

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/18
Date: 21 October 2019
Date of submission
22 November 2019

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Kimberly Prost

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR *v.* AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MOHAMOUD**

Public

Public redacted version of the "Prosecution's Response to Defence Request for Leave to Appeal Request for leave to appeal the Single Judge's *"Décision relative à la requête du Procureur aux fins d'autorisation de la non-communication de l'identité du témoin MLI-OTP-P-0577"* [REDACTED],
21 October 2019, ICC-01/12-01/18-477-Conf-Exp

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The Defence's request for leave to appeal ("Request")¹ the Single Judge's "*Décision relative à la requête du Procureur aux fins d'autorisation de la non-communication de l'identité du témoin MLI-OTP-P-0577*" ("Decision")² should be rejected. The Request fails to meet the requirements for leave to appeal under article 82(1)(d) of the Rome Statute ("Statute").

2. The Defence fails to identify a discrete legal or factual issue requiring a decision by the Appeals Chamber for its resolution. The Request raises nothing more than a disagreement with the Single Judge's findings and the procedure that led to the Decision. Since disagreements are not appealable issues,³ the Request should be dismissed on this basis alone.

3. Even if, *arguendo*, appealable issues did arise from the Decision, none of the issues identified by the Defence ("Three Issues") meets the remaining cumulative requirements for leave to appeal under article 82(1)(d) of the Statute. The alleged impact on the fairness and expeditiousness of the proceedings is unsubstantiated.

4. The Defence does not demonstrate how the resolution of any of the Three Issues would materially advance the proceedings. Instead, it merely advances a general and speculative argument regarding the possibility that the trial would be contaminated *if* the confirmation of charges were *perceived* to have been conducted on a flawed and unfair manner.⁴ At this juncture, where the charges have been confirmed and the suspect has been committed to trial, an appellate litigation of any of the Three Issues would delay rather than advance the proceedings forward.

¹ [REDACTED].

² [REDACTED].

³ ICC-01/04-168 OA3, para. 9; ICC-01/05-01/08-532, para. 17; ICC-01/04-01/06-1557, para. 30; ICC-01/04-01/07-2035, para. 25; ICC-02/05-03/09-179, para. 27.

⁴ [REDACTED].

Confidentiality

5. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is filed as confidential *ex parte*, available only to the Prosecution, the Defence and the Victims and Witnesses Unit as it responds to a filing of the same classification.

Submissions

6. An “issue” for the purpose of article 82(1)(d) of the Statute must be “an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion”.⁵ Further, the party seeking leave to appeal under article 82(1)(d) must identify a discrete legal or factual issue arising from the impugned decision.⁶ The Request fails to do so.

7. Assuming *arguendo* that any of the Three Issues constitutes an appealable issue, they otherwise fail to meet the other requirements of article 82(1)(d) of the Statute.

The First Issue does not meet the article 82(1)(d) criteria

8. The Defence’s First Issue is “





”.⁷ This does not constitute an “issue” arising

⁵ ICC-01/04-168 OA3, para. 9.

⁶ See for example, ICC-01/12-01/18-130-tENG, para. 34. See also ICC-02/11-01/11-307, para. 70; ICC-01/05-01/13-2030, para. 6.

⁷ .

from the Decision, and does not meet the other criteria under article 82(1)(d) of the Statute.

9. Firstly, the Defence misrepresents the Decision. Contrary to the Defence's allegation⁸, [REDACTED]
[REDACTED]⁹, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Moreover, the Defence argument that
[REDACTED]
[REDACTED]¹⁰ [REDACTED]
[REDACTED].

10. Secondly, the issue regarding the timing of the submission of the Prosecution's request for non-disclosure regarding P-0577 ("Prosecution Redaction Request")¹¹ had already been raised by the Defence¹² and [REDACTED]
[REDACTED]¹³. The First Issue merely represents the Defence's disagreement with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁴.

11. Thirdly, the Defence allegations regarding [REDACTED]
[REDACTED]
[REDACTED] are unfounded. In the Prosecution Redaction Request, the Prosecution already outlined exculpatory information contained in her statement,

⁸ [REDACTED]
⁹ [REDACTED]
¹ [REDACTED]

¹¹ ICC-01/12-01/18-410-Conf-Red.

¹² ICC-01/12-01/18-437-Conf-Exp, para. 18-23.

¹³ [REDACTED]
¹⁴ [REDACTED]

[REDACTED]

[REDACTED].²⁴ This does not constitute an “issue” arising from the Decision, nor meet the other criteria under article 82(1)(d) of the Statute.

18. Firstly, the issue of [REDACTED] had already been raised by the Defence.²⁵ However, [REDACTED]

[REDACTED].²⁶ [REDACTED]

[REDACTED].²⁷ The Third Issue represents nothing more than the Defence’s disagreement with the Decision and its dissatisfaction with the process that led to it.

19. Secondly, the Defence misrepresents the Decision. Contrary to the Defence’s suggestion, [REDACTED]

[REDACTED]. This is clear, for example, from [REDACTED]

[REDACTED].²⁸

and [REDACTED]

[REDACTED].²⁹ The Third Issue therefore does not arise from the Decision.

20. Finally, even if [REDACTED]

[REDACTED]

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ ICC-01/12-01/18-88-Conf-Exp-Red.

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ [REDACTED].

██████████
██████████
██████████³⁰ Accordingly, the Third Issue does not significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and an immediate resolution by the Appeals Chamber would not materially advance the proceedings.

Conclusion

21. For the reasons set out above, the Request should be rejected.



Fatou Bensouda, Prosecutor

Dated this 21st day of October 2019
At The Hague, the Netherlands

³⁰ ██████████.