

Annex 1

Public

From: Trial Chamber X Communications
Sent: 15 September 2021 18:32
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-0603
Attachments: 2020.09.06 OTP List of material for submission regarding Witness MLI-OTP-P-0603.xlsx.pdf

Dear counsel,
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution dated 6 September 2021 at 14:02 and attachment) following the testimony of P-0603. The Chamber also takes note of the response of the Defence (Email from the Defence dated 7 September 2021 at 17:50), the reply from the Prosecution (Email from the Prosecution dated 8 September 2021 at 15:19), and the further email from the Defence relating to an issue raised in the Prosecution's 8 September email (Email from the Defence dated 9 September 2021 at 10:12).

It is noted that the Defence does not seek to submit any items (Email from the Defence dated 7 September 2021 at 17:48).

In relation to the Prosecution email of 6 September, the Chamber notes that of the three items sought to be submitted by the Prosecution, the Defence does not object to the submission of item 1 (video MLI-OTP-0012-1726) and related item 2 (transcript MLI-OTP-0069-0383) through Witness P-0603, on the condition that the video is properly authenticated by its alleged author [REDACTED]. While the Defence acknowledges that Item 1 was shown to P-0603 during the examination in chief (T-125), it submits that P-0603 did not author the item. The Chamber notes that portions of this video were shown to P-0603 and that she was able to comment on said items, including to make identifications (T-125). The Chamber is therefore satisfied that the item was sufficiently used with P-0603 for it to be submitted through this witness and considers that the issue raised by the Defence is not one that prevents the submission of the item at this stage. The Defence submissions will, however, be taken into consideration by the Chamber in due course, and particularly in its judgment under Article 74 of the Statute. The Chamber will also consider any relevant evidence from the alleged author of this video, [REDACTED].

The Chamber additionally notes that item 3 which Prosecution seeks to submit (MLI-REG-0001-0211) was used with P-0603 and that the Defence does not object to the submission of this item.

In relation to the Prosecution email of 8 September, the Chamber notes that the Prosecution seeks the submission of four additional items (MLI-OTP-0074-2052, MLI-OTP-0074-2054, MLI-OTP-0074-2055 and MLI-OTP-0078-9955-R01) which were used by the Defence but not sought to be submitted by it, on the basis that submission of these notes is necessary to properly understand P-0603's evidence. The Defence objects to the substance and the manner in which the Prosecution seeks the submission of these additional four items. As previously stated, the Chamber considers that in principle it is within the parties' discretion to request the submission of items used during the testimony of a witness, however, this does not bar the Chamber from taking a decision pursuant to Article 69(3) of the Statute, particularly when the submission of this material is necessary to understand the transcripts of proceedings (see email decision on submitted material for P-0150). The Chamber recalls that it has exercised its discretion to do so on a previous occasion involving one item for P-0623 (see email decision on submitted material for P-0623), and declined to do so in relation to a large number of items relating to P-0150 (see email decision on submitted material for P-0150). In the instant case, the Chamber notes that the four items relate to questions put to P-0603 during cross-examination regarding [REDACTED]. Having had regard to the witness's evidence on this point (see T-127-ENG, pages 26 to 28), the Chamber does not consider that the submission of these four items is necessary and, most importantly, is not convinced that lack thereof would be

detrimental to the fairness of proceedings or the determination of the truth. The Prosecution's request for submission of these four items is therefore rejected.

For the aforementioned reasons, the Chamber authorises the submission of the items identified in the attachment to the Prosecution's email of 6 September 2021. 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

From: [REDACTED]
Sent: 09 September 2021 10:12
To: Dutertre, Gilles [REDACTED]; [REDACTED]; Trial Chamber X Communications <[TrialChamberXCommunications](#)>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)>; V43 Victims Al Hassan Team <[V43LRVTeam](#)>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)>
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)>
Subject: RE: List of material for submission regarding Witness P-0603

Honourable Trial Chamber X,
Dear Colleagues,

The Defence objects to the substance and the manner in which the Prosecution seeks the submission of notes MLI-OTP-0074-2052, MLI-OTP-0074-2054, MLI-OTP-0074-2055 and MLI-OTP-0078-9955-R01.

At the outset, and as recognised by the Prosecution, it is not for the Prosecution to dictate which material the Defence tenders for submission as evidence.

Fundamentally, P-0603's testimony on [REDACTED] is clear and no further material is necessary to ensure that it is properly comprehensible. The Defence relied on these notes to contradict claims made by P-0603 in response to open questioning.

These notes are drafted by OTP investigators and are testimonial in nature. In the event that the Prosecution considered this testimony to be critical to understand P-0603's evidence, it had the following procedural remedies:

- (1) The Prosecution could have sought the Chamber's leave to re-examine her on this point at the appropriate time. It did not. Instead, the Prosecution indicated that it had no further questions.
- (2) The Prosecution could seek to call the relevant investigators. It has not.
- (3) The Prosecution could seek the submission of these notes through and in full accordance with Rule 68(2)(b). It has not.

The substantive commentary provided by Mr Dutertre falls outside the boundaries of either a response to the Defence submission request or a reply to the Defence emails of 7 September. The deadline for the Prosecution to seek to submit items has also expired. It is wholly inappropriate for the Prosecutor to hijack these email communications for the purpose of providing unsworn testimony as to the purported contents of the notes and purposes of the provision of funds to P-0603. Mr Dutertre's arguments and commentary should be disregarded *in toto*.

The Defence reserves the right to respond to any proper attempt by the Prosecution to seek the submission of these notes through Rule 68.

Respectfully,

Defence for Al Hassan

From: Dutertre, Gilles [REDACTED]

Sent: 08 September 2021 15:19

To: [REDACTED]; Trial Chamber X Communications; Al Hassan Prosecution Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; [REDACTED]

Cc: D28 Al Hassan Defence Team

Subject: RE: List of material for submission regarding Witness P-0603

Dear Trial Chamber X,
Dear colleagues,

The Defence objects to submission of video MLI-OTP-0012-1726 and its transcript MLI-OTP-0069-0383, on the basis that P-0603 did not author the video.

- As mentioned several times, pursuant to paragraph 58 of the Conduct of Proceedings Decision (ICC-01/12-01/18-789-AnxA) a video can be submitted via someone who is not the author of the video: provided they have “personal knowledge of the making of the recording *or its contents*”.
- The Prosecution notes, as acknowledged by the Defence, that the video was shown to P-0603. P-0603 was able to comment on the said item [REDACTED] T-125-CONF-ENG ET, p. 9, l. 23-p. 11, l. 14/T-125-CONF-FRA ET, p. 9, l. 4-p. 10, l. 25).
- The Prosecution submits that the video was sufficiently used with P-0603 for it to be submitted through this witness and considers that the issues raised by the Defence are not ones that prevent the submission of the video.
- Last, although video MLI-OTP-0012-1726 was played without sound to P-0603, the Prosecution added the related transcript MLI-OTP-0069-0383 to the list of items for submission for completeness’ sake.

Additionally, the Prosecution notes that the Defence is not seeking the submission of notes MLI-OTP-0074-2052, MLI-OTP-0074-2054, MLI-OTP-0074-2055 and MLI-OTP-0078-9955-R01 into evidence. In this respect:

- The Prosecution acknowledges that in principle it is within the parties’ discretion to request the submission of items used during the testimony of a witness.
- However, the Prosecution submits that the submission of these notes is necessary to properly understand the witness’s evidence, and thus should be submitted for the purposes of the determination of the truth and integrity of the proceedings.
- In the instant case, the Prosecution is not seeking the submission of all the documents used by the Defence but a limited part thereof that are necessary.
- In particular, the lack of such evidence on the record would be detrimental to the fairness of proceedings or the determination of the truth since the questioning of the defence does not reflect the entire reality of these notes (see for instance question at T-127-CONF-ENG ET, p. 27, l. 11-12 [REDACTED] compared to note MLI-OTP-0074-2054). As a result, this whole issue of financial assistance is not clear and the Prosecution submits that it is within the Chamber discretion’s to authorise the submission solely of the four following notes:

- MLI-OTP-0074-2052 relates to [REDACTED]. This goes to the availability of P-0603 as a witness.

- MLI-OTP-0074-2054 relates to [REDACTED]

[REDACTED]

- MLI-OTP-0074-2055 relates to [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- MLI-OTP-0078-9955-R01 relates to a [REDACTED]
[REDACTED] This goes to the availability of P-0603 as a witness.

Considering the detailed explanations [REDACTED] as contained in the investigation notes and given the use of the investigation notes during cross examination (see T-127-CONF-ENG ET, p. 26, l.1-p. 28, l.20/T-127-CONF-FRA ET, p.25, l. 13-p. 28, l.2), it would be in the interests of justice and the determination of the truth to allow their submission.

Best regards,

Gilles Dutertre

From: [REDACTED]
Sent: 07 September 2021 17:50
To: Dutertre, Gilles [REDACTED]; Trial Chamber X Communications <[TrialChamberXCommunications](#)>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)>; V43 Victims Al Hassan Team <[V43LRVTeam](#)>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)>
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)>
Subject: RE: List of material for submission regarding Witness P-0603

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-0603. The Defence does not object to the submission of item 1 (MLI-OTP-0012-1726) and item 2 (MLI-OTP-0069-0383) through Witness P-0603, on the condition that the video is properly authenticated by its alleged author [REDACTED].

While the Defence acknowledges that Item 1 was shown to the witness during the examination in chief (T-125-Conf-Eng, p. 10 ln 1 to p. 14), Witness P-0603 did not author the item for which the Prosecution seeks admission into evidence. The alleged source of the item according to the metadata of the item is [REDACTED]. It is only he who is in a position to testify to the content, integrity and reliability of the item. The Defence notes that this indeed appears to be the aim of the Prosecution: MLI-OTP-0012-1726 is on the Prosecution list of material to be used [REDACTED] and is marked as an item for which the Prosecution will seek to admit as evidence [REDACTED].

The Defence does not object to the submission of Item 3 through P-0603.

For these reasons, and subject to the proper authentication of Items 1 and 2 [REDACTED] the Defence does not object to the submission of the three items tendered for submission by the Prosecution.

Kind regards,
 [REDACTED] for the Al Hassan Defence

From: [REDACTED]
Sent: 07 September 2021 17:48
To: Trial Chamber X Communications <[TrialChamberXCommunications](#)[REDACTED]>
Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)[REDACTED]>; D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)[REDACTED]>; V43 Victims Al Hassan Team <[V43LRVTeam](#)[REDACTED]>
Subject: List of items of evidence to be submitted (Witness P-0603)

Dear Trial Chamber,
 Dear Colleagues,

The Defence does not have any request pursuant to ICC-01/12-01/18-789-AnnA, paragraph 34 (ii) for material to be submitted following the testimony of Witness P-0603.

With kind regards,
 [REDACTED] for the Al Hassan Defence

From: Dutertre, Gilles [REDACTED]
Sent: 06 September 2021 14:02
To: [REDACTED] Trial Chamber X Communications <[TrialChamberXCommunications](#)[REDACTED]>; Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)[REDACTED]>; V43 Victims Al Hassan Team <[V43LRVTeam](#)[REDACTED]>; Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)[REDACTED]>; Taylor, Melinda <[mtaylor](#)[REDACTED]>
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)[REDACTED]>
Subject: List of material for submission regarding Witness P-0603

Chère Chambre de Première Instance X et Chers Collègues,

Conformément au paragraphe 34. ii. de l'annexe ICC-01/12-01/18-789-AnnA, l'Accusation vous prie de bien vouloir trouver en pièce jointe la liste de tous les éléments dont la soumission est requise concernant le témoin P-0603, y compris le transcrit MLI-OTP-0069-0383 de la vidéo MLI-OTP-0012-1726, et ce par souci d'exhaustivité quand bien-même ladite vidéo a été diffusée sans le son.

Respectueusement,

Gilles Dutertre

List of material for submission regarding Witness MLI-OTP-P-0603

Count	Doc ID	Type	Title	Main Date	Confidentiality Level	To Be Tendered through Witness MLI-OTP-P-0603
1	MLI-OTP-0012-1726	Audio / Video Material	MOV062	15-Dec-12	Confidential	Yes
2	MLI-OTP-0069-0383	Transcript	Transcription de document audio/vidéo / MOV062	15-Dec-12	Confidential	Yes
3	MLI-REG-0001-0211	Photograph/s	MLI-OTP-0048-0729 marked by P-0603		Confidential	Yes