

Annex I

Public

From: Trial Chamber X Communications
Sent: 01 October 2020 12:01
To: FS Items Communication
Cc: Al Hassan Prosecution Team; 'D28AlHassanDefenceTeam';
 'V43LRVTeam'; Associate Legal Officer-Court Officer; Trial Chamber X Communications
Subject: FW: Decision on submitted material for P-0102
Attachments: Defence formal submission of materials used during examination of witness P-102; RE: List of material for submission regarding Witness MLI-OTP-P-0102; List of material for submission regarding Witness MLI-OTP-P-0102; RE: List of material for submission regarding Witness MLI-OTP-P-0102

Dear counsel,
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution dated 15 September 2020 at 13:29 and corresponding attachment), as well as by the Defence (Email from the Defence dated 15 September 2020 at 15:57) following the testimony of P-0102.

It is noted that the Defence objects to the submission of MLI-OTP-0074-0575 and to multiple items related to reports drafted by P-0102 (Email from the Defence dated 18 September 2020 at 14:37). The Prosecution sent a reply dated 21 September 2020 at 17:03.

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-0102. The Chamber also considered the nature and scope of the witness's testimony, particularly that the Chamber previously authorised the introduction pursuant to Rule 68(3) of the Rules of Procedure and Evidence (the 'Rules') of reports authored by P-0102, as well as related material (see Decision ICC-01/12-01/18-989-Conf, paras 97-102).

Turning to the other related material which the Chamber already authorised in its Rule 68(3) Decision, the Chamber notes that the Defence did not object to the introduction via Rule 68(3) of the Rules of P-0102's reports or the related material (see Decision ICC-01/12-01/18-989-Conf, para. 101 and Defence submissions at ICC-01/12-01/18-895-Conf, paras 65-67). Furthermore, the formalities pursuant to this provision were met during P-0102's testimony. Accordingly, the submission of related material identified in the Rule 68(3) Decision ICC-01/12-01/18-989-Conf is authorised.

With regard to the Defence's submission that these items cannot be admitted for the truth of their contents, the Chamber reiterates that the formal submission of these items is without prejudice to their admissibility and weight to be given to each item of evidence in the Chamber's judgment pursuant to Article 74 of the Statute.

As regards the ballistic report MLI-OTP-0074-0575, the Chamber considers that although other reports authored by P-0102 were submitted via Rule 68(3) of the Rules, this does not prevent the submission of this other report, authored by the witness, through the witness during his testimony. The Chamber is satisfied that the said report was sufficiently used and discussed with P-0102 during his testimony, including during cross-examination, for it to be recognised as formally submitted.

Accordingly, the Chamber recognises the formal submission of items contained in the table attached to the email submissions received from the Prosecution on 15 September 2020.

Noting there is no objection from the Prosecution, and considering that the two items the Defence seeks to submit were used during the cross-examination of P-0102, the Chamber recognises the formal submission of items MLI-D28-0004-0337 and MLI-OTP-0042-0503, being the items contained in the table attached to the email submissions received from the Defence on 15 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).

Finally, the Chamber observes that a significant amount of material includes translations of items for submission. The Chamber therefore directs the parties in future submissions lists to group the translations and transcripts of items together with the item itself. For Rule 68(3) items, material related to a report or prior recorded testimony should also be grouped together with the report.

Kind regards,



(on behalf of Trial Chamber X)