

Annex 13

**PUBLIC
REDACTED**

From: Trial Chamber X Communications
Sent: 08 October 2020 22:48
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Chamber Decisions Communication; Associate Legal Officer-Court Officer; Trial Chamber X Communications
Subject: TC X - Decision on Defence's objections to the Prosecution's list of material for P-0620

Dear Counsels,

The Chamber notes that the Defence objects to the use and admissibility of certain items on the Prosecution's list of material for P-0620.

The Chamber recalls that it has previously authorised the use of the report drafted by P-0620 and P-0621 while clarifying that 'any authorisation to introduce the joint expert report and related material pursuant to this provision, is without prejudice to the Chamber's eventual determination on the admissibility of the evidence analysed by the experts, including pursuant to Article 69(7) of the Statute' (ICC-01/12-01/18-989-Conf, para. 87).

As regards the items analysed by P-0620 and P-0621, the Chamber reiterates its previous observation that these items will be submitted through other witnesses (ICC-01/12-01/18-989-Conf, paras 87-88). The Chamber also notes that it made no findings on allegations of torture or cruel, inhuman or degrading treatment yet, while noting that Article 69(7) was one of the appropriate remedies for these allegations (ICC-01/12-01/18-1009-Conf, paras 80 and 122).

For these reasons, the Chamber confirms that the material in question may be used with P-0620. This is without prejudice to any eventual determination on admissibility pursuant to Article 69(7) of the Statute, which will be made at the appropriate time and in due course.

Kind regards,

On behalf of Trial Chamber X

From: [REDACTED]
Sent: 07 October 2020 15:47
To: Trial Chamber X Communications; Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Pineau, Carine; Bossette, Caroline
Subject: RE: List of material for Witness MLI-OTP-P-0620

Dear Trial Chamber X,
 Dear Colleagues,

At the outset, the Defence notes the request from the Prosecution submitted *via* email today, 7 October 2020, at 11:45 to add [REDACTED] to its list of evidence ('Request for Additional Item'). The Request for Additional Item refers to, and relies on, the preparation session conducted by the Prosecution with Witness P-0620. To that end, the Defence made an *inter partes* request for provision of the preparation log regarding Witness P-0620 today at 11:48. The Prosecution indicated that it would be provided, but has yet to do so. In the premises of these events, and in the interests of justice, even though the Defence provides its objections below in accordance with the timeline set out in paragraph 60 of ICC-01/12-01/18-789-AnxA, the Defence reserves its right to provide any further objections in relation to the Request for Additional Item as and when this log is provided to the Defence.

Pursuant to paragraph 60 of ICC-01/12-01/18-789-AnxA, the Defence provides notice of its objection to the use of the following material with Witness P-0620:

Tab	Document ID	Title	Type	Main Date	To Be Tendered as Evidence	To Be Submitted under Rule 68(3) through P-0620
54		Interview P-0398	Physical item	13-Jul-17	Yes	No
55		P-0398 Interview day 2	Physical item	14-Jul-17	Yes	No
56		P-0398 Interview 3	Physical item	17-Jul-17	Yes	No
57		P-0398 Interview	Physical item	06-Sep-17	Yes	No
58		Interview of P-0398	Physical item	08-Sep-17	Yes	No
59		Interview du P-0398	Physical item	11-Sep-17	Yes	No
60		Interview P-0398	Physical item	13-Sep-17	Yes	No
61			Sketch	06-Oct-17	Yes	No
62		Interview P-0398	Physical item	02-Oct-17	Yes	No
63		P-0398 Interview	Physical item	06-Oct-17	Yes	No
64		Interview Session P-0398	Physical item	04-Dec-17	Yes	No
65		Interview du P-0398	Physical item	06-Dec-17	Yes	No
66		MLI-OTP-P-0398 Seance	Physical item	08-Dec-17	Yes	No
67		MLI-OTP-P-0398 Séance	Physical item	15-Jan-18	Yes	No
68		MLI-OTP-P-0398 Interview	Physical item	16-Jan-18	Yes	No
69		MLI-OTP-P-0398 Interview	Physical item	18-Jan-18	Yes	No
102		MLI-OTP-P-0398 Interview	Physical item	05-Mar-18	Yes	No
103		MLI-OTP-P-0398 Interview	Physical item	06-Mar-18	Yes	No
104		MLI-OTP-P-0398 Interview	Physical item	07-Mar-18	Yes	No
105		MLI-OTP-P-0398 Interview	Physical item	08-Mar-18	Yes	No
106			Satellite images and related reports	08-Mar-18	Yes	No
107			Forensic Records or Reports	08-Mar-18	Yes	No

108			Forensic Records or Reports	08-Mar-18	Yes	No
109			Forensic Records or Reports	08-Mar-18	Yes	No
110			Forensic Records or Reports	08-Mar-18	Yes	No
111			Notes (other)	08-Mar-18	Yes	No
112		ANNEX I / Public / Appointment of counsel / ICC-01/12-01/18-19-AnxI	Court document - ICC	11-Apr-18	Yes	No
116		RAPPORT D'EXPERTISE / TOME 1 sur 2	Forensic Records or Reports	24-Sep-18	Yes	Yes
117		RAPPORT D'EXPERTISE / TOME 2 sur 2	Forensic Records or Reports	24-Sep-18	Yes	Yes

Relief sought

Article 69(7) of the Statute states that '[e]vidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:

- (a) The violation casts substantial doubt on the reliability of the evidence; or
- (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.'

As detailed below, this evidence objected to was obtained in breach of Articles 55(1)(a), 55(1)(b), 55(1)(d) and (in some cases) 55(2) of the Statute and internationally recognised human rights law reflecting *jus cogens* norms against arbitrary detention and torture (ECCC [Case No. 002](#), para. 25 and fns. 74-75). Furthermore, as set out in ECCC [Case No. 002](#) at para. 21, Article 15 of the United Nations Convention against Torture prohibits not only the admission of torture evidence as evidence, but also the use of the evidence (including as a basis of questioning). This means that it cannot be used for the purpose intended by the Prosecution. Each of the subsections of Article 69(7) are satisfied as not only would admission of the evidence be 'manifestly contrary to the most basic international standards of a fair trial' but is also improper to rely on as torture tainted evidence is intrinsically unreliable (ECCC [Case No. 002](#), paras. 44-45). These findings are independent of any complicity of the Prosecution in any such violations as Article 55(1) creates a form of protection for any forms of investigation under the Statute (and therefore includes any acts that occur while a person is subjected to arbitrary detention (amounting to a form of torture and/or cruel, inhuman and degrading treatment), and/or subjection to any form of coercion, duress or threat) and exclusion under Article 69(7) can apply, if there has been a violation, even if there has been no finding of responsibility by the Prosecution. The ICC and international criminal courts and tribunals have applied these exclusionary rules in respect of violations committed by third parties (including national authorities) so any finding of lack of complicity in, or responsibility of, the Prosecution for the arbitrary detention, torture and/or CIDT does not resolve the issue (see [ICC-01/04-01/07-2635](#), paras. 63-65; *Co-Prosecutors v. "Duch"*, [Decision on the Admissibility of Evidence in the Case File as Evidence](#), para. 19 (noting in context of statement taken by the UN without a Counsel present, that "exclusion is the usual remedy" as concerns breaches of right to silence/privilege against self-incrimination).

Items 54-69 and 102-111

Items 54-69 and 102-111 represent documents allegedly written or signed by Mr. Al Hassan during interviews with the Prosecution used by P-0620 for signature comparison.

In *Prosecutor v. Delalic et al*, a Prosecution request for the Chamber to order defendant Mucic to produce a handwriting sample to confirm the authorship of a document allegedly written by Mucic was rejected, on the basis that such an order would violate the defendant's privilege against self-incrimination (emphasis added):

45. It is significant that though absent express words in the ECHR, the provisions of Article 6 sub-paragraph 1, which protect the right to fair hearing, have been extended to include the right to protection from self-incrimination. The consideration is that it is an inherent element of any fair trial. (...)

47. The Trial Chamber is not satisfied that a handwriting sample per se can be regarded as forming material proof against an accused. We hold that where the material factor absent in the incriminating elements is the handwriting sample of the accused, the Trial Chamber cannot compel the accused to supply the missing element. To do so will be to infringe the provisions of Article 21 sub-paragraph 4(g) which protects the accused from self-incrimination. It is different where the accused voluntarily complies on demand without coercion.

48. It has been argued that in the instant case the Order for a handwriting sample bears no relevance to the case before the Trial Chamber. The Trial Chamber rejects this contention. The reason for requiring the handwriting sample is admittedly to ascertain conclusively the authorship of Exhibit 155. If authenticated, the letter will act as a sufficient admission of its contents in respect of certain counts in the indictment against the author. The obvious implication is that the accused would have been compelled by an Order of the Trial Chamber to assist the Prosecution in its investigation, and probably provide the evidence to incriminate himself. The fact that the handwriting sample per se is neutral evidence is not the issue. If the handwriting sample taken together with other evidence will constitute material evidence to prove the charge against the accused, then the Order of the Trial Chamber would have compelled the production of self-incriminating evidence.

49. There is no duty in law or morals for the accused to fill a vacuum created by the investigative procedural gap of the Prosecution. Self-preservation is the first principle of life. It is an elementary principle of proof, that he who alleges must prove the subject matter of his allegation. Since the Prosecution alleges the authorship of Exhibit 155, it has to discharge the burden of proof unaided by the Defence. [...]

58. In construing the provisions of Article 21 sub-paragraph 4(g), it is better to rely on the words of the provision if clear and unambiguous. The words "to testify against himself" are clear and unambiguous, and require no modification or qualification. Nowhere is the privilege from self-incrimination qualified, or restricted to testimonial evidence. To read such a limitation as is suggested by the Prosecution is to read into the plain words, a condition not contemplated by the law maker. Such a construction will subvert the intention of the protection by introducing a qualification inconsistent with the true basis of the protection. The Trial Chamber cannot deprive the accused of his guaranteed right through construction of the words of the provision given without express limitation. The true basis of the protection against self-incrimination, is to protect the innocent by insulating him from the effects of coercion from law enforcement authorities. Another objective is the protection of society by conviction of the guilty. Furthermore, the right encourages witnesses to volunteer to testify who might be deterred from doing so out of fear of self-incrimination. On the whole the right seeks to protect the innocent and guilty alike.

59. The international community, due to the operation of international and regional conventions protecting fair trial rights, has come a very long way from the unabashed and egregious violation of the dignity and personality of the individual in judicial proceedings. It is the sacred and solemn duty of every judicial institution to respect and give benevolent construction to the provisions guaranteeing such rights instead of giving such a construction as to whittle down their effects.

60. The Trial Chamber, in accordance with its Statute, is enjoined to ensure that the accused has a fair trial and that the proceedings are conducted in accordance with the Rules and with full respect for his/her rights. The Trial Chamber is satisfied that the construction of the words of Article 21 sub-paragraph 4(g) adopted herein accords with the words and spirit of the provision and is consistent with the protection of the rights of the accused as provided. The Trial Chamber cannot in the circumstance exercise any jurisdiction to make

the Order sought. Mucic, cannot be ordered to provide a handwriting sample. This would involve him testifying against himself.

Article 55(1)(a) of the Rome Statute states that persons under investigation under the Statute ‘shall not be compelled to incriminate himself or herself or to confess guilt’. The phrasing of ‘incriminat[ion]’ extends beyond a right to remain silent and not provide testimony, but includes other forms of incrimination (like the provision of real evidence). Furthermore, pursuant to Article 55(2)(b) of the Rome Statute, when being questioned, Mr. Al Hassan had the right ‘to remain silent’ and at trial, pursuant to Article 67(1)(g), Mr. Al Hassan maintains this right ‘not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence’ (emphasis added). In making the finding in *Delalic*, the ICTY Chamber referred to a variety of comparative domestic and regional human rights decisions, including *Funke v. France* (European Court of Human Rights), and *Miranda v. Arizona* and *Gilbert v. California* (Supreme Court of the United States). Under international human rights jurisprudence, ‘the right to silence and the right not to incriminate oneself ... lie at the heart of the notion of a fair procedure’ and the ‘right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused’ (*Funke v. France*, para. 68; see also *Saunders v. United Kingdom*, para. 60; *O’Halloran and Francis v. United Kingdom*, para. 45). Pursuant to Article 21(3) of the Rome Statute, the Chamber’s application and interpretation of law must be consistent with internationally recognized human rights, and this includes Mr. Al Hassan’s Statutorily enshrined right to a fair trial (see Article 64(2): ‘The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused’ and Article 67(1): ‘In the determination of any charge, the accused shall be entitled to ... a fair hearing conducted impartially, and to [specific] minimum guarantees, in full equality’.)

This privilege against self-incrimination, consistently with *Prosecutor v. Delalic et al* at para. 58 extracted above, is not confined to testimonial evidence. This is consistent with the findings of Trial Chamber VII in *Prosecutor v. Bemba et al* that, *first*, the right to silence and privilege against self-incrimination under the Statute meant that the defendant was not required to produce evidence to the Prosecution that could be potentially incriminating and *second*, that such a right applied in circumstances where the Prosecution sought the production of real evidence in the possession of the Defence (para. 14).

While in *Saunders v. United Kingdom*, para. 69 and *O’Halloran and Francis v. United Kingdom*, para. 47, the European Court of Human Rights has held that the privilege against self-incrimination does not extend to the use in criminal proceedings which may be obtained from the accused through recourse to compulsory powers (such as documents acquired pursuant to a warrant or breath, blood or urine samples obtained under an order), this jurisprudence is distinguishable in the present case because, as the Prosecution has explicitly asserted, Mr. Al Hassan’s presence at interviews with the Prosecution, and provision of handwriting/signature samples, was not pursuant to any order or other form of compulsory power (ICC-01/12-01/18-982-Conf-Exp-Corr):

2. [...] the Accused was never arrested or held by the French or Malian authorities at the behest, or even the knowledge, of the ICC’s OTP.

62. Despite the Defence’s assertions, the Prosecution was not responsible for Al HASSAN’s detention by the Malian authorities during the periods of time that the Prosecution sought access to him for the specific purposes of interviewing him. At no stage did the Prosecution request the French or the Malian authorities to arrest or detain the Accused, prolong his detention, or to question, let alone ill-treat, the Accused on its behalf.

The burden to prove its case beyond a reasonable doubt lies with the Prosecution alone. Its duty to meet this burden cannot unlawfully include the compelling of a signature during the course of its investigations from an individual to whom the Prosecution had not expressly informed that this could be used for incriminating purposes. This is consistent with the emphasis placed, by international human rights courts, on individuals being notified, cautioned or warned about the incriminating nature of statements made during questioning (see ECHR: *Brusco v. France*, para. 54; *Navone and Others v. Monaco*, para. 74; *Stojkovic v. France and Belgium*, para. 54; *Ibrahims and Others v. United Kingdom*, para. 272).

██████████ (██████████); ██████████ (██████████) and ██████████ (██████████); and

) the remaining 13 sessions only mention that the interviewers would proceed to sealing the tapes, it does not actually record the process by which this occurred (██████████ (██████████): *'Et nous allons faire, comme indiqué plutôt, une copie de travail, mettre les scellés à la carte mémoire'*); ██████████ (██████████): *'Et bien sûr procéder comme d'habitude à la mise sous scellés de la carte mémoire de ce jour'*); ██████████ (██████████): *'Nous interrompons et nous allons procéder à la mise sous scellés de ce... de la carte mémoire du jour'*); ██████████ (██████████): *'Nous allons clôturer cet entretien et procéder au scellé des... des enregistrements audio'*); ██████████ (██████████): *'Nous allons interrompre et procéder à la... la mise sous scellés de la carte mémoire comme d'habitude, d'accord'*); ██████████ (██████████): *'Nous allons... nous allons arrêter l'enregistrement et procéder donc, comme d'habitude, à la... la mise sous scellés de la carte mémoire'*); ██████████ (██████████): *'J'arrête l'enregistrement et nous allons procéder à la... à la mise sous scellés de la carte mémoire'*); ██████████ (██████████): *'Et nous allons procéder donc à la mise... à la... la copie de travail et la mise sous scellés de la carte mémoire au jourd'hui'*); ██████████ (██████████): *'Nous allons donc arrêter et passer à la copie de travail de la carte mémoire et sa mise sous scellés'*); ██████████ (██████████): *'Avec ... comme nous allons le faire tout à l'heure une ... une copie de travail de ce qui est contenu dans la carte mémoire'*); ██████████ (██████████): *'nous arrêtons l'enregistrement et nous allons procéder à la copie du travail et la mise sous scellés de la carte mémoire'*); ██████████ (██████████): *'nous allons procéder à la copie du travail et la mise au CD de la carte de mémoire'*); and ██████████ (██████████): *'et donc, procéder à la copie de travail et la mise sous scellée de la carte mémoire'*).

The Prosecution's failure to explain the potentially incriminating nature of these actions to Mr. Al Hassan (and therefore its implication for his right to silence and privilege against self-incrimination) is particularly serious, because, as set out in ICC-01/12-01/18-991-Conf, para. 2:

the Prosecution must exercise a particularly high standard of diligence to safeguard the interview process against issues of undue influence or improper or equivocal waiver of rights, where the witness is held in custody;^[8] failure to satisfy this threshold triggers exclusion.^[9] This includes circumstances where the defendant was interviewed by domestic authorities outside the framework of Article 55, or by third parties.

[8]. [Sesay](#), paras. 6, 43, 46; [Bagosora](#), paras. 17, 19, 63. An additional layer of caution applies in relation to detained accomplice witnesses: *Prosecutor v. Nzabonimana*, [Trial Judgment](#), para, 81.

[9]. "[A]s a matter of law, statements by an accused person in a custodial setting which are not voluntary must be excluded under Rule 95": [Sesay](#), para. 38; [ICC-01/04-01/07-2635](#), paras. 63-65.

The Prosecution cannot rely on evidence which is not recorded: in [Prosecutor v. Halilovic](#), the ICTY Appeals Chamber excluded a record of interview with the defendant in part because there was a break in the record of interview during which the Prosecution discussed substantive matters with the defendant:

41. The purpose of requiring that an interview with an accused be recorded is to ensure that the accused's rights are respected at all times. Rule 43(ii) provides that, in the event of a break in the course of questioning, the fact and time of the break shall be recorded. While the Rules do not explicitly require, when an interview is stopped to address an on-the-record question of the Appellant that clearly implicates the potential non-voluntariness of the interview, that the parties "get an answer to the question on reached agreement so that we know how to proceed", the interview should recommence with a full explanation of what has occurred in the break and what understanding had been reached by the parties. It is only in this way that the Chamber can be satisfied that the rights of accused are in fact protected.

54. However, the Appeals Chamber has found that the Trial Chamber erred in failing to consider that the statement to the Appellant by the Prosecution that his cooperation with it could have a positive influence on the Prosecution's position regarding any application he may make for provisional release did constitute an inducement and that it erred in failing to take into account the break in the interview as establishing the reasonable possibility that the Appellant was labouring under some misapprehension as to the possible

outcome of his agreeing to be interviewed. Accordingly, the Appeals Chamber finds that the Trial Chamber erred in failing to take into account relevant considerations when exercising its discretion to admit the record of interview.

65. Taking into account all of the circumstances, and considering the relevant factors identified above that the Trial Chamber failed to properly consider, the Appeals Chamber has determined to exercise its discretion pursuant to Rule 89(D) and exclude the record of interview from the Trial record in the interests of fairness to the Appellant. The Trial Chamber is therefore ordered to expunge the record of interview from the trial record.

Item 61 is a sketch allegedly drawn by Mr. Al Hassan during the session of [REDACTED]. Mr. Al Hassan was not warned that this could be used for an incriminating purpose: [REDACTED].

Item 106 is a satellite image allegedly labelled and signed by Mr. Al Hassan in the course of a biographical and security questionnaire (BSQ) session. The interviewers explicitly state at the beginning of the session that it was a security session ([REDACTED]) and then request Mr. Al Hassan, for the purpose of being more precise for the questionnaire, to annotate a satellite image taken from Google Earth ([REDACTED]):

« 6 Intervieweur 2 : Ceci est le questionnaire de sécurité euh ... de M. Al Hassan Ag ABDOUL AZIZ.

7 [Interpretation]

8 Et en fait, pour être plus précis, c'est une mise à jour du questionnaire de sécurité. »

« 32 Intervieweur 2 : En fait, pour être plus précis dans le cadre de ce questionnaire, nous avons extrait une image satellite de ... du site Google Earth. »

Mr. Al Hassan then goes on to complete this exercise with the interviewers: [REDACTED]

In such circumstances, the evidence is liable to be excluded under both the common law principle of inadmissibility and civil law principles of nullity. Such evidence falls within the exclusionary rule identified by the Human Rights Committee (which the Committee has expressly identified includes 'real evidence obtained as a result of ill-treatment but falling short of torture': [A/HRC/25/60](#), para. 29, [General Comment No. 32](#), para. 6) and the African Commission on Human and Peoples' Rights ([Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa](#), paragraph N(6)(d)(1), noting that 'any ... evidence obtained by any form of coercion of force may not be admitted as evidence or considered as probative of any fact at trial or in sentencing'). Similarly, human rights courts have found that 'the absolute nature of the evidentiary rule is reflected in the prohibition on granting probative value not only to evidence obtained directly by coercion, but also to evidence derived from such action. Consequently, the Court considers that excluding evidence gathered or derived from information obtained by coercion adequately guarantees the exclusionary rule' (IACHR: [Cabrera García v. Mexico](#), para. 167).

Item 112

Item 112 is the appointment of P-0398's choice of counsel, a right foreseen under the rules of procedure and evidence, and carried out by the Registry of the Court. The Prosecution cannot make use of a Court required document produced according to administrative practices for proper record keeping by the Court to attempt to incriminate, and thereby alleviate to some extent, the Prosecution's duty to prove its case beyond a reasonable doubt. As the European Court of Human Rights held in [Allan v. United Kingdom](#), the freedom of choice to speak or to remain silent will be 'effectively undermined' in a case where the authorities use subterfuge to elicit evidence of an incriminating nature and where such evidence is adduced as evidence at trial (para. 50). In this case, permitting the use of a document specifically designated for an administrative purpose and in circumstances in which P there was no indication to P-0398 that this would be provided to the Prosecution and/or used for an incriminating purpose, is analogous to the use of the police informer in *Allan v. United Kingdom* as in both cases, the criminal accused was not aware of the possibility of the evidence (in that case, confessional statements and in this case, his signature) being used to incriminate himself. In the premises, this item is not admissible and to admit it would gravely distort this Court's duty to administer justice in a fair manner.

Furthermore, the principles of data protection as enshrined in article 8 of the [European Convention of Human Rights](#) apply *a fortiori* in the context of Mr. Al Hassan's status as a criminal accused and the particular nature of this document. Not only was the document administrative in nature, P-0398 was required to submit this form in order to exercise a fundamental right provided for by the Statute (Article 67(1)(d)). To produce this as prosecutorial incriminating evidence of the Accused is contrary to the sense of justice.

Items 116 and 117

In circumstances in which the findings as concerns handwriting/signature analysis rely on the evidentiary items at Items 54-69 and Items 102-112, the portions of the report at Items 116 and 117 necessarily must be excluded, as they rely on inadmissible, tainted evidence. The Defence notes for completeness that the co-author of this report has previously testified before the Chamber and that the Prosecution has formally included the report on its list of evidence for submission for Witness P-0621 [REDACTED] [REDACTED]). However, the Defence and Prosecution have formally agreed that the submission of the report through Witness P-0621 concerned only that witness's findings on document authentication [REDACTED] [REDACTED]), and not P-0620's findings on handwriting/signature analysis.

In the premises of the above, the Defence seeks exclusion of the above material pursuant to Article 69(7) of the Statute.

Best regards,

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

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

From: Dutertre, Gilles [REDACTED]

Sent: 07 October 2020 11:45

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

Cc: [REDACTED]

[REDACTED] D28 Al Hassan Defence Team

Subject: RE: List of material for Witness MLI-OTP-P-0620

Chère Chambre de première instance X,

L'Accusation demande l'autorisation d'ajouter à la liste des éléments de preuves une page du tome 2 de la version papier du rapport d'expertise écrit conjointement par P-0620 et P-0621.

P-0620 a souligné lors de la session de préparation que la page [REDACTED] du tome 2 du rapport d'expertise [REDACTED] était incomplète. Elle a indiqué qu'il manquait en bas de ladite page [REDACTED] la photographie de la pièce [REDACTED] hors de sa pochette plastique (étant précisé que la pièce [REDACTED] est visible en photographie dans sa pochette plastique en haut de la page [REDACTED]). Cela avait été aussi noté par P-0621.

[REDACTED] pour le tome 1 et [REDACTED] pour le tome 2 sont la version électronique du rapport tel que communiqué comme élément à charge à la Défense le 11 octobre 2018.

Après avoir consulté la version papier du rapport d'expertise dans la chambre forte, les membres du Bureau du Procureur ont en effet constaté une différence entre la page [REDACTED] de la version électronique ([REDACTED]) et la page [REDACTED] de la version papier du tome 2 du rapport ([REDACTED]). La version papier du tome 2 du rapport vient d'être communiquée à la Défense comme élément de preuve à charge comme l'avait été la version électronique du rapport ([REDACTED] pour le tome 2).

En conséquence, l'Accusation demande à la Chambre, sur le fondement de la norme 35 du Règlement de la cour, de bien vouloir accepter que la page [REDACTED] de la version papier du tome 2 du rapport ([REDACTED]) soit ajoutée à la liste des éléments de preuve. Il est dans l'intérêt de la justice que cette inexactitude, quand bien même elle ne présente aucun impact sur les conclusions du rapport, soit rectifiée en vue du témoignage de P-0620 qui doit avoir lieu vendredi 9 octobre 2020.

L'Accusation demande aussi l'autorisation de pouvoir ajouter cette page [REDACTED] à la "List of Material" de P-0620.

Ceci ne présente aucun préjudice d'aucune sorte pour la Défense. L'Accusation précise en outre que la pièce [REDACTED] représentée sur cette page [REDACTED] a été communiquée à la Défense le 3 août 2018 comme élément à charge.

Respectueusement,

Gilles Dutertre

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

From: Dutertre, Gilles

Sent: 24 September 2020 23:18

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

Cc: [REDACTED] 'D28 Al Hassan

Defence Team [REDACTED]'

Subject: List of material for Witness MLI-OTP-P-0620

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-0620.

Respectueusement,

Gilles Dutertre

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