

Annex I

Public

From: Trial Chamber X Communications
Sent: 28 April 2021 08:31
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Associate Legal Officer-Court Officer; Trial Chamber X Communications; FS Items Communication
Subject: Decision on submitted material for P-0635
Attachments: P-0635 Defence submission.pdf; P-0635 Prosecution reply.pdf; P-0635 Prosecution response.pdf; P-0635 Prosecution Submission.pdf; P-0635 Defence response.pdf

Dear counsel,
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution dated 15 April 2021 at 18:06 and corresponding attachment, hereinafter ‘Prosecution List’), as well as by the Defence (Email from the Defence dated 16 April 2021 at 14:17, hereinafter ‘Defence List’) following the testimony of P-0635.

The Prosecution List

The Defence objects to the submission of these items on the basis that: (i) the witness’s report (MLI-OTP-0069-9281) and its addendum (MLI-OTP-0078-0933) lack reliability, impartiality and independence and are based on flawed methodology; and (ii) given the accessorial nature of the remainder of the items on the Prosecution List, they lack any probative value should the report and the addendum not be accepted for submission (Email from the Defence dated 20 April 2021 at 15:11).

In response, the Prosecution submits that: (i) the objections relate to the probative value of P-0635’s evidence, which is a matter that the Chamber need not assess at the submission stage; (ii) P-0635’s reports are reliable and credible; and (iii) the alleged error raised by the Defence in relation to the panoramas should have been raised in court (Email from the Prosecution dated 21 April 2021 at 09:51).

As regards the objections by the Defence, the Chamber considers these are without merit. The Chamber recalls that in respect of all but two items contained in the Prosecution List the Chamber authorised their introduction pursuant to Rule 68(3), pending solely the formalities under this provision (*see* ICC-01/12-01/18-989-Conf, para. 111). In relation to the arguments raised by the Defence, challenging P-0635’s expert evidence, the Chamber observes that it previously authorised the Prosecution to call P-0635 as an expert (*see* ICC-01/12-01/18-989-Conf, para. 110). Moreover, such challenges do not prevent the submission of these items at this stage but will rather be considered 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 the formalities under Rule 68(3) of the Rules have been satisfied for the thirteen items, whose introduction was authorised by the Chamber pursuant to Rule 68(3) and that MLI-OTP-0078-8036 and MLI-OTP-0078-8040 were used or otherwise discussed in a broad sense with P-0635.

The Defence List

While not objecting to the submission of items on the Defence List, the Prosecution expresses its concerns regarding the relevance of item MLI-D28-0004-7601 (Email from the Prosecution dated 16 April 2021 at 17:19).

The Chamber is satisfied that all the items on the Defence List have been used or otherwise discussed in a broad sense with P-0635.

Accordingly, the Chamber recognises the formal submission of all items on the Prosecution List and the Defence List. 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