

Annex 5

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From: Trial Chamber X Communications
Sent: 02 December 2020 20:00
To: D28 Al Hassan Defence Team; Al Hassan Prosecution Team; V43 Victims Al Hassan Team
Cc: Trial Chamber X Communications; Chamber Decisions Communication
Subject: Decision on Defence's objections to Prosecution list of material for P-0638

Dear counsel,
 Dear colleagues,

The Chamber takes note of the Defence objections to certain items the Prosecution intends to use during the examination of P-0638.

The Chamber notes the Defence submission that P-0638 cannot authenticate some of the material the Prosecution intends to introduce during his testimony. These are identified in the Defence email as Category A - objections to two videos and a photograph provided by P-0065 and Category B – objections to two videos provided by P-0136. The Defence similarly objects to items produced internally by the Prosecution, namely three photographs and a map, on the basis that P-0638 did not produce this material and cannot authenticate it (Category C). The Defence also objects to items not previously shown to the witness (Category D), which, save for one item, are items otherwise also captured in Categories A and C. Finally, in relation to the Categories A to D above, the Defence also objects to the use of the relevant respective translations/transcripts (identified as Category E in the Defence email).

In relation to the Defence objections to the videos identified in Categories A and B, and as previously decided by the Chamber (see email decisions of 27 October 2020 13:24, 24 November 2020 10:37 and 29 November 2020 at 12:40), the Chamber will not rule on these objections in the abstract. It will be for the Prosecution to attempt to establish the relevance of presenting audio-visual material to P-0638 in court pursuant to paragraph 58 of the Directions on the Conduct of Proceedings (ICC-01/12-01/18-789-AnxA), and for the Chamber to determine at that point, also taking into account any objections raised at that point by the Defence, whether the requirements of the aforesaid provision have been satisfied. Similarly, the Chamber will also not rule in the abstract on the Defence's objections to items not produced by P-0638 namely the category A photograph and the items in Category C. It is for the Prosecution to establish the foundation for showing these items to the witness during questioning and for the Chamber to determine at that point, also taking into account any objections raised at that point by the Defence, whether the items may be used.

In relation to Category D, given the limited nature of these items (three photographs, two videos and a map), the Chamber does not consider the use of these items with P-0638 to prejudice the Defence's time and facilities to prepare. In any event, the Chamber notes that most of these items were shown to the witness during his preparation session and the witness's comments thereon are recorded in the associated log which has been disclosed to the Defence.

The above conclusions of the Chamber apply to items identified in Category E, as they are accessories (transcripts and translations) of the relevant material in the aforesaid categories A to D.

Kind regards

██████████ on behalf of Trial Chamber X

From: ██████████
Sent: 02 December 2020 15:56
To: Trial Chamber X Communications ; Al Hassan Prosecution Team ; D28 Al Hassan Defence Team ; V43 Victims Al Hassan Team ; Associate Legal Officer-Court Officer
Subject: RE: List of Materials for Prosecution Witness MLI-OTP-P-0638

Dear Trial Chamber X,
Dear Colleagues,

Pursuant to paragraph 60 of ICC-01/12-01/18-789-AnxA, the Defence provides its objections to the use of the following material with P-0638.

Category A Objections: Photographs and videos provided by Witness P-0065 to the Prosecution, which were not shown to Witness P-0065 during examination-in-chief or were not verified by P-0065

The Prosecution has included a number of photographs and videos in its List of Material which were provided by Witness P-0065 to the Prosecution. Witness P-0065 was examined over an intensive period from 30 October 2020 to 20 November 2020 but the Prosecution has not verified the contents of the following items with that witness. The Prosecution therefore should not be permitted to use this evidence with this witness, who is not the author of any of these items.

This is particularly important, as the Prosecution has indicated that they will seek to submit this evidence through Witness P-0638, even though P-0638 did not produce this material and is not in a position to authenticate it.

Tab	Document ID	Title	Type	Main Date	To be tendered through the witness	Shown to P-0065?
7			Audio / Video Material	02-Oct-12	Yes	No
8			Audio / Video Material	07-Nov-12	Yes	
27			Photograph/s	29-Nov-12	Yes	No

Category B Objections: Videos provided by P-0136 to the Prosecution, which have not yet been verified

The Prosecution has included in its list of material two videos provided by P-0136, who has not yet testified. The Prosecution ought not to be permitted to show this evidence, which has not yet been verified, through Witness P-0638. This is particularly important, as the Prosecution has indicated that they will seek to submit this evidence through Witness P-0638, even though P-0638 did not produce this material and is not in a position to authenticate it.

Tab	Document ID	Title	Type	Main Date	To be tendered through the witness
20			Audio / Video Material	30-Oct-12	Yes
23			Audio / Video Material	02-Oct-12	Yes

Category C Objections: Items produced internally by the Prosecution

These items were not produced by the witness but were rather produced internally by the Prosecution. The Prosecution ought not to be permitted to show this evidence, which has not yet been verified, through Witness P-0638. This is particularly important, as the Prosecution has indicated that they will seek to submit this evidence through Witness P-0638, even though P-0638 did not produce this material and is not in a position to authenticate it.

Tab	Document ID	Title	Type	Main Date	To be tendered through the witness
4			Photograph/s		Yes
5			Photograph/s	20-Sep-12	Yes
6			Photograph/s	21-Sep-12	Yes
28			Satellite images and related reports	29-Oct-12	Yes

Category D Objections: Items not previously shown to the witness

The Prosecution has included in its list of material a number of items not previously shown to the witness when his statement was taken in October 2019 (). The Defence objects to these items being shown to the witness for the purposes of eliciting testimony, as this is contrary to the defendant's foundational right to notice, because the witness will be testifying concerning the contents of these items for the first time on the stand, which is prejudicial to Mr. Al Hassan's Statutory right to adequate time and facilities to prepare his defence.

Tab	Document ID	Title	Type	Main Date	To be tendered through the witness
4		Picture 27	Photograph/s		Yes
5		SAM_0097_002	Photograph/s	20-Sep-12	Yes
6		Photo 0646	Photograph/s	21-Sep-12	Yes
7		VID00035	Audio / Video Material	02-Oct-12	Yes
24		Extrait-SALAFISTES.mp4	Audio / Video Material		Yes
28		General Overview Map of Timbuktu	Satellite images and related reports	29-Oct-12	Yes

Category E Objections: Transcripts and translations related to Categories A to D

These items are related to, and derivative of, the videos objected to in Categories A to D. If the videos listed above are not permitted for use, there is no further utility for these items.

Tab	Document ID	Title	Type	Main Date
9			Transcript	07-Nov-12
10			Translation - ENG	07-Nov-12
12			Transcript	06-Oct-

			12
13		Translation - FRA	06- Oct- 12
15		Transcript	06- Oct- 12
16		Translation - FRA	06- Oct- 12
18		Transcript	09- Jun- 13
19		Translation - FRA	09- Jun- 13
21		Transcript	30- Oct- 12
22		Translation - FRA	30- Oct- 12
25		Transcript	
26		Translation - FRA	

Best regards,

██████████ (on behalf of the Al Hassan Defence)

From: Dutertre, Gilles ██████████

Sent: 26 November 2020 18:38

To: Trial Chamber X Communications; Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; ██████████

Cc: ██████████

Subject: List of Materials for Prosecution Witness MLI-OTP-P-0638

Dear Trial Chamber X, Dear Colleagues,

The Prosecution attaches its list of materials for Prosecution Witness MLI-OTP-P-0638.

Kind regards,

Gilles Dutertre

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