

Annex I

Public

From: Trial Chamber X Communications
Sent: 17 May 2021 18:06
To: Al Hassan Prosecution Team; 'D28AlHassanDefenceTeam'; 'V43LRVTeam';
Cc: Associate Legal Officer-Court Officer; Trial Chamber X Communications; FS Items Communication
Subject: Decision on submitted material for P-0646
Attachments: Defence List of material for submission regarding P-0646.pdf; Defence Response to OTP List of material for submission regarding P-0646.pdf; OTP List of material for submission regarding P-0646.pdf; OTP Reply to Defence Response to OTP List of material for submission regarding P-0646.pdf; OTP Response to Defence List of material for submission regarding P-0646.pdf

Dear counsel,
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution dated 22 April 2021 at 14:22 and corresponding attachment, hereinafter 'Prosecution List'), as well as by the Defence (Email from the Defence dated 22 April 2021 at 15:00, hereinafter 'Defence List') following the testimony of P-0646. The Chamber also notes the Prosecution response (E-mail from the Prosecution dated 23 April 2021 at 14:42), the Defence response (E-mail from the Defence dated 28 April at 17:18) and the Prosecution reply (Email from the Prosecution dated 29 April 2021 at 16:49).

The Chamber notes that in respect of the Prosecution List, the Defence objects to the submission of all items (the 'contested items') with one exception.

The Defence objects on the basis that: (i) the methodology employed to gather information relating to the contested items is unreliable; (ii) the contested items lack authenticity as P-0646 could not confirm the authenticity of the content nor the form of these documents; (iii) four of the contested items (MLI-OTP-0012-0287, MLI-OTP-0012-0295, MLI-OTP-0012-0310 and MLI-OTP-0012-0327) are not documents produced or signed by P-0646 or any members of the DSM; (iv) it is impossible to establish corroboration of the contested items as they greatly depend on anonymous hearsay; (v) the methodology used to gather information was fundamentally unreliable; (vi) there exists no information concerning the process for selecting and collecting the documents; (vii) P-0646's credibility as a source of authentication is undermined by his refusal to answer Defence questions; and (viii) the limited probative value of the contested items is outweighed by the prejudice caused due to the use of anonymous sources.

The Prosecution submits that the objections of the Defence relate to the admissibility and probative value of the items, which will be decided at the end of trial. The Prosecution argues that the contested items should be considered reliable, and of probative value, especially when considered together with the totality of evidence at end of trial.

The Chamber notes that in respect of the Defence List, the Prosecution does not object to the submission of the said items. However, it submits these items should not be ultimately admitted or relied upon by the Chamber.

Concerning the Defence objection under (vii) above, the Chamber disagrees with the Defence submission that the provisions of Article 72 of the Statute were triggered by the answers given by the witness to questions posed to him.. Accordingly, the Defence's request for remedies to be provided at this stage is dismissed.

In relation to the remainder of the Defence objections, and in line with its previous rulings, the Chamber considers that they do not prevent the submission of items at this point in time, but will rather be consider as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused, having due regard to the submissions made by the parties.

Further, the Chamber is satisfied that all items on the Prosecution List and the Defence List were sufficiently used or discussed in a broad sense with P-0646 and accordingly recognises their formal submission.

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).

Kind regards,



(on behalf of Trial Chamber X)