

Annex 57

Confidential

From: Trial Chamber X Communications
Sent: 02 June 2021 08:47
To: Al Hassan Prosecution Team; D28 Al Hassan Defence Team; V43 Victims Al Hassan Team
Cc: Associate Legal Officer-Court Officer; FS Items Communication; Chamber Decisions Communication
Subject: TC X - Decision on submitted material for P-0643
Attachments: P-0643 Prosecution reply.pdf; P-0643 Prosecution response.pdf; P-0643 Prosecution submission.pdf; P-0643 Defence reply.pdf; P-0643 Defence response.pdf; P-0643 Defence submission.pdf

Dear counsel,
 Dear colleagues,

The Chamber notes the submission of items by the parties following the testimony of P-0643 (Email from the Prosecution dated 19 May 2021 at 15:32 and corresponding attachment; Email from the Defence dated 19 May 2021 at 15:36; the 'Prosecution List' and 'Defence List', respectively).

The Prosecution seeks to submit four items through P-0643. The Defence objects to the submission of P-0643's report ([REDACTED]; the 'Report'), challenging its reliability as an expert report, relevance to the charges and consistency with the mission letter (Email from the Defence dated 21 May 2021 at 17:25).

As correctly pointed out by the Prosecution (Email from the Prosecution dated 24 May 2021 at 20:15), the Chamber authorised the introduction of all items on the Prosecution List, including the Report, pursuant to Rule 68(3) of the Rules, pending solely the formalities under this provision (*see* ICC-01/12-01/18-1409-Conf, paras 26-32). In relation to the arguments raised by the Defence, challenging P-0643's expert evidence, the Chamber observes that it previously authorised the Prosecution to call P-0643 as an expert (*see* ICC-01/12-01/18-1409-Conf). In the same decision, the Chamber also decided that the challenges raised by the Defence on the quality of the Report do not prevent its submission, as such arguments will be evaluated holistically in the Chamber's Article 74 Judgment (ICC-01/12-01/18-1409-Conf, para. 24).

Given that the formalities under Rule 68(3) of the Rules were satisfied (T-083, p. 12 lines 13-22), the Chamber recognises the submission of all items on the Prosecution List, including the Report.

The Defence seeks to submit sixteen items through P-0643. The Prosecution does not object to the submission of these items. It however makes observations as regards the relevance and reliability of these items as well as the Defence's description of the items (Email from the Prosecution dated 22 May 2021 at 19:25; the 'Prosecution Response').

The Chamber is satisfied that all the items on the Defence List have been used or otherwise discussed in a broad sense with P-0643 and accordingly recognises their formal submission.

The Registry is directed to proceed in accordance with paragraph 34(vi) of the Directions on the conduct of the proceedings (ICC-01/12-01/18-789-AnxA).

The Chamber notes that the Defence requests the Chamber to disregard the observations in the Prosecution Response, on the basis that they fall outside the parameters of paragraph 34(iii) of the Directions on the conduct of proceedings (Email from the Defence dated 24 May 2021). The Defence argues that the observations made by the Prosecution should be excluded as they are not objections to the submission of items but rather concern broader issues regarding the interpretation of evidence.

The Chamber recalls that pursuant to paragraph 34(iii) of the directions on the conduct of proceedings, when a party or participant requests the submission of evidence, the other party and participants may send emails in response, *raising issues related to the relevance or admissibility of the items submitted* (ICC-01/12-01/18-789-AnxA [emphasis added]).

Thus, the mere fact that a party is not raising an 'objection' does not render its response out of the scope of paragraph 34(iii) of the Directions. In fact, given that, as repeatedly emphasised by the Chamber, the standard evidentiary criteria will be considered as part of the holistic assessment of all evidence submitted when deciding on the guilt or

innocence of the accused, the Chamber considers it helpful that objections to the submission of the items be separated from arguments on the relevance or admissibility.

In the case at hand, the Chamber notes that the Prosecution Response, specifically addresses the Defence's submissions on the relevance and admissibility of each item on the Defence List.

Accordingly, the Chamber does not consider it necessary to disregard the observations made in the Prosecution Response.

Kind regards,



On behalf of Trial Chamber X