



Original: English

No.: ICC-01/12-01/18

Date: 13 November 2019

Date of submission: 06

January 2020

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Single Judge

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF

***THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD***

Public

Public Redacted Version of Defence Request for Leave to Reply to ICC-01/12-01/18-485-Conf-Exp

**Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
Mahmoud**

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

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**Victims Participation and
Reparations Section**

Other

1. Article 67(1)(e) of the Statute vests the Defence, with the right to investigate under the same conditions as the Prosecution. In order for this right to be effective, and not illusory, the Defence should be able to exercise this right without fear that it will be subjected to baseless accusations of impropriety, which can indirectly or directly intimidate the Defence from discharging its mandate.
2. The ‘Prosecution Response to the Defence’s “Request for Clarification and Disclosure”’¹ appears to be an unhelpful attempt to generate controversy and create a shroud of suspicion, with a view to scoring litigation points. A large swathe of the Response derives from the complaint that the Prosecution do not know the name of the person contacted by the Defence resource person. And yet, although the Defence offered to provide the name of this person to the Prosecution over six days ago, the Prosecution never contacted the Defence to obtain this information, or any of the further particulars that it now claims to be of essential importance to the resolution of this issue.
3. The Prosecution has also elected not to address the Defence request for disclosure of information, even though the disclosure of information concerning [REDACTED] this individual may render the need to conduct further interviews moot.²
4. In order to expedite the Chamber’s resolution of this matter, the Defence hereby informs the Chamber that:
 - a. In the absence of particular specification from the Prosecution as to how the name should be conveyed, the Defence transmitted it to the Prosecution via email on 13 November 2019;³
 - b. The Defence has requested STIC to prepare a French transcript of the recording on an urgent basis.⁴ As soon as this transcript is received, the Defence will

¹ ICC-01/12-01/18-485-Conf-Exp (the “Prosecution Response” or “Response”).

² The Defence requested the Prosecution to disclose any such information prior to the confirmation hearing, and has made its position that such information falls under Article 67(2) and Rule 77 abundantly clear.

³ The Defence did not include the name in its filing, in order to limit the number of persons who would have access to the name.

⁴ STIC has informed the Defence that it does not have the capacity to prepare an English transcript.

disclose it to the Prosecution and the Chamber.⁵ There were no further interactions with this individual;

- c. This was the first investigative mission conducted by this resource person. He was given multiple instructions in advance, and following the Defence discovery of this issue, he has not been requested to perform any other tasks. The Defence is currently [REDACTED].
5. Although the Defence notes that the Prosecution submissions concerning VWU ‘advice’ are a red herring, which have no relevance to the substance of the Defence Request, the Defence also attaches, on a confidential *ex parte* Defence, VWU only basis, the minutes of its meeting with the VWU.⁶
 6. To the extent that the Prosecution Response suggests that any further interactions with this individual would be incompatible with the Protocol, the Defence seeks leave to reply in relation to:
 - a. The issue as to whether this individual can be characterised as a Prosecution witness, for the purposes of the Protocol; and
 - b. The power of the Chamber to authorise the Defence to conduct a recorded interview with an individual on discrete issues, outside of the presence of the Prosecution, in circumstances where the presence of the Prosecution is likely to impede the willingness of the individual to respond freely to questions concerning the discrete issue in question.
 7. If leave to reply is granted, the Defence will submit its reply within three working days of the decision granting leave to reply.
 8. Finally, as set out above, even before the Prosecution filed its Response, the Defence took steps to address potential issues concerning its resource person. Nonetheless, the

⁵ Since the Defence has not received the transcript, it is not in a position to identify whether any redactions might be required. As a result, it is not in a position to communicate the recording until it has verified this issue.

⁶ Annex 1.

issues set out in the Defence Request also stem from a host of related problems concerning the degree of unnecessary redactions in this case and the very small pool of potential witnesses for either the Prosecution and the Defence, the fact that individuals contacted by the Prosecution may be unaware of their status as ‘Prosecution witnesses’, and the reluctance of individuals to acknowledge to the Defence that they have spoken to the Prosecution. In the absence of any clarity as to when the case will be transferred to the Trial Chamber, the Defence respectfully proposes that these issues be addressed through an urgent Status Conference, rather than further adversarial litigation.

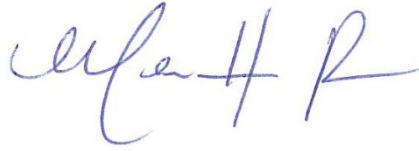
Relief Sought

9. For the reasons set out above, the Defence for Mr. Al Hassan respectfully requests the Honourable Single Judge to:
 - Grant the Defence leave to reply in relation to the issues identified above; and
 - Convene an urgent Status Conference to discuss any remaining issues concerning the interpretation and application of the Protocol.



Melinda Taylor

Lead Counsel for Mr Al Hassan



Marie-Hélène Proulx

Associate Counsel for Mr Al Hassan

Dated this 13th Day of November 2019
At The Hague, The Netherlands