

Annex 1

Public

From: Trial Chamber X Communications
Sent: 17 August 2021 08:28
To: Al Hassan Prosecution Team; D28AlHassanDefenceTeam [REDACTED]
 V43LRVTeam [REDACTED]
Cc: Associate Legal Officer-Court Officer; Trial Chamber X Communications; FS Items Communication
Subject: Submission of Material P-0150
Attachments: List of material for submission regarding Witness MLI-OTP-P-0150.pdf; 2021.07.21 List of Material for Submission regarding Witness P-0150 v2.pdf; Items used during the cross-examination of P-0150 and not included in the Defence LOM (corrected).pdf; 2021.07.23 Defence objections to OTP list for submission through P-0150.pdf; Defence objections to OTP list for submission P-0150.pdf

Dear counsel,
 Dear colleagues,

The Chamber notes the submission of items by the Prosecution (Email from the Prosecution of 19 July 2021 at 22:16 and corresponding attachment), as well as by the Defence (Email from the Defence of 21 July 2021 at 20:17 and corresponding attachment), following the testimony of P-0150.

The Chamber also notes the Prosecution's further e-mail stating that in principle the documents created by P-0150 during the course of his examination-in-chief are *de facto* submitted on the record as they are part of his testimony (E-mail of 22 July 2021 at 22:06).

It is noted that the Prosecution does not object to the submission of the 23 items proposed by the Defence for P-0150 (E-mail from the Prosecution of 23 July 2021 at 16:21 and corresponding attachment). However, the Prosecution argues that the Defence used approximately 200 items with P-0150 that are not formally submitted on the record and which it now does not seek to submit. The Prosecution argues that 43 items which are not of a testimonial nature (listed in the annex to the Prosecution's E-mail, the '43 Items') should be submitted into evidence in the interests of justice and the determination of the truth, as they are integral part of P-0150's testimony.

The Chamber notes the Defence response thereto (E-mail from the Defence of 26 July 2021 at 16:55). The Defence does not oppose to the submission of items created by P-0150 (Registry exhibits) as well as item MLI-D28-0005-6126. However, as regards the 43 Items identified by the Prosecution, the Defence argues that their submission would be against the clear language of the Decision on the conduct of proceedings, which foresees items being used but not submitted. It also argues that such an approach would be forcing the accused to tender evidence against himself. The Defence also submits that it is the parties' discretion to determine which evidence to enter in the case file.

The Chamber notes that the parties made further submissions as regards the 43 Items identified by the Prosecution (see E-mail from the Prosecution on 29 July 2021 at 8:41 and E-mail from the Defence on 29 July 2021 at 9:40). The Chamber considers that the Prosecution's reply and the Defence's submissions on this issue are not necessary to render the present decision. The Chamber rejects the Prosecution's leave to reply and has therefore not considered the aforesaid further submissions in its assessment below.

The Chamber takes note of the Defence's objections to items the Prosecution seeks to submit through P-0150 (E-mail from the Defence of 23 July 2021 at 16:38).

The Chamber notes that the Defence classifies its objections in the following categories:

Objection A: items were not shown to P-0150 before his in-court testimony and thus submission violates the Defence's right to notice.

Objection B: witness does not have any personal knowledge of the circumstances of creation of items or any familiarity with their contents.

Objection C: witness's evidence regarding these items lacks integrity and reliability and raises concerns as to its accuracy.

Objection D: items derived from P-0150's laptop, provided the inconsistent and unreliable testimony on chain of custody of electronic files and the laptop itself.

Objection E: items lack reliability as witness's evidence raises doubts as to the integrity of the chain of custody of these items (derived from evidence bag of items allegedly found at the Hotel La Maison by P-0055).

Objection F: transcripts or translation of objected items.

Objection G: Items taken from a notebook addressed by the Prosecution in a 'bulk' manner.

Objection H: items which P-0150 identified as containing Mr Al Hassan's signature. Given P-0150's lack of any personal and independent knowledge of Mr Al Hassan's signature, his evidence does not provide any foundation to validate the document and/or support the Prosecution's allegation of authorship or attribution.

At the outset, the Chamber concurs with the parties and considers that items created by P-0150 in court are submitted on the record, as they are an integral part of his oral testimony. This includes all items bearing the ERN 'MLI-REG' created both during examination-in-chief and cross-examination.

As regards the items to be submitted by the Prosecution, the Chamber will address below the categories of objections raised by the Defence.

As regards the items under Objection A, the Chamber considers that, contrary to the submission of the Defence, sufficient notice was provided. The Chamber recalls in this regard its previous findings in relation to a related Defence request prior to the commencement of P-0150's testimony (Single Judge E-mail decision of 19 May 2021 at 16:30). As noted by the Single Judge, the Defence was on notice about the general topics to be touched upon by P-0150 during his testimony well in advance to the commencement of his testimony (referring to ICC-01/12-01/18-740-Conf-AnxB, pp. 573-643, containing the summary of the expected evidence of P-0150). The Chamber considers that the Defence has failed to show how, in light of the broad and extensive scope of P-0150's testimony, it was not genuinely on notice. Although these items were not shown before to the witness, the Chamber fails to see how their use during his testimony and most importantly, his answers thereto generated new or unexpected issues.

As regards the items identified by the Defence under Objection G, the Chamber recalls that for items to be submitted on the basis of the testimony of a witness, they must have been used or otherwise discussed with the witness during testimony. However, the Chamber notes this does not require that each document must have been shown or otherwise meaningfully commented on by the witness during testimony. In line with its previous decisions, it is sufficient if the documents were used or otherwise discussed in a broad sense (*see* E-mail Decision on submitted material for P-0007 of 18 September 2020 at 18:36). Applying this principle, the Chamber is satisfied that the items tendered by the Prosecution were sufficiently used or discussed with P-0150 during his testimony for them to be recognised as formally submitted. In particular, the Chamber notes that items identified under this category by the Defence are photographs of individual pages of what P-0150 identified in court as being one single notebook. In assessing the evidence of P-0150 with regards to this notebook, the Chamber will take into account, as relevant, *inter alia*, the way in which the images of this notebook were used, the images actually used with the witness, and, if relevant, the knowledge of the witness as to the whole notebook (for example, where the witness is the author).

In relation to the Objections B, C, D, E and H, the Chamber considers these pertain more to the reliability and weight to be given to these items than to their submission. In line with its previous decisions, the Chamber will consider the probative value of these items 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. In particular, the Chamber will give due consideration to the specific submissions made by the Defence in the Annex attached to its e-mail of 26 July 2021 at 16:38.

As regards the items under Objection F, as previously established by the Chamber, transcripts and translations are accessories of the main documents to be tendered into the record and therefore are equally to be submitted. The same applies to transcripts and translations of items not yet formally submitted on the record, but that correspond to items formally submitted.

As regards the items to be submitted by the Defence, the Chamber notes that there is no objection from the Prosecution.

The Chamber is further satisfied that all items tendered by the parties were sufficiently used or discussed with P-0150 during his testimony in a broad sense for them to be recognised as formally submitted at this stage.

Turning now to the Prosecution's request on the 43 Items, 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. As referenced by the Prosecution the Chamber has exercised its discretion to do so on a previous occasion involving one item (E-mail decision on submitted material for P-0623). However, the Chamber considers the instant case to be distinct because of the volume of material involved. The Chamber agrees with the submission of the Defence that it would be inconsistent with its Decision on the conduct of proceedings to request the submission of every item used by the Defence with a witness, especially where it expressly objects to its submission. As to the more specific request of the Prosecution regarding the 43 items, the Chamber is not convinced by the Prosecution's arguments in this regard and considers it has not been demonstrated that the submission of each of these Items would be necessary and, most important, that lack thereof would be detrimental to the fairness of proceedings or the determination of the truth. Accordingly, the Chamber considers that it is within the discretion of the Defence to decide whether or not to seek the submission of such items. Bearing in mind that the Defence does not object to the submission of one additional discrete item (MLI-D28-0005-6126), the Chamber authorises the submission solely of this item, in addition to the Registry items identified above.

Accordingly, the Chamber:

1. Authorises the submission of all items identified in the annex attached to the Prosecution e-mail dated 19 July 2021 at 22:16.
2. Authorises the submission of all items identified in the annex attached to the Defence e-mail dated 21 July at 20:17.
3. Authorises the submission of items MLI-REG-0001-0023 to MLI-REG-0001-0109 created by P-0150 during his testimony (see Prosecution e-mail of 22 July 2021 at 22:06).
4. Rejects the Prosecution request to recognise as formally submitted the 43 Items and authorises the submission solely of item MLI-D28-0005-6126.

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)

CHAIN OF E-MAIL EXCHANGES FOLLOWS (see also attachments to this e-mail):

From: Taylor, Melinda [REDACTED]
Sent: 29 July 2021 09:40
To: Dutertre, Gilles <[REDACTED]> [REDACTED] Trial Chamber X Communications
 <[TrialChamberXCommunications](#)> [REDACTED] Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]
 [REDACTED] V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED]; Associate Legal Officer-Court Officer
 <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]
Subject: Re: List of material for submission regarding Witness P-0150

Dear Trial Chamber X,

There is no procedural right to seek leave to file a reply to a submission that is itself a 'reply'. In addition, the two issues below do not satisfy the criteria for granting leave to 'reply'.

In accordance with the Decision on the Conduct of the Proceedings, the Defence submitted its list of evidence. The Prosecution responded, noting that they did not object to the items tendered by the Defence but were of the view that additional items should have been tendered (even though the Prosecution did not include such items on its list within the necessary deadline). The Defence then replied to this response, within the applicable deadline. The Prosecution's request to introduce additional submissions artificially and unfairly protracts the litigation. Indeed, if the Prosecution were to be granted an additional right to present argument, this in turn would trigger additional rights for the Defence as the calling party. This extension of procedural argument is entirely unnecessary, as set out in the arguments below.

With respect to the first issue, the Prosecution through its response argued that the Chamber should invoke its discretion to admit documents that were referred to during cross-examination by the Defence. Having raised this issue, the Prosecution cannot claim that it was a new or unforeseeable issue arising solely from the Defence reply.

As concerns the second issue, the Prosecution has failed to identify where this issue arises in the reply. The Prosecution cannot simply claim that the Defence has 'suggested' a particular argument in order to trigger additional and superfluous arguments on their part. Paragraph 58 of the Decision on the Conduct of the Proceedings is clear and any further argument on this point would be wholly redundant.

Kind regards,
Melinda Taylor on behalf of the Al Hassan Defence

From: Dutertre, Gilles [REDACTED]
Sent: 29 July 2021 08:41
To: Taylor, Melinda [REDACTED]
 [REDACTED] Trial Chamber X Communications
 <[TrialChamberXCommunications](#)> [REDACTED] Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]
 [REDACTED] V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED] Associate Legal Officer-Court Officer
 <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]
Subject: RE: List of material for submission regarding Witness P-0150

Dear Trial Chamber X,

The Prosecution seeks authorisation to reply to the Defence submissions on the Prosecution's request for the submission of items used with P-0150 during his cross-examination by the Defence.

The Prosecution seeks authorisation to reply on two points:

- First, on the scope of the Chamber's discretion to allow submission of items used during cross-examination, where it is necessary to properly understand the witness's testimony, in the interests of justice and determination of the truth; and
- Second, regarding the appropriate interpretation of paragraph 58 of the Conduct of Proceedings Decision (ICC-01/12-01/18-789-AnxA), in particular the provision allowing for submission through a witness who has "personal knowledge of the making of the recording *or its content*". In particular, whether it is correct - as the Defence suggests - that only witnesses who have knowledge of the recording are the appropriate witnesses through whom such items can be submitted, or whether a witness like P-0150 who has personal knowledge of its content may be used to submit such items.

Best regards,

Gilles Dutertre

From: Taylor, Melinda [REDACTED]
Sent: 26 July 2021 16:55
To: [REDACTED] Dutertre, Gilles [REDACTED]
 [REDACTED] Trial Chamber X Communications
 <[TrialChamberXCommunications](#)> [REDACTED] Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]
 [REDACTED] V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED] Associate Legal Officer-Court Officer
 <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]
Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]
Subject: Re: List of material for submission regarding Witness P-0150

Dear Trial Chamber X, Dear Colleagues,

The Defence respectfully submits its reply to the observations below:

At the outset, the Defence notes that it has no objection to the submission of Registry exhibits. Where such exhibits concerned the spelling of names in order to assist the interpreters or court reporters, the Defence had understood the need for their submission to be moot in case the transcripts were subsequently corrected to conform to this spelling.

The Defence also notes that MLI-D28-0005-6126 is the transcript of a discreet component of MLI-OTP-0015-0495, which had previously been submitted into evidence. The Defence does not oppose its submission.

As concerns the remaining items, the Prosecution's position translates to an automatic rule of submission of any evidence used or discussed with a witness, irrespective as to the purpose for which it is used or the extent to which the item forms part of a larger body of evidence, which may be submitted at a later stage or through a different witness. This position is inconsistent with the clear language of the Decision on the Conduct of the Proceedings, the Prosecution's own practice with past witnesses, and the defendant's protection, set out in Article 67(1)(g), against being forced to tender evidence against himself.

The [Appeals Chamber](#) has explained that "evidence is "submitted" if it is presented to the Trial Chamber by the parties on their own initiative or pursuant to a request by the Trial Chamber for the purpose of proving or disproving facts in issue, and in conformity with the directions of the Presiding Judge or the manner agreed upon by the parties" (para. 1).

In line with this legal requirement, the Decision on the Conduct of the Proceedings (Annex A - ICC-01/12-01/18-789-AnxA, para. 34 (ii), sets out the following procedure for the submission of evidence in this case:

the parties and participants will formally request the submission of evidence either via the relevant procedures as specified in sections I.D.2, I.F.7, I.G.1 and I.G.2 of the present decision or, for items used during a hearing, by sending an email to the Chamber and the other participants clearly identifying these items no later than one working day after the conclusion of the examination of the relevant witness by the parties and participants.

Para. 57 further specifies that:

The calling party or participant will provide by email to the Chamber and the other party and participants, at least five days before a witness commences testifying, a list (hereinafter: 'List of Material') setting out: i. the materials it intends to use during the questioning of the witness; ii. any passages intended to be used within any lengthy document; and iii. whether the materials are intended to be tendered as evidence, including under Rule 68, where appropriate.

The Decision thus clearly envisages that the use of materials does not equate to an automatic duty to tender the same materials as evidence. Otherwise, paragraph 57 (iii) would be redundant. In line with the right to procedural certainty concerning the procedures employed at trial, any amendment to this procedure would need to be adopted and applied in a *prospective* manner to enable the Defence and the defendant to make informed decisions concerning their procedural rights and obligations. The protection afforded by Article 67(1)(g) of the Statute also militates against any retrospective changes to the regime for the submission of evidence. The specific example of the Chamber's submission of CDRS concerning P-0623 also cannot be relied upon to establish a general rule to this effect given that first, the Chamber determined that it was in the interests of justice to submit this specific item, second, the item had a direct linkage to P-0623 and her testimony on a particular point, third, the content of the item had been substantively discussed with P-0623, and fourth, the nature of the item would have made it difficult to submit through the bar at a later stage.

The retrospective application of a rule of automatic submission would also be contrary to the practice adopted in connection with earlier witnesses. Specifically, the Prosecution has itself employed a distinction between usage and submission – in many cases, deferring formal submission to a subsequent witness, who may be better placed to address issues of authenticity or reliability. For example, materials related to P-0150 and P-065 were used during the testimony of P-0075, but submitted into evidence through later witnesses who were better placed to authenticate or contextualize the evidence. Accordingly, where documents are linked to, or allegedly authored by an individual who will testify in the future (i.e. P-0654, P-0136, P-0626, P-0111), it is unnecessary and premature for the Chamber to resort to its power to introduce evidence *proprio motu*. Rather, the interests of justice would best be served by adjudicating the bases for submission in connection with a witness who is better placed to authenticate or contextualise the item in question or, after the Defence has had sufficient time to complete investigations or inquiries that may be relevant to the criteria for formal submission.

The right to 'confront' a witness also presupposes that the Defence should be afforded a full right to ascertain or challenge the ability of a witness to identify individuals, places or events and to do so, through the use of materials that might present a different or consistent perspective. This right is of particular importance as concerns witnesses (such as P-0150) who have declined to be interviewed in advance of their testimony. In line with the primacy of the principle of orality, the Chamber's assessment of the witness's testimony will be based on the witness's evidence or responses to such exhibits, in light of the specific extracts that are read into the record. In the same manner that reading out extracts of a prior statement (or statement from another witness) does not have the effect of submitting these prior/other statements into evidence (ICC-02/11-01/15-498-AnxA, paras. 41-42), reading out extracts from an article or playing parts of a video to confront or refresh the witness's memory does not automatically have the effect of admitting those items into evidence.

Given the limited purpose for which certain exhibits were used or shown, it would also be entirely disproportionate and inefficient to submit them into the record. As an example, whereas the Prosecution has claimed that the video, the Salafists (MLI-OTP-0078-9946), and its transcript (MLI-D28-0004-3525) were used with P-0150, the Defence only showed 30 seconds without sound for the purpose of ascertaining whether P-0150 was able to identify the person in this section (see ICC-01/12-01/18-T-107-CONF-ENG, p. 76). Similarly, P-0150 indicated that he has no knowledge of the existence or content of Security Council resolutions. The mere reference to resolutions in such circumstances does not constitute a sufficient or necessary basis to submit the resolutions for the truth of their contents through P-0150, particularly for those which were not 'discussed' in any manner. Indeed, apart from listing the items, the Prosecution has not set out any arguments concerning either why it is necessary or the interests of justice to submit these documents through P-0150 or why the Prosecution did not itself seek their submission, within the applicable deadline. The absence of rational justification is further underlined by the fact that several of these documents have already been submitted into evidence through an earlier bar table motion (see MLI-OTP-0001-1468, MLI-OTP-0001-1924 and MLI-OTP-0006-2732).

The Defence is also entitled to use certain materials or exhibits with a witness in order to challenge the relevance or reliability of that exhibit (or category of evidence), or to address issues that may be relevant to future Prosecution witnesses. In such circumstances, an automatic system for the submission of evidence would frustrate the right of the Defence to use cross-examination for this purpose. This would also result in crucial Defence rights being tied to the vagaries of witness scheduling and the order of witnesses. For example, if the Prosecution has linked documents to a future witness, the Defence should be entitled to investigate the reliability or accuracy of that document through investigations. Cross-examination is one of the means by which the Defence conducts its investigations. Accordingly, using documents in cross-examination cannot amount to a form of waiver or acquiescence as concerns the admissibility of such documents, when the very purpose of such usage is to lay a foundation for a future objection.

While not binding on the ICC, the Defence further notes that the distinction between 'usage' as compared to submission/admission is also recognized at the ICTY, and further embodies the discretion afforded to the parties to determine which evidence to enter into the case file. See for example:

- Stanisić & Zupljanin - T. 13715 (not tendering documents that are repetitive or duplicative of others or merely illustrative) - https://www.icty.org/x/cases/zupljanin_stanismic/trans/en/100825IT.htm
- Mladic - T. 8544 (not tendering photographs shown to the witness) <https://www.icty.org/x/cases/mladic/trans/en/130213ED.htm> (also T. 8595 in relation to 'associated exhibits' and T. 8600 as reliance on adjudicated facts); T. 8104 – 8106 (not tendering photographs used to confront a witness's ability to describe a location) <https://www.icty.org/x/cases/mladic/trans/en/130205ED.htm>
- Gotovina - T. 11793 -11796 (not tendering statement used to confront witness) - <https://www.icty.org/x/cases/gotovina/trans/en/081113IT.htm>

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

From: Taylor, Melinda [REDACTED]
Sent: 26 July 2021 16:11
To: Dutertre, Gilles [REDACTED] Trial Chamber X
 Communications <TrialChamberXCommunications@icc-01/12-01/18-1866-Anx1-Red> Kassongo, Mayombo <[REDACTED]>
 Doumbia, Seydou [REDACTED]; Nsita Luvengika, Fidel [REDACTED]
Cc: Al Hassan Prosecution Team <AlHassanProsecutionTeam@icc-01/12-01/18-1866-Anx1-Red>; D28 Al Hassan Defence Team
 <D28AlHassanDefenceTeam@icc-01/12-01/18-1866-Anx1-Red> V43 Victims Al Hassan Team <V43LRVTeam@icc-01/12-01/18-1866-Anx1-Red> Associate Legal
 Officer-Court Officer <AssociateLegalOfficer-CourtOfficer@icc-01/12-01/18-1866-Anx1-Red>
 [REDACTED]
Subject: Re: List of material for submission regarding Witness MLI-OTP-P-0150

Dear Trial Chamber X, Dear Colleagues,

The Defence hereby attaches its streamlined objections and observations concerning the list of evidence submitted by the Prosecution (as amended on 22 July 2021).

The Prosecution list was itself 22 pages (in 8 font) and encompassed 434 items.

The Defence objections amount to an additional 6 pages. The additional text related to the bases for objection would also fit within 20 pages if submitted as a filing.

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

From: Taylor, Melinda [REDACTED]
Sent: 26 July 2021 11:00
To: Dutertre, Gilles <[REDACTED]> Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED] Kassongo, Mayombo <[REDACTED]>; Doumbia, Seydou <[REDACTED]> Nsita Luvengika, Fidel [REDACTED]
Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED] D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED] V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED] Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]
Subject: Re: List of material for submission regarding Witness MLI-OTP-P-0150

Dear Trial Chamber X,

Noting that the Prosecution amended their list on Thursday to address and incorporate Registry exhibits, the Defence will submit a streamlined version of its submissions, by COB today.

Kind regards

Melinda Taylor, on behalf of the Al Hassan Defence

From: Dutertre, Gilles <[REDACTED]>
Sent: 26 July 2021 09:02
To: [REDACTED] Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED] Taylor, Melinda [REDACTED] Kassongo, Mayombo [REDACTED] Doumbia, Seydou [REDACTED] Nsita Luvengika, Fidel <[REDACTED]>
Cc: Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED] D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED] V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED] Associate Legal Officer-Court Officer <[AssociateLegalOfficer-CourtOfficer](#)> [REDACTED]
Subject: RE: List of material for submission regarding Witness MLI-OTP-P-0150

Chère Chambre de Première Instance X,

Tous les documents soumis par l'Accusation ont été discutés avec le témoin P-0150 et/ou [REDACTED] ([REDACTED]) : ils ont donc comme tels vocation à être formellement soumis. Les développements faits par la Défense, et que l'Accusation conteste, portent en réalité sur le poids qu'il faut accorder à ces éléments de preuve: il s'agit de développements prématurés qui relèvent en réalité du futur *closing brief* de la Défense.

L'Accusation note, au passage, que dans l'hypothèse où la Défense procéderait dans son futur *closing brief* par renvoi à ce type d'email, cela reviendra indirectement à dépasser la limite de pages qui sera fixée par la Chambre pour un tel *closing brief*.

Respectueusement,

Gilles Dutertre

From: [REDACTED]

Sent: 23 July 2021 16:38

To: Trial Chamber X Communications <[TrialChamberXCommunications](#)> [REDACTED] Dutertre, Gilles
[REDACTED] Taylor, Melinda [REDACTED] Kassongo, Mayombo
[REDACTED] Doumbia, Seydou [REDACTED] Nsita Luvengika, Fidel
[REDACTED]

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

Subject: RE: List of material for submission regarding Witness MLI-OTP-P-0150

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-0150 in the **attached** document.

The Defence notes the Chamber's email decision of 21 July 2021 at 08:03 suspending time limits falling between 23 July and 15 August 2021. However, the Defence has prepared and has submitted its objections within the normal time limit applicable under ICC-01/12-01/18-789-AnxA and would propose that the Prosecution's response to such objections under paragraph 34(iv) falls due within the normal time limit to enable the finalisation of evidentiary steps after the conclusion of P-0150's testimony and to aid in the overall efficiency of the proceedings.

Kind regards,
[REDACTED] (on behalf of the Al Hassan Defence)

From: [REDACTED]

Sent: 23 July 2021 16:21

To: Dutertre, Gilles <[REDACTED]> [REDACTED]
[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]
[REDACTED] Taylor, Melinda [REDACTED]

Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#)> [REDACTED]
Subject: RE: List of material for submission regarding Witness P-0150

Dear Trial Chamber X, dear colleagues,

Please see attached a corrected version of the chart, and corrections to two numbers mentioned in the email below (highlighted in yellow).

Best regards,

[REDACTED]
On behalf of the Prosecution

From: Dutertre, Gilles [REDACTED]

Sent: 23 July 2021 15:39

To: [REDACTED] Trial Chamber X Communications
<[TrialChamberXCommunications](#)> [REDACTED] Al Hassan Prosecution Team <[AlHassanProsecutionTeam](#)> [REDACTED]
[REDACTED] V43 Victims Al Hassan Team <[V43LRVTeam](#)> [REDACTED] Associate Legal Officer-Court Officer

<[AssociateLegalOfficer-CourtOfficer](#) [REDACTED] Taylor, Melinda

Cc: D28 Al Hassan Defence Team <[D28AlHassanDefenceTeam](#) [REDACTED]
Subject: RE: List of material for submission regarding Witness P-0150

Dear Trial Chamber X, Dear Colleagues

The Prosecution does not object to the submission of the 21 items as listed by the Defence in its List of Material sent on 21 July 2021.

The Prosecution notes that during its cross-examination of P-0150, the Defence used a total of approximately 200 items (excluding the FS ones), including those listed in the Prosecution's List of Material. However, the Defence is only seeking to submit a small portion thereof.

The Prosecution considers that except for items of testimonial nature, whose submission is governed by specific regimes, and other items whose admissibility is contestable, all items used or discussed with P-0150 during his testimony, such as videos, photos and articles, etc. should also be submitted into evidence: see attached chart.

This is important for the completeness and clarity of evidentiary record because these items were shown and commented upon by P-0150 during his testimony.

It is in the interests of justice and the determination of the truth (see e.g. Decision on submitted material for P-0623, issued by the Chamber via email on 7 October 2020 at 17:14) to allow the submission of the 45 items in question, including all items annotated by the witness in court (that are integral part of his testimony and should be considered automatically submitted into evidence).

Respectfully,

Gilles Dutertre

From: Dutertre, Gilles <[REDACTED]>
Sent: 22 July 2021 22:06
To: Trial Chamber X Communications <[TrialChamberXCommunications](#) [REDACTED]> Taylor, Melinda
 [REDACTED] Kassongo, Mayombo
 [REDACTED] Doumbia, Seydou [REDACTED]
Cc: [REDACTED]
 [REDACTED]
 [REDACTED]
 'D28AlHassanDefenceTeam' [REDACTED] <[D28AlHassanDefenceTeam](#) [REDACTED]> 'V43LRVTeam' [REDACTED]
 <[V43LRVTeam](#) [REDACTED]> [REDACTED]
Subject: RE: List of material for submission regarding Witness MLI-OTP-P-0150

Chère Chambre de Première Instance X,

L'Accusation est partie du principe que les documents ci-dessous enregistrés par le Greffe au cours de l'interrogatoire en chef de P-0150 sont *de facto* soumis au dossier en tant qu'ils sont le propre témoignage du témoin.

Count	Doc ID	Type	Title	Main Date	Confidentiality Level	EVD - Date Used
1	MLI-REG-0001-0023	Court document - ICC			Confidential	31-May-2021
2	MLI-REG-0001-0024	Court document - ICC			Confidential	31-May-2021

Respectueusement,

Gilles Dutertre

From: [REDACTED]

Sent: 21 July 2021 20:17

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] Dutertre, Gilles <[REDACTED]> Taylor, Melinda [REDACTED]

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

Subject: RE: List of material for submission regarding Witness P-0150

Dear Trial Chamber X,
Dear Colleagues,

Please see **attached** the Defence's updated List of Material for Submission regarding P-0150. This list has the same content as the version transmitted by my colleague at 18:45 today, but contains additional metadata fields and is organised in tab order for ease of reference.

Kind regards,
[REDACTED] (on behalf of the Al Hassan Defence)

From: [REDACTED]

Sent: 21 July 2021 18:45

To: 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] Dutertre, Gilles <[REDACTED]> Taylor, Melinda [REDACTED]

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

Subject: List of material for submission regarding Witness P-0150

Dear Trial Chamber X,
Dear Colleagues,

Pursuant to paragraph 34(ii) of ICC-01/12-01/18-789-AnxA, the Defence provides its List of Material for Submission regarding Witness P-0150 (see attached).

These items were used with the witness (as indicated by the references to the English edited transcript), are open source or authored by the witness, and have sufficient indicia of relevance and reliability to be suitable for submission as evidence.

Sincerely,
[REDACTED] *on behalf of Counsel*

[REDACTED]
Case Manager
Defence (Al Hassan)
[REDACTED]

From: Dutertre, Gilles <[REDACTED]>

Sent: 19 July 2021 22:16

To: Trial Chamber X Communications <[TrialChamberXCommunication](#)> [REDACTED] Taylor, Melinda
[REDACTED]; [REDACTED]; [REDACTED]; Kassongo, Mayombo
<[REDACTED]> Doumbia, Seydou [REDACTED]

Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

'D28AlHassanDefenceTeam [REDACTED] <[D28AlHassanDefenceTeam](#)> [REDACTED] V43LRVTeam [REDACTED]
<[V43LRVTeam](#)> [REDACTED]
[REDACTED]

Subject: List of material for submission regarding Witness MLI-OTP-P-0150

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-0150.

Respectueusement,

Gilles Dutertre