

ANNEX 5

Public redacted

From: Trial Chamber X Communications
Sent: 07 September 2020 17:38
To: [REDACTED] Dutertre, Gilles; Taylor, Melinda; [REDACTED] Nsita
 Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou
Cc: [REDACTED]
Subject: RE: List of material for Witness MLI-OTP-P-0007
Follow Up Flag: Follow up
Flag Status: Flagged

Dear counsel,

The Chamber takes note of the Defence's objections to the List of Material for P-0007 and P-0010. The Chamber however reminds the parties that pursuant to the Directions on the Conduct of Proceedings (filing 789-AnxA), particularly paragraph 34, issues related to the relevance or admissibility of items of evidence shall be raised in writing. Moreover, pursuant to paragraph 60 of the said Directions, objections to the use of any material with a particular witness shall also be made in writing. Accordingly, the Chamber reminds the parties that it will not allow for such objections to be raised orally in court, unless they specifically relate to the manner in which the material is presented to a witness during his or her testimony or any other issue related to the conduct of proceedings, such as the mode of questioning.

Kind regards,

[REDACTED]
 (On behalf of Trial Chamber X)

From: Thomas, Molly [REDACTED]
Sent: 04 September 2020 15:36
To: Trial Chamber X Communications [REDACTED] Dutertre, Gilles
 [REDACTED]; Taylor, Melinda [REDACTED]
 [REDACTED] Nsita Luvengika, Fidel [REDACTED] Kassongo, Mayombo
 [REDACTED] Doumbia, Seydou [REDACTED]
 [REDACTED]

Subject: RE: List of material for Witness MLI-OTP-P-0007

Dear Trial Chamber X,
 Dear Colleagues,

In accordance with paragraph 60 of ICC-01/12-01/18-789-AnxA ('Directions on the Conduct of Proceedings'), the Defence hereby provides notice of its objections to the Office of the Prosecutor's use of material with Witness P-0007, as per the Office of the Prosecutor's List of Material provided on 1 September 2020 ('P-0007 List of Material').

The Defence provides notice of the following two objections:

1. First, the Defence objects to the use of item 9 (pg. 10) of the P-0007 List of Material, being MLI-OTP-0033-0840-R02. This document is an investigation note authored by Gergana Yancheva of the Office of the

Prosecutor. As it is testimonial in nature (per the Appeals Chamber in [Bemba et al](#) at para. 304), it has not been authored or signed by the witness, and it has not been submitted through Rule 68 (and the Office of the Prosecutor has indicated in the P-0007 List of Material that it will not be submitted through Rule 68), the Chamber should therefore assess it as having no relevance or probative value.

Furthermore, the investigator's note is prejudicial as it can be suggestive to the witness and may constitute an impermissible form of leading by the Office of the Prosecutor. It is instead the duty of the Prosecutor to elicit such testimony orally (per the Appeals Chamber in [Bemba et al](#) at paras. 305-306).

In any event, the Defence, in accordance with paragraph 60 of the Directions on the Conduct of Proceedings, reserves its right to object, during P-0007's testimony, to the manner in which this document is presented to the witness, in particular to the reading of any quotes from this document by the Office of the Prosecutor. As the Appeals Chamber stated in [Bemba et al](#) at para. 307, if the document itself is relied on, it needs to be submitted as evidence.

In circumstances in which the Office of the Prosecutor proposes to use an item which is itself inadmissible in order to elicit testimony from the witness, the prejudice occasioned by such use outweighs the low probative value of the document.

2. Second, the Defence notes that it will raise issues as to the admissibility of items 2, 3, 4, 5, 6, 7a, 7b and 11 (pgs. 1-23) of the P-0007 List of Material, as the Defence disputes the authenticity and reliability of these documents allegedly collected by P-0007, and submits that there is insufficient proof of the legality of the collection of the evidence contained therein, and therefore the associated translations of those documents included in these items. These issues will be raised, in accordance with paragraph 31 of the Directions on the Conduct of Proceedings, at the time when the evidence is submitted to the Chamber.

Regards,

Al Hassan Defence Team

-----Original Message-----

From: Dutertre, Gilles

Sent: 01 September 2020 13:42

To: Trial Chamber X Communications; Taylor, Melinda; Nsita Luvengika, Fidel; Kassongo, Mayombo; Doumbia, Seydou

Subject: List of material for Witness MLI-OTP-P-0007

Chère Chambre de Première Instance X et Chers Collègues,

Conformément au paragraphe 57 de l'annexe ICC-01/12-01/18-789-AnnA, l'Accusation vous prie de bien vouloir trouver en pièce jointe la "List of Material" concernant le témoin P-0007.

Respectueusement,

Giles Dutertre

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