

Annex I

Public

From: Trial Chamber X Communications
Sent: 18 December 2020 10:05
To: Al Hassan Prosecution Team; 'V43LRVTeam';
'D28AlHassanDefenceTeam'; Associate Legal Officer-Court Officer
Cc: Trial Chamber X Communications; FS Items Communication
Subject: Decision on submitted material for P-0065 (part 1)
Attachments: Prosecution reply.pdf; Prosecution response.pdf; Prosecution list of material for submission P-0065.pdf

Dear counsel,
Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution of 23 November 2020 at 17:26 and corresponding attachment), as well as by the Defence (Email from the Defence of 27 November 2020 at 13:48 and corresponding attachment) following the testimony of P-0065.

It is noted that the Prosecution does not object to the submission of the items proposed by the Defence for P-0065 (E-mail from the Prosecution of 30 November 2020 at 17:19). However, the Prosecution notes that this does not necessarily mean that it agrees with the comments made by the Defence as regards the relevance and reliability of the said items of evidence.

The Chamber takes note of the Defence's objections to items the Prosecution seeks to submit through P-0065 (E-mail from the Defence of 3 December 2020 at 15:46) and the Prosecution's reply thereto (E-mail from the Prosecution of 9 December 2020 at 16:37).

The Chamber also notes the parties have provided further comments (E-mail from the Defence of 9 December 2020 at 17:15 and e-mail from the Prosecution of 9 December 2020 at 19:50).

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-0065. However, the Chamber observes that the aforesaid further comments were made without the leave of the Chamber. Accordingly, the Chamber has not taken them into consideration and therefore the e-mail exchanges of 9 December 2020 at 17:15 and 19:50 are not attached to this e-mail decision.

As regards the items to be submitted by the Prosecution, the Chamber notes that contrary to the submissions made by the Defence, all items included in the list were shown to P-0065 during his testimony and he was able to comment and give evidence as regards the said items. Accordingly, all items used by the Prosecution during P-0065's testimony and not objected to by the Defence may be submitted through this witness. As regards the items objected to by the Defence under 'Category A' and thus on the basis that they were not shown to P-0065, their submission is equally authorised. Transcripts and translations related to these items are equally to be submitted as they are accessories to the main item of evidence. The Chamber notes nonetheless that some of these items' ERNs are not reflected in the English transcript but only in the French transcript. Accordingly, it instructs the parties to liaise with the Registry so that the English transcripts are corrected to reflect the missing ERNs.

As regards the items identified by the Defence under 'Category B' of its objections, as videos P-0065 did not recognise and about which he was not able to provide testimony, the Chamber considers that the matters raised by the Defence pertain more to the weight to be given to the testimony of P-0065 in relation to a given item than to its submission at this stage of the proceedings. In fact, the Chamber considers that the submission of these videos are necessary for it to evaluate the testimony of P-0065. The Chamber notes that in commenting on video MLI-OTP-0018-0482, P-0065 said [REDACTED] and that this was probably in 2012. While in videos MLI-OTP-0041-0605 and MLI-OTP-0069-3712, he did not recognise [REDACTED], P-0065 identified Mr Al

Hassan. Accordingly, the Chamber rejects the Defence objections to the aforesaid three videos and their corresponding transcripts and translations for the purpose of considering the submission of those items.

The Defence also objects to items it identifies under 'Category C', [REDACTED]. The Chamber notes, as submitted by the Defence, that these objections relate to the relevance and probative value of the items in question and P-0065's evidence in this regard. The Chamber considers that these are not issues that prevent the submission of the said items at this stage but they will, as with previous submissions of such a nature, be taken into consideration by the Chamber in due course, and particularly in its judgment under Article 74 of the Statute. This is in line with the approach taken by the Chamber in its Directions on the conduct of proceedings, adopting a system that recognises submission of items of evidence 'without a prior ruling on relevance and/or admissibility' and considering 'relevance and probative value as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused'. (see ICC-01/12-01/18-789-AnxA, para. 29). Accordingly, the Chamber rejects the Defence objections to the videos and photographs, as well as their corresponding transcripts and translations identified under 'Category C' for the purpose of considering the submission of those items.

Turning to the items identified by the Defence under 'Category D', [REDACTED], the Chamber notes the Defence's submissions that the Prosecution has not provided sufficient evidence of originality and integrity of the video excerpts. Similarly to the category above, the Defence refers in its objections 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 for 'Category C', the Chamber does not consider that these are issues that prevent the submission of the said items at this stage but will be considered holistically in the judgment under Article 74 of the Statute. The Chamber therefore rejects the Defence objections to the videos and their corresponding transcripts and translations identified under 'Category D' for the purpose of considering the submission of those items.

As regards the item identified by the Defence under 'Category F', namely the France 2 video MLI-OTP-0009-1749 and its corresponding transcript, the Chamber notes the Defence objection that these items should not be submitted for the truth of their contents as they contain misleading and biased commentaries. Similarly to the category above, the Defence refers in its objections to matters of probative value and relevance and ultimately to the weight to be given to these items of evidence. Accordingly, and as noted for the above categories, the Chamber does not consider that these are issues that prevent the submission of the items at this stage but will be considered holistically in the judgment under Article 74 of the Statute. The Chamber therefore rejects the Defence objections to the videos and their corresponding transcripts and translations identified under 'Category F' for the purpose of considering the submission of those items.

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. 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.

The Defence also raises objections to the submission of a Facebook conversation and its translation, identified as 'Category G'. It argues that this is a conversation between P-0065 and an unknown person and is outside the temporal scope of the charges. The Chamber notes here again that the Defence in its submission refers to issues of reliability and integrity and probative value. Accordingly, and as noted for the above categories, the Chamber does not consider that these are issues that prevent the submission of the items at this stage but will be considered holistically in the judgment under Article 74 of the Statute. The Chamber therefore rejects the Defence objections to the Facebook conversation and translation identified under this category for the purpose of considering the submission of those items.

The Chamber notes the Defence makes a threefold objection to satellite images, identified under Category 'H'. Firstly, the Defence objects in general to the submission of maps not produced by the witness. The Defence submits he therefore cannot testify to their reliability. The Chamber considers that this objection is unfounded, as witnesses in general can comment and give evidence on locations contained in a map on the basis of their own knowledge on

the ground. The Chamber agrees in this regard with the Prosecution's submission that although P-0065 is not a satellite imagery expert, it is common practice for witnesses to identify relevant locations on the satellite imagery. It will be for the Chamber to evaluate, at a later stage, the reliability of the evidence provided by P-0065, based on his knowledge of Timbuktu and relevant locations, as well as any other evidence on the record. Second, the Defence submits that as regards maps P-0065 annotated in court, the annotated version, not the original, must be submitted. In this regard the Chamber considers that submission of the annotated version is more appropriate, particularly in order to avoid having duplicative evidence. Moreover, it is the annotated version which includes (in the annotations) the testimony of P-0065. Third, the Defence submits there are maps which P-0065 did not annotate in court. In relation to these two maps, the Chamber notes that although these maps were annotated by P-0065 during his interview with OTP investigators, he referred to them during his in-court testimony and confirmed the meaning of each annotation he had made. The Chamber therefore considers that these maps are to be submitted together with other versions annotated in court. Accordingly, except for the original versions of maps annotated during the witness's testimony (MLI-OTP-0019-0290, MLI-OTP-0040-0408, MLI-OTP-0040-0410) the remainder of the Defence objection is rejected for the purpose of considering the submission of those items.

As regards the items to be submitted by the Defence, the Chamber notes that there is no objection from the Prosecution. Moreover, the Chamber notes that all items were in fact used and presented to P-0065 during his testimony.

Accordingly, the Chamber authorises the submission of all items identified in the annex attached to the Prosecution e-mail dated 23 November 2020 at 17:26, with the exception of items MLI-OTP-0019-0290, MLI-OTP-0040-0408 and MLI-OTP-0040-0410.

The Chamber also authorises the submission of all items identified in the annex attached to the Defence e-mail dated 27 November 2020 at 13:48.

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).

Further attachments are included in an e-mail that will immediately follow.

Kind regards,

[REDACTED]

(on behalf of Trial Chamber X)