

# Annex I

Public

**From:** Trial Chamber X Communications  
**Sent:** 26 January 2021 11:00  
**To:** Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team  
**Cc:** Associate Legal Officer-Court Officer; FS Items Communication; Trial Chamber X Communications  
**Subject:** Decision on submitted material for P-0638  
**Attachments:** OTP submission email 9.12.2020.pdf; Defence submission email 9.12.2020.pdf; OTP response 9.12.2020.pdf; Defence response 14.11.2020.pdf; OTP reply 15.12.2020.pdf

Dear counsel,  
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution dated 9 December 2020 at 15:51 and corresponding attachment), as well as by the Defence (Email from the Defence dated 9 December 2020 at 15:27) following the testimony of P-0638.

It is noted that the Prosecution does not object to the submission of one item by the Defence (without prejudice to any subsequent observations on the relevance and weight of this evidence) (Email from the Prosecution dated 9 December 2020 at 16:00). The Chamber takes note of the Defence's objections to items the Prosecution seeks to submit through P-0638 (Email from the Defence dated 14 December 2020 at 19:59) and the Prosecution's reply thereto (Email from the Prosecution dated 15 December 2020 at 19:59).

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-0638.

The Chamber notes at the outset that the Prosecution requests the submission of eight items that have already been submitted through witness P-0065 (MLI-OTP-0018-2357; MLI-OTP-0069-3712; MLI-OTP-0018-0379; MLI-OTP-0069-7535; MLI-OTP-0069-7539; MLI-OTP-0018-0693; MLI-OTP-0069-1464; MLI-OTP-0078-1304). Accordingly, the request is moot as submission of an item on the case record occurs only once. Nonetheless, the Chamber notes that to the extent that these items were shown to and commented upon by P-0638 during his testimony, the Chamber will take this, as well as the Defence's objections, into consideration in the analysis of the admissibility and the weight to be given to each item of evidence in the Chamber's judgment pursuant to Article 74 of the Statute.

As regards items MLI-REG-0001-0016 and MLI-REG-0001-0017, the Chamber notes these are not objected to, and that they were used with P-0638 during his testimony.

The Defence objects to items it identifies under 'Category A', on the basis that it submits that P-0638 did not author, was not present at the events and has no personal knowledge of how the material was produced. As regards photograph MLI-OTP-0018-2595 and portions of video MLI-OTP-0069-4624, the Chamber notes that the items were shown to P-0638 and that he was able to comment on said items, including to make identifications. The Chamber is therefore satisfied that the items were sufficiently used with P-0638 for them to be submitted through this witness and considers that the issues raised by the Defence are not ones that prevent the submission of the said items at this stage. The Defence submissions on these items will, however, be taken into consideration by the Chamber in due course, and particularly in its judgment under Article 74 of the Statute. The Chamber also therefore dismisses the Defence's related objections under 'Category C' to the submission of the related transcripts and translations MLI-OTP-0078-4603 and MLI-OTP-0078-4686, and MLI-OTP-0078-4567 and MLI-OTP-0078-4633.

In relation to the two remaining items (MLI-REG-0001-0018 and MLI-REG-0001-0019) objected by the Defence under its 'Category B', on the basis that 'recognitions' made by the witness were elicited in an unsafe and reliable manner, the Chamber considers these objections to pertain to matters of probative value and relevance and ultimately to the weight to be given to these items of evidence. Accordingly, and as noted above, the Chamber does not consider that

these are issues that prevent the submission of the items at this stage but the Chamber will consider them holistically in the judgment under Article 74 of the Statute.

The Chamber notes that for some videos and their associated transcripts and translations, the Prosecution seeks to submit only those extracts used with the witness. As previously noted by the Chamber, 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.

As regards the item submitted by the Defence, MLI-D28-0004-3945, the Chamber notes that there is no objection from the Prosecution, and that the item was used with P-0638 during his testimony.

As regards the parties' submissions on the evaluation of the items, the Chamber reiterates again that the formal submission of these items is without prejudice to their admissibility and the weight to be given to each item of evidence in the Chamber's judgment pursuant to Article 74 of the Statute.

Accordingly, the Chamber recognises the formal submission of the following 10 items in the attachment to the Prosecution email of 9 December: MLI-OTP-0018-2595; MLI-OTP-0069-4624; MLI-OTP-0078-4603; and MLI-OTP-0078-4686 ; MLI-OTP-0078-4567; MLI-OTP-0078-4633; MLI-REG-0001-0016; MLI-REG-0001-0017; MLI-REG-0001-0018 and MLI-REG-0001-0019.

The Chamber also recognises the formal submission of the item identified the Defence email of 9 December, MLI-D28-0004-3945.

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,

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(on behalf of Trial Chamber X)