

Annex I

Public

From: Trial Chamber X Communications
Sent: 23 December 2020 09:00
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Trial Chamber X Communications; Associate Legal Officer-Court Officer; FS Items Communication
Subject: Decision on submitted material for P-0557
Attachments: Defence List of Material for Submission for P-0557.pdf; Prosecution objections and Defence response.pdf; List of materials for submission regarding Witness MLI-OTP-P-0557.pdf; Defence List of Material for Submission for P-0557.pdf; Defence objections and Prosecution Response.pdf

Dear counsel,
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution dated 7 December 2020 at 17:50 and corresponding attachment), as well as by the Defence (Email from the Defence dated 7 December 2020 at 15:58 and corresponding attachment) following the testimony of P-0557.

The Chamber takes note of the parties' objections to the submission of items by the other party (Email from the Prosecution dated 10 December 2020 at 17:47 and email from the Defence dated 10 December 2020 at 12:48) as well as their response to the objections by the other party (Email from the Prosecution dated 11 December 2020 at 17:39 and email from the Defence dated 11 December 2020 at 12:09).

As a preliminary matter, the Chamber notes that the Prosecution requests the submission of seven items that have already been submitted through P-0065 (items no. 20, 21, 25, 28 and 36-38 of the Prosecution's list of material for submission). Accordingly, this part of the request is moot as submission of an item on the case record occurs only once. The Defence objections made to items it identifies under 'Category C' is equally moot as all items falling under this category have already been submitted through P-0065. Nonetheless, the Chamber notes that the items were shown and commented upon by P-0557 in his testimony and 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 the items objected to by the Defence under 'Category A' on the basis that there is no evidence of provenance, the Chamber considers that the matter raised by the Defence pertains to the probative value of the items and does not prevent the submission of the said items at this stage. 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 made to items it identifies under 'Category A' for the purpose of submission of the items.

The Defence also objects to items it identifies under 'Category B', as videos which [REDACTED]
 [REDACTED] 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, the Chamber does not consider that these are issues that prevent the submission of the said items at this stage but they will be considered holistically in the judgment under Article 74 of the Statute. The Chamber therefore rejects the Defence objections to items identified under 'Category B' for the purpose of submission of the items.

In light of the aforementioned conclusions, the Chamber also rejects the Defence 'Category E' objections, which are objections to the submission of transcripts and translations of videos it objects under 'Category A' and 'Category B'.

The Defence also objects to the submission of a video (MLI-OTP-0017-0027) as well as its transcript and the translation of the transcript (MLI-OTP-0033-5228 and MLI-OTP-0033-5405) by the Prosecution, on the basis that it was not shown in full to the witness ('Category D' objections). The Defence submits that while the Prosecution seeks to introduce the section between 00:03:25 and 00:05:28 of the video, only the part from 00:04:33 to 00:04:41 was

shown to the witness in Court. While the Prosecution submits that the broader section of the video was shown to the witness during the preparation session and that this has been reflected in the witness preparation log, the Chamber stresses that parties may not submit evidence through a witness on the basis that they were shown to the witness during the preparation session. Rather, parties must use or otherwise discuss the item in question in court. Nonetheless, in line with the Chamber's previous decision (*see* Decision on submitted items for P-0065 dated 18 December 2020 at 10:05), and 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. Accordingly, the Chamber authorises the submission of the three items to which the Defence objects under 'Category D'. However, in assessing the evidence, the Chamber will take into account the usage of the video with P-0557 in court (00:04:33 to 00:04:41 by the Prosecution as well as 00:03:29 to 00:04:13 and 00:15:15 to 00:15:36 by the Defence) as well as the objections raised.

As regards the items to be submitted by the Defence, the Chamber notes that the Prosecution objects to the submission of four items on the basis of lack of relevance. As mentioned above, the Chamber does not consider that the issue raised by the Prosecution prevents the submission of the objected items at this stage and accordingly rejects the Prosecution's objections for the purpose of submission of the items.

The Chamber is thus satisfied that all the items in the list submitted by both parties have been used or otherwise discussed in a broad sense with witness P-0557. Accordingly, the Chamber authorises the submission of all items identified in the annex attached to the Prosecution email dated 7 December 2020 at 16:50 and the Defence email dated 7 December 2020 at 15:58, with the exception of items MLI-OTP-0009-1749, MLI-OTP-0028-0839, MLI-OTP-0018-0242, MLI-OTP-0018-0243, MLI-OTP-0018-0249, MLI-OTP-0033-5748 and MLI-OTP-0018-0252 which have already been submitted through P-0065.

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