September 2020 at 14:17). The Defence submits that the Prosecution's objection should be rejected (Email from the Defence dated 14 September 2020 at 11:09).

The Chamber has had due regard to the email exchanges between the parties as a result of their respective submission of items following the testimony of P-0007. The Chamber also considered the nature and scope of the witness's testimony.

The Chamber recalls that for items to be submitted on the basis of the testimony of a witness, they must have been used or otherwise discussed with the witness during testimony. However, the Chamber notes this does not require that each document must have been shown or otherwise meaningfully commented on by the witness during testimony. It is sufficient if the documents were used or otherwise discussed in a broad sense.

Applying this principle, the Chamber is satisfied that the items tendered by the Prosecution were sufficiently used or discussed with P-0007 during his testimony for them to be recognised as formally submitted. Notably, as concerns the items submitted by the Prosecution, the Chamber observes that P-0007's testimony centred essentially on the circumstances of the collection of documents and photographs in Timbuktu in 2013 and their subsequent transmission to the Prosecution.

Accordingly, the Chamber recognises the formal submission of items contained in the tables attached to the email submissions received from the Prosecution on 9 September 2020. All these items are hereby recognised as formally submitted and, accordingly, the Registry is directed to proceed in accordance with paragraph 34(vi) of the Directions on the conduct of the proceedings (ICC-01/12-01/18-789-AnxA).

With respect to the ten documents the Defence seeks to submit, the Chamber notes that four of these items were used or discussed with the witness in the broad sense defined above. However, as noted by the Prosecution, the Defence also seeks to submit six new items relying on the fact that they came from the same twitter accounts as those used in court. The Chamber rejects that as a basis for the submission of items through this witness. This is nevertheless without prejudice to the Defence's right to submit such items other than through a witness, as foreseen in paragraphs 78-79 of the Directions on the conduct of the proceedings (ICC-01/12-01/18-789-AnxA). Accordingly, the Chamber recognises the formal submission of items MLI-D28-0004-0008, MLI-D28-0004-0009, MLI-D28-0004-0011 and MLI-D28-0004-0042 and, accordingly, the Registry is directed to proceed in accordance with paragraph 34(vi) of the Directions on the conduct of the proceedings (ICC-01/12-01/18-789-AnxA).

The Chamber notes the comments and objections of the parties on substantive issues. As explained in the Directions on the conduct of the proceedings (ICC-01/12-01/18-789-AnxA, para. 34(i)), these will be considered by the Chamber during its judgment deliberations. Accordingly, the present ruling is without prejudice to the Chamber's final consideration as to the admissibility and weight, if any, of the items hereby recognised as submitted, all of which may be further discussed and used by the parties in the course of the trial, including with additional witnesses who may testify on their contents.

Kind regards,


(on behalf of Trial Chamber X)