

Annex 55

Confidential

From: Trial Chamber X Communications
Sent: 31 May 2021 08:03
To: Dutertre, Gilles; [REDACTED]; Trial Chamber X Communications; Al Hassan Prosecution Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer
Cc: D28 Al Hassan Defence Team; Chamber Decisions Communication
Subject: Re: List of Materials for Prosecution Witness [REDACTED]

Dear colleagues,
 Dear counsel,

The Chamber notes the Defence's objections below to the items the Prosecution intends to use during the testimony [REDACTED].

As regards the three items identified under **Category A as 'videos without transcript or translation'**, the Chamber notes that in its Directions on the conduct of proceedings the Chamber determined that in principle, video recordings may only be used in court if a transcript and translation, if applicable, are available (Decision 789-AnxA, para. 59). However, as foreseen in the aforesaid decision, the Chamber may authorise the use of videos without such a transcript or translation, if deemed appropriate.

In fact, the Chamber notes that one of the videos objected by the Defence [REDACTED] was already used and submitted through P-0065 (E-mail decision of 18 December 2020 at 10:05). The Chamber also observes that the Defence did not object to the use of the aforesaid video with P-0065. The Chamber further notes the Prosecution submission that it intends to rely only on the visual content of this video. The Chamber also observes that as regards [REDACTED], the Prosecution's submission that it has decided to rely on another item containing the same footage [REDACTED].

Nonetheless, the Chamber considers it appropriate to emphasise that the determination of whether a video may be played to a witness with or without sound or with or without transcript or translation is a matter that cannot be decided in abstract. Instead, the Chamber will decide, in the context of the Prosecution's questioning of the witness, whether the use of the video is appropriate. Accordingly, the Defence objections to the use of three videos without transcript or translation is dismissed. This is without prejudice to the Defence's possibility, during the testimony, to object to the manner in which the videos are shown to the witness (Decision 789-AnxA, para. 60).

Turning to the items identified by the Defence under **Category B as 'Items not on the Prosecution List of Evidence'**, the Chamber notes that except for five items below [REDACTED] all other items have already been formally submitted in the case record. As regards the remaining five items, the Chamber notes that indeed, these do not appear to relate to the items referred to in the context of the Decision on the Prosecution's Regulation 35 Request (E-mail of 20 May 2021 at 13:31). The Chamber notes the Prosecution's submission below that with respect to [REDACTED], it intends to rely on a black and white version of the same article, [REDACTED].

For the remaining items [REDACTED] the Chamber considers that as accessories of items already in the List of Evidence, their use will not unduly prejudice the Defence. As the Chamber has repeatedly stated in previous decisions, such transcripts and translations will ultimately benefit the Defence and those in the court. Although the Chamber notes that the aforesaid items are not in the Prosecution's List of Evidence, it considers that it is in the interests of justice to allow their use. In particular, the Chamber notes the Prosecution's submissions that these are transcripts of short videos that are already included in the Prosecution's List of Evidence [REDACTED].

Accordingly, the Chamber authorises the inclusion of the aforesaid four remaining items in the Prosecution's List of Evidence and their use during the testimony [REDACTED]. The Prosecution is nevertheless instructed to submit an updated List of Evidence including these items at the earliest opportunity.

Further, the Chamber reminds the parties that pursuant to the Directions on the conduct of proceedings (Decision 789-AnxA, para. 59), 'the parties and participants shall consult to try and resolve any disagreement as to the transcription or translation of the excerpts'.

Lastly, and in relation with the general use of video material in court, the parties and participants are reminded that the transcripts of [REDACTED]'s testimony will ultimately be released, albeit with redactions, into the public record of the case. Accordingly, parties and participants shall already indicate in court whether any item used in court, including videos and photographs, may be ultimately reclassified (see ICC-01/12-01/18-1265, para. 10).

Kind regards,

[REDACTED]

(on behalf of Trial Chamber X)

From: Dutertre, Gilles <[REDACTED]>
Sent: 28 May 2021 18:00
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]>
Cc: D28 Al Hassan Defence Team <D28AlHassanDefenceTeam@[REDACTED]>
Subject: RE: List of Materials for Prosecution Witness [REDACTED]

Dear Trial Chamber X, Dear Colleagues,

The Prosecution provides its responses to the Defence objections to the Prosecution's List of Material (LoM) for Witness [REDACTED] below.

Category A Objections raised by the Defence

With respect to [REDACTED], the Prosecution has decided to rely on [REDACTED], which contains the same footage as this video and whose transcript and translation are included in the LoM at no. 1016 and 1017.

The Prosecution intends to rely only on the visual content of [REDACTED].

Category B Objections: Items not on Prosecution List of Evidence (LoE)

Except for [REDACTED], all the items listed by the Defence under this category have been formally submitted into evidence:.

- With respect to [REDACTED], the Prosecution intends to rely on a black and white version of the same article, [REDACTED].
- [REDACTED] are transcripts and translations of short videos [REDACTED], which are duly included in the LoE. The Prosecution is in the hands of the Chamber regarding the use of these items.

Respectueusement,

Gilles Dutertre

Dévouement - Intégrité - Respect
Dedication - Integrity - Respect

From: [REDACTED]
Sent: 28 May 2021 16:44
To: Trial Chamber X Communications; Al Hassan Prosecution Team; V43 Victims Al Hassan Team; Associate Legal Officer-Court Officer
Cc: D28 Al Hassan Defence Team
Subject: RE: List of Materials for Prosecution Witness [REDACTED]

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 Prosecution's List of Material for Witness [REDACTED].

Category A Objections: Videos without transcript or translation

The Defence objects to the use of videos [REDACTED]. For each of these items, no transcripts and/or translations have been provided in the working language of the Court although they contain spoken word in various languages. In addition, the metadata indicates that these items have been in the possession of the Prosecution since March 2012, and July 2014 respectively: they have therefore had a significant amount of time during which to prepare translations.

Even if the Prosecution is only interested in the visual content of the images, the Defence has a Statutory right to challenge the visual content based on any audio components that might contradict or contextualise the visual content. It cannot do so if it is not provided with a transcript in English or French. As found by Pre-Trial Chamber I in *Lubanga* (ICC-01/04-01/06-676, pp. 3-4), the Prosecution is required to disclose video materials with an accompanying transcript in one of the working languages, at the time its list is filed, since it would be contrary to the interests of fair determination to submit materials that the Chamber cannot itself review. [REDACTED], the Defence also lacks the time and resources to prepare its own translations and transcriptions.

Whereas the Prosecution proposes to use only a portion of Item [REDACTED], this does not mitigate the prejudice caused to the Defence by the absence of transcripts or translations. This issue is compounded by the fact that videos are submitted in full, even if only a portion thereof is relied upon in Court (see Email decision of 23 December 2020 at 09:00).

# OTP List	Doc ID	Main Date	Type	Title	Chain of Custody	Conf. Level	Related to Witness	Language
998	[REDACTED]					[REDACTED]		
1217								
1540								

Category B Objections: Items not on Prosecution List of Evidence (LoE)

The Defence objects to the items enumerated in the Table below, which were not included on the Prosecution List of Evidence (994-Conf-AnxA), mentioned in the witness summary for witness [REDACTED] (740-Conf-AnxB), or outlined in the Prosecution Regulation 35 request of 18 May 2021.

# OTP List	Doc ID	Main Date	Type	Title	Related to Witness	Language
37	[REDACTED]					
39						
59						
77						
79						
100						
102						
106						
108						
110						
114						
122						
124						
130						
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1282	
1409	
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1594	

Whereas 53 of the above items are transcripts or translations generally regarded as “accessories of the items included in the List of Evidence”, the Prosecution has had ample opportunity to add these items to their LoE and has provided no insight into why it did not do so. Untimely additions such as these adversely impact Defence preparations, [REDACTED]. As such, the Defence requests the Trial Chamber to exclude these items from the Prosecution’s list [REDACTED].

The above is without prejudice to Defence objections concerning the introduction of testimony on issues concerning the acts and conduct of Mr Al Hassan, based on evidence that was elicited for the first time during the witness preparation sessions.

On behalf of Counsel for Mr Al Hassan,
[REDACTED]

From: Dutertre, Gilles [REDACTED]
Sent: 25 May 2021 22:00
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 [REDACTED]

Dear Trial Chamber X, Dear Colleagues,

The Prosecution attaches its list of materials for Prosecution Witness [REDACTED].

Kind regards,

Gilles Dutertre

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