

Annex 1

Public

From: Trial Chamber X Communications
Sent: 07 October 2021 08:16
To: Al Hassan Prosecution Team; D28AlHassanDefenceTeam [REDACTED]; V43LRVTeam [REDACTED]
Cc: Associate Legal Officer-Court Officer; FS Items Communication; Trial Chamber X Communications
Subject: TC X - Decision on submitted material for P-0641

Dear counsels,

Dear colleagues,

The Chamber notes the submission of items by the parties (Email from the Prosecution dated 29 September 2021 at 11:41 and corresponding attachment; Email from the Defence dated 29 September 2021 at 15:26) following the testimony of P-0641.

The Chamber takes note of the parties' response to the submission of items by the other party (Email from the Prosecution dated 1 October 2021 at 10:22 and email from the Defence dated 30 September 2021 at 14:49) as well as their replies (Email from the Prosecution dated 1 October 2021 at 15:59; Email from the Defence dated 4 October 2021 at 11:28).

The Chamber notes that the Prosecution objects to the submission of item MLI-OTP-0078-1908, which is a French translation of the transcript of a video (MLI-OTP-0037-1554), arguing that neither the item itself nor the original video was used in court.

The Chamber observes that item MLI-OTP-0078-1908 was used in court during the testimony of P-0641 (see ICC-01/12-01/18-T-139-CONF-ENG, p. 53, lines 12 to 16 and corresponding French transcript) in the context of the Defence playing an excerpt of a different video (MLI-OTP-0011-0263).

The Chamber also observes that the section of video MLI-OTP-0011-0263 that was shown in court appears to depict the same interview as that contained in the relevant excerpt of video MLI-OTP-0037-1554 (*compare* MLI-OTP-0011-0263 at 00:01:12-00:01:29 with MLI-OTP-0037-1554 at 00:01:05-00:01:26; and MLI-OTP-0061-1188 at p.1190 line 38 to p. 1191 line 47 with MLI-OTP-0078-1908 at p.1911 lines 47-48). Accordingly, the Chamber finds it appropriate to authorise the submission of translation MLI-OTP-0078-1908, although only the relevant parts used in court will be considered.

The Chamber notes that the Defence makes several objections which it categorises in the following two groups:

- (i) Category B Objections: items regarding which the witness does not have any personal knowledge of the circumstances of the creation of these documents or any familiarity with their contents; and
- (ii) Category C Objections: evidence lacking integrity and reliability;

In line with its previous rulings, the Chamber considers that the Defence's arguments 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. Considering that all items the parties seek to submit were sufficiently used or discussed with P-0641, the Chamber authorises their submission and directs the Registry 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

From: [REDACTED]
Sent: 04 October 2021 11:28
To: [REDACTED]; Trial Chamber X Communications
[<TrialChamberXCommunications \[REDACTED\]>](#)
Cc: D28 Al Hassan Defence Team [<D28AlHassanDefenceTeam \[REDACTED\]>](#); V43 Victims Al Hassan Team [<V43LRVTeam \[REDACTED\]>](#); Al Hassan Prosecution Team [<AlHassanProsecutionTeam \[REDACTED\]>](#); Associate Legal Officer-Court Officer [<AssociateLegalOfficer-CourtOfficer \[REDACTED\]>](#)
Subject: RE: Defence List of Material for Submission for Witness P-0641
 Dear Trial Chamber X,

The Defence wishes to respond to the Prosecution's objection regarding the translation of video MLI-OTP-0078-1908 by noting that Me Taylor did cite this document at the same time as the transcription and corresponding English translation (T-139 ET, p.53:12-15).

Regarding the Facebook account, the Defence did authenticate the first page of the document with the witness, which displays the photo of the witness himself. In light of the limited time allocated to the cross-examination and judicial economy, the Defence did not see fit to go through the 69-page document with the witness. The reliability of the document should nonetheless not be affected since the witness [REDACTED]

Kind regards,

[REDACTED] (on behalf of Al Hassan Defence team)

From: [REDACTED]

Sent: 01 October 2021 15:59

To: Trial Chamber X Communications <[TrialChamberXCommunications](#)>

Cc: D28 Al Hassan Defence Team ([D28AlHassanDefenceTeam](#))

<[D28AlHassanDefenceTeam](#)>; V43 Victims Al Hassan Team ([V43LRVTeam](#))

<[V43LRVTeam](#)>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)>

Subject: RE: List of material for submission regarding Witness P-0641

Dear Trial Chamber X,

The Prosecution responds to the Defence's objections regarding the following items of evidence, and submits that they should all be admitted through P-0641, and accorded due weight:

- **MLI-OTP-0069-3805:** The witness confirmed that he had personal knowledge of the content of the video. It is not necessary that he be the person who filmed the video footage for it to be admitted through him. In particular, [REDACTED] (See ICC-01/12-01/18-T-138-CONF-ENG ET: p. 13, l. 3-p. 14, l. 4).
- **MLI-OTP-0072-0240** (and related transcript and translation): The Defence has mischaracterised P-0641's testimony.
 - First, Witness P-0641 confirmed [REDACTED] (See ICC-01/12-01/18-T-138-CONF-ENG ET: p. 66-67, l. 23-6).
 - He further explained that whilst he was only able to access the audio of the item, because [REDACTED] (See ICC-01/12-01/18-T-140-CONF-ENG ET: p. 22, l. 18, p.23, l. 3). Contrary to what the Defence suggests, it is not necessary to have adduced expert testimony. The evidentiary item provided to the Office of the Prosecutor by P-0641, as confirmed by the witness, was video footage, appearing with sound.
 - Moreover, it was Defence counsel who put to the witness that the audio and video were put together separately afterwards, and who asked him whether the audio and video footage was then merged. He did not confirm any knowledge of that Defence proposition, but simply confirmed that this is how it came and how it was transferred to them. (See ICC-01/12-01/18-T-140-CONF-ENG: p. 22, l.22, p. 23, l. 3).
 - It is not correct that Witness P-0641 corrected who the source of this video footage was. He was [REDACTED] (See ICC-01/12-01/18-T-138-CONF-ENG ET: p. 54, l. 12-13; ICC-01/12-01/18-T-140-CONF-ENG ET, p. 22, l. 10-12).
 - It is irrelevant that P-0641 [REDACTED], in the two different video items he was shown (MLI-OTP-0018-0741 and MLI-OTP-0018-0742) (See ICC-01/12-01/18-T-140-CONF-ENG ET: p. 22, l. 13-15). These two other video items of the same event have already been submitted/admitted through Witness [REDACTED]. Those items were only shown to P-0641 for the purposes of identification of [REDACTED], who can be clearly seen at the event filming it, which supports P-0641 that [REDACTED] and shared the video footage with others.
 - Moreover, P-0641 correctly identified Demba Demba, in both video footage from the event in which [REDACTED] can clearly be seen filming (MLI-OTP-0018-0741 and MLI-OTP-0018-0742) (See ICC-01/12-01/18-T-138-CONF-ENG ET: p. 55, l. 23-25, p. 56, l. 1-6) and from a separate and unrelated photograph (MLI-OTP-0012-1844) (See ICC-01/12-01/18-T-139-CONF-ENG ET: p. 25, l. 15-17).

- The fact that he wrongly identified a person, seen at a distance, holding a camera, and whose face cannot be seen, [REDACTED] - does not detract from this fact. (See ICC-01/12-01/18-T-140-CONF-ENG ET: p. 22, I. 5-15; ICC-01/12-01/18-T-138-CONF-ENG ET: p. 48, I. 8-10).
- There is sufficient indicia of reliability and authenticity – both apparent from the content of this video when compared with other contemporaneous videos of the same event (e.g. MLI-OTP-0018-0741 and MLI-OTP-0018-0742); and, from the fact that P-0641 confirmed he was present during the event so had personal knowledge of its content, and was the source of the item.

- **MLI-OTP-0072-0241** (and related transcript and translation): Again, P-0641 confirmed that [REDACTED]
[REDACTED]
[REDACTED] (See ICC-01/12-01/18-T-138-CONF-ENG ET: p. 66-67, I. 23-6). For the same reasons as stated above in relation to MLI-OTP-0072-0240, this item should be viewed as reliable, and authentic. There is sufficient indicia of reliability and authenticity, both apparent from the content of this video when compared with other contemporaneous videos of the same event (e.g. MLI-OTP-0018-0145, MLI-OTP-0018-0146, MLI-OTP-0018-0147), and from the fact that P-0641 confirmed [REDACTED] so had personal knowledge of its content, and was the source of this item.

For all these reasons, the Prosecution submits that these items, and their ancillary transcripts and translations, should be admitted into evidence when the Chamber later assesses the totality of the evidence at the end of the case, and relied upon, as they are reliable and of probative value.

Kind regards

[REDACTED]
Trial Lawyer

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: [REDACTED]

Sent: 01 October 2021 10:22

To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]

Cc: D28 Al Hassan Defence Team (<[D28AlHassanDefenceTeam](#)> [REDACTED]); V43 Victims Al Hassan Team (<[V43LRVTeam](#)> [REDACTED]); Al Hassan Prosecution Team (<[AlHassanProsecutionTeam](#)> [REDACTED]); Associate Legal Officer-Court Officer (<[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED])

Subject: RE: Defence List of Material for Submission for Witness P-0641

Dear Trial Chamber X,

The Prosecution has no objection to the submission of the following items listed by the Defence, except for MLI-OTP-0078-1908, which is the translation of video MLI-OTP-0037-1554, neither item of which appears in any list of material used with P-0641.

In addition, the Prosecution raises issues regarding the reliability and/or admissibility, of the following items of evidence:

1. **MLI-D28-0005-7323**: Whilst P-0641 confirmed that the first page of this item (the only page of the 69 pages to which he was referred or shown) appeared to be from his Facebook page, the Prosecution disputes the relevance of this item. The item is composed of photographs, videos and other person's posts (including with items of clearly private content, wholly unrelated to this case). When asked if it was correct that the witness could not read or write, he confirmed this was the case. Nothing amongst the 69 pages suggests otherwise, nor was the witness taken to any individual page that would contradict this statement. The witness was also not given an opportunity to look at any of the other pages, other than the first page, in order to confirm that these pages came from his Facebook address. Accordingly, it is not possible to confirm the reliability of this 69-page document. For all these reasons, this item should not be admitted into evidence.
2. **MLI-OTP-0011-0263** (and its related transcript and translation): Although P-0641 confirmed that he was able to recognise one individual in this video, he did not indicate any personal knowledge related to the content of this item. Accordingly, it is not appropriate that this video (and the related transcript and translation) be admitted through P-0641, other than at the precise time stamps where the individual he recognised appears.

Kind regards,

[REDACTED]
Trial Lawyer

From: [REDACTED]

Sent: 30 September 2021 14:49

To: [REDACTED]; Trial Chamber X Communications

<[TrialChamberXCommunications](#)[REDACTED]>

Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)[REDACTED]>; V43 Victims Al Hassan Team

<[V43LRVTeam](#)[REDACTED]>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)[REDACTED]>;

Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)[REDACTED]>

Subject: RE: List of material for submission regarding Witness P-0641

Dear Trial Chamber X,

Dear Colleagues,

Pursuant to paragraph 34(iii) of ICC-01/12-01/18-789-AnxA, the Defence provides its objections to the Prosecution's List of Material for Submission for Witness P-0641.

The Defence has identified two categories of objection which relate to the documents contained in OTP List of Material. The objection codes and short submissions concerning the basis of these objections are listed below. All transcript references are to the confidential English edited version.

Category B Objections: The witness does not have any personal knowledge of the circumstances of the creation of these documents or any familiarity with their contents.

The Defence refers to its previous submissions concerning the weight that can be attributed to items that are not self-authenticating/open source, in circumstances where the prosecution has not adduced evidence concerning the circumstances of the creation of these documents or the reliability of the contents.

Having failed to elicit evidence concerning P-0641's personal knowledge of these documents, submission of these documents through P-0641 would be prejudicial and unfair.

Item	Doc ID	Type	Title	Submissions
7	MLI-OTP-0069-3805	Audio / Video Material	[REDACTED]	[REDACTED]

Category C Objections: The witness's evidence regarding these documents lacks integrity and reliability.

The witness's evidence raises concerns as to its accuracy as concerns the evidential items involved and can therefore not form a foundation for their submission.

Item	Doc ID	Type	Title	Submissions
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1	MLI- OTP- 0072- 0240	Audio / Video Material	Video 1 /	As Trial Chamber II explained in Kordić & Čerkez, paras. 689-690, the admissibility of a piece of evidence hinges in part on its reliability (see also Tadić, paras. 661-662). ‘In order to ensure the reliability of the evidence, it must be authenticated. If authentication fails, the evidence cannot be admitted.’ (Kordić & Čerkez, para. 20-22). ‘If there is no authentication, there can be no guarantee that the party tendering it purports to be what it claims to be’ (Tadić, paras. 661-662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000).
2	MLI- OTP- 0080- 1440	Transcript	Transcription de document audio / vidéo / Video 1	
3	MLI- OTP- 0080- 1444	Translation - ENG	Translation / Transcription de document audio / vidéo / Video 1 /	

				[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	Video 2 [REDACTED]	The above reasoning and case law following specification: [REDACTED]
[REDACTED]	Transcript	Transcription de document audio / vidéo / Video 2 [REDACTED]		
[REDACTED]	Translation - ENG	Translation / Transcription de document audio / vidéo / Video 2 / [REDACTED]		

Defence Tab 36	MLI-D28-0004-3768	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Communication - Social Media	Public	T-140-ENG-RT, p.69, l.21 to 70, l.24.	A Facebook picture from the Facebook account of an individual called [REDACTED] [REDACTED]
Defence Tab 36	MLI-OTP-0011-0263	[REDACTED] [REDACTED] [REDACTED]	Audio/Video Material	Public	T-139-ENG-RT, p.62, l.13 to p.65, l.1.	This video was shown to the witness and he recognised an individual present in the video and was questioned on the content of this video. This video is relevant for the witness credibility concerning [REDACTED]
Defence Tab 47	MLI-OTP-0056-0644	Transcript of Audio/Video Material / [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Transcript	Confidential		
Defence Tab 48	MLI-OTP-0061-1188	Translation / Transcript of Audio/Video Material / [REDACTED] [REDACTED] [REDACTED]	Translation - ENG	Confidential		
Defence Tab 51	MLI-OTP-0078-1908	Traduction / Transcription de document audio/video / [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Translation - FRA	Confidential		

Kind regards,

[REDACTED] (on behalf of the Al Hassan Defence team)

From: [REDACTED]

Sent: 29 September 2021 11:41

To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED]

Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)<[REDACTED]>; V43 Victims Al Hassan Team <[V43LRVTeam](#)<[REDACTED]>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)<[REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)<[REDACTED]>

Subject: List of material for submission regarding Witness P-0641

Dear Trial Chamber X,

Dear Colleagues,

Pursuant to paragraph 34(ii) of ICC-01/12-01/18-789-AnxA, the Prosecution provides its List of Material for Submission for Witness P-0641 (attached).

Kind regards,

[REDACTED]
On behalf of the Prosecution

Count	Doc ID	Type	Title
1	MLI-OTP-0072-0240	Audio / Video Material	Video 1 / [REDACTED]
2	MLI-OTP-0080-1440	Transcript	Transcription de document audio / vidéo / Vidéo / [REDACTED]
3	MLI-OTP-0080-1444	Translation - ENG	Translation / Transcription de document audio , vidéo / Vidéo 1 / [REDACTED]
4	MLI-OTP-0072-0241	Audio / Video Material	Video 2 / [REDACTED]
5	MLI-OTP-0080-1442	Transcript	Transcription de document audio / vidéo / Vidéo [REDACTED]
6	MLI-OTP-0080-1447	Translation - ENG	Translation / Transcription de document audio , vidéo / Vidéo 2 / [REDACTED]
7	MLI-OTP-0069-3805	Audio / Video Material	[REDACTED]