

# Annex I

Public

**From:** Trial Chamber X Communications  
**Sent:** 09 March 2021 18:04  
**To:** D28 Al Hassan Defence Team (D28AlHassanDefenceTeam[REDACTED]); Al Hassan Prosecution 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-0081  
**Attachments:** OTP Objections to Defence Submission of Material P-0081.pdf; OTP Reply to Defence Objections to OTP Submission of Material P-0081.pdf; OTP Submission of Material P-0081 (attachment).pdf; OTP Submission of Material P-0081.pdf; Defence Objections to OTP Submission of Material P-0081.pdf; Defence Reply to OTP Objections to Defence Submission of Material P-0081.pdf; Defence Submission of Material P-0081.pdf

Dear counsel,  
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution of 18 February 2021 at 16:45 and corresponding attachment), as well as by the Defence (Email from the Defence of 19 February 2021 at 11:36) following the testimony of P-0081.

The Chamber takes note of the Defence's objections to items the Prosecution seeks to submit through P-0081 (E-mail from the Defence of 22 February 2021 at 16:10) and the Prosecution's reply thereto (E-mail from the Prosecution of 23 February 2021 at 13:32). The Defence has further requested leave to submit a further reply in which it already makes observations (E-mail from the Defence of 24 February 2021 at 13:05), which was then responded to by the Prosecution (E-mail from the Prosecution on 24 February 2021 at 14:37), to which the Defence reacted (E-mail from the Defence of 24 February 2021 at 17:41).

The Chamber also takes notes of the Prosecution's objections to the item the Defence seeks to submit through P-0081 (E-mail from the Prosecution of 19 February 2021 at 14:06) and the Defence's reply thereto (E-mail from the Defence on 22 February 2021 at 11:55).

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-0081. However, as regards the Defence's request for leave to submit a further reply, the Chamber does not consider these submissions will be of any assistance in order to make its determination. Accordingly, it rejects the Defence request for leave to reply, together with the subsequent e-mails from the Prosecution and the Defence, and did not consider them further in its assessment below.

As regards the items to be submitted by the Prosecution, the Chamber notes that the Defence objections are three-fold. First, the Defence makes a general objection to the items introduced via Rule 68(3) of the Rules of Procedure and Evidence (the 'Rules'), namely that a significant part of the evidence provided by this witness is outside the scope of the charges. Second, the Defence objects to the submission of two set of notes allegedly written by P-0081. Third, the Defence objects to the submission of a video (MLI-OTP-0011-0007) and its transcript and translation, which it submits is not relevant and lacks authenticity.

First, as regards items in the first and second category above, the Chamber notes, as pointed out by the Prosecution, that the introduction via P-0081 was already authorised pursuant to Rule 68(3) of the Rules (the 'Rule 68(3) Decision', ICC-01/12-01/18-1267-Conf, paras 36-38), pending solely the formalities under this provision, which were fulfilled during P-0081's appearance in court (T-061). As noted in the Rule 68(3) Decision, the Defence arguments that part of P-0081's evidence is irrelevant to the charges, does not prevent its submission at this stage. Nonetheless, as stated in the aforesaid decision, the analysis of the evidence introduced in the record will be confined to the facts and circumstances of the charges confirmed in this case (Rule 68(3) Decision, para. 36). As

regards the Defence's submissions that the notes should not be introduced for the truth of their contents as they were not authenticated or signed by P-0081 and have no certain date, the Chamber considers this is without merit. First, P-0081 recognised the notes during his testimony (including during cross-examination) and although he did not provide an exact date, he stated that [REDACTED] (T-061-CONF-FRA ET, p. 53, line 14 to p.55, line 7; p.77, line 11 to p.78, line 5). As regards the Defence's allegations that the notes contain anonymous hearsay evidence, the Chamber considers that P-0081's testimony stating that his family provided some of the information does not prevent the submission of the said notes. Instead, the Defence's challenges pertain to the probative value and weight to be given to these items of evidence, which as pointed out by the Prosecution, must be analysed holistically with other evidence on the record.

Turning to the video, the Chamber notes that P-0081 meaningfully commented on the video and recognised the location and date of excerpts shown to him (T-061-CONF-FRA ET, p.19, line 6 to p. 20, line 20). He also recognised Cheikh Abou Aoussa Mohammed in an excerpt (T-061-CONF-FRA ET, p. 21, lines 5-11). Most significantly, P-0081 recognised [REDACTED] in another excerpt of the video (T-061-CONF-FRA ET, p.22, line 2 top. 23, line 22). Accordingly, the Chamber considers that sufficient foundation was established to use and subsequently submit the video through P-0081. The same conclusion applies for the transcript and the translation of the said video, which are accessories to the main item of evidence.

The Chamber notes that the Prosecution seeks to submit via P-0081 a photograph (MLI-OTP-0022-0468), which was already submitted via P-0557 (see e-mail decision of 23 December 2020 at 09:00). Accordingly, the request is moot. The Chamber recalls submission of an item on the case record occurs only once. Nonetheless, the item was shown and commented upon by P-0081 in his testimony and the Chamber will take this into consideration in the analysis of the admissibility and the weight to be given to this item of evidence in the Chamber's judgment pursuant to Article 74 of the Statute.

Accordingly, the Chamber authorises the submission of the material identified in the attachment of the Prosecution's e-mail of 18 February 2021 at 16:45, with the exception of MLI-OTP-0022-0468, which has already been submitted via P-0557.

As regards the item to be submitted by the Defence (MLI-D28-0004-4814), the Defence submits that this article is relevant to P-0081's testimony that [REDACTED] (report is at MLI-OTP-0012-1184, and was introduced by the Prosecution via Rule 68(3) of the Rules). Chamber considers that the matters raised by the Prosecution pertain more to the weight to be given to the testimony of P-0081 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 this item is necessary for it to evaluate the testimony of P-0081.

Accordingly, the Chamber authorises the Defence's request to submit item MLI-D28-0004-4814.

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,

[REDACTED]  
(on behalf of Trial Chamber X)