

Annex 12

Confidential

From: Trial Chamber X Communications
Sent: 16 April 2021 08:54
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Trial Chamber X Communications; Chamber Decisions Communication; Associate Legal Officer-Court Officer
Subject: Decision on Defence objections to List of Materials for Prosecution Witness MLI-OTP-P-0646

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-0646.

The Defence objects to the use of 14 items on the basis that these are not signed and/or do not have serial numbers. The Defence refers to P-0646 witness statement and preparation log, where it submits P-0646 [REDACTED] [REDACTED] The Defence also objects to the fact that all but two items were first shown to the witness during the preparation session. It therefore submits that the items lack sufficient reliability and probative value and that their use would thus be prejudicial to the accused.

As regards the alleged irrelevance and lack of probative value, and contrary to the submission of the Defence, the Chamber does not consider that the comments made by P-0646 during the preparation session impede the use of these items during his testimony. If any of these items are used with P-0646 during his examination in chief, the Defence will have ample opportunity to raise any issue of reliability and probative value during the cross-examination.

As regards the Defence's submission that these items were shown for the first time to P-0646 during the witness preparation session, the Chamber considers this does not cause any prejudice to the accused. Specifically, the Chamber notes that all exhibits were listed as material to be shown to P-0646 in the summary disclosed to the Defence in April last year (ICC-01/12-01/18-740-Conf-AnxB, pp. 1140-1159).

The Chamber reiterates its previous decisions that it will be for the Prosecution to establish the foundation for using these items, or parts thereof, during the examination-in-chief. The Chamber will determine at that point whether excerpts, if any, may be used, having regard to the manner in which they are presented and also taking into account any objections raised in court by the Defence.

Kind regards,

[REDACTED] (on behalf of Trial Chamber X)

From: [REDACTED]
Sent: 14 April 2021 18:17
To: Dutertre, Gilles <[REDACTED]>; Trial Chamber X Communications <TrialChamberXCommunications@icc-01/12-01/18-740-Conf-AnxB>; Al Hassan Prosecution Team <AlHassanProsecutionTeam@icc-01/12-01/18-740-Conf-AnxB>; D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@icc-01/12-01/18-740-Conf-AnxB>; V43 Victims Al Hassan Team <V43LRVTeam@icc-01/12-01/18-740-Conf-AnxB>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer@icc-01/12-01/18-740-Conf-AnxB>; [REDACTED]
Cc: [REDACTED]

Subject: RE: List of Materials for Prosecution Witness MLI-OTP-P-0646

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 P-0646.

The Defence objects to the items listed in the table below as these documents are not signed and items 106, 119, 121, 122, 127, 128, 130 also have no serial numbers. According to the statement of the Witness himself, these documents have no value and are therefore irrelevant [REDACTED]. Furthermore, according to the information available to the Defence, the witness was shown these documents for the first time during the Preparation sessions (with the exception of tabs 106, 128).

Trial Chamber VI in *Ntaganda* has considered the presence or absence of a signature on official documents as one of the indicia of reliability of the evidence. The Trial Chamber found that a document in without, signature or stamp does not offer sufficient reliability and that their limited probative value was outweighed by the potential prejudice of their admission, therefore declining to admit these documents into evidence [REDACTED].

The use of the items listed below with the Witness P-0646 would be prejudicial to the Defence as these documents are not sufficiently reliable and have no probative value, as established by the Witness during the Preparation Sessions with the Prosecution [REDACTED]

Tab	Document ID	Type	Title	Main Date	Comments
106	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
119					
121					
122					
127					

128					
130					
132					
133					
135					
136					

202						
211						
245						

Kind regards,

[REDACTED] *on behalf of Al Hassan Defence*

From: Dutertre, Gilles **[REDACTED]**
Sent: 05 March 2021 18:08
To: Trial Chamber X Communications; Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer; **[REDACTED]**
Cc: **[REDACTED]**
Subject: List of Materials for Prosecution Witness MLI-OTP-P-0646

Dear Trial Chamber X, Dear Colleagues,

The Prosecution attaches, with a bit of advance, its list of materials for Prosecution Witness MLI-OTP-P-0646.

Kind regards,

Gilles Dutertre

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