

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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 Request for Clarification and Disclosure

**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:

The Office of the Prosecutor

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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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Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and
Reparations Section**

Other

I. Introduction

1. The Defence for Mr. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (the “Defence”) respectfully requests the Single Judge for clarification regarding potential contacts between the Defence and a person of interest concerning [REDACTED].
2. After consultation with VWU, it is clear that the Protocol on the Handling of Confidential Information (the “Protocol”)¹ is inapplicable to the existing situation regarding this person. The Defence therefore requests guidance from the Chamber as to whether the Defence may contact this person in the course of its investigations. If the Person of Interest has indeed been interviewed by the Prosecutor, the Defence further requests the Single Judge to order the Prosecutor to disclose any statements and information in its possession concerning [REDACTED], or which might otherwise fall under Article 67(2) of the Statute, or Rule 77 of the Rules of Procedure and Evidence.

II. Classification

3. The present request is filed confidentially and ex parte, only available to the Defence, the Prosecution and VWU, as it relates to witness protection and to Defence preparation for trial.

III. Background

4. On 5 October 2019, a resource person in the Al Hassan Defence team (the “Resource Person”), conducted an interview with an individual (the “Person of Interest”),² [REDACTED]. The Resource Person was instructed to follow the terms of the Protocol ahead of this interview.
5. On 15 October 2019, the Resource Person transmitted to the Defence: (1) a copy of the Person of Interest’s I.D.; (2) a copy of the Person of Interest’s [REDACTED]; (3) a recording of the interview [REDACTED]; and (4) a rough summary of the interview. The Defence transmitted those items to Mr. Al Hassan and requested that he listen to the recording [REDACTED].

¹ ICC-01/12-01/18-40-Anx.

² Out of abundance of caution and to avoid unnecessary dissemination of confidential information, the Defence has opted to not include the name of the Person of Interest in the present request. Should the Chamber or the Prosecution express the wish to receive this information, the Defence will provide it in a secure manner.

6. In the absence of any specific mention to this effect in the summary of the interview, the Defence, on the same day, required the Resource Person to confirm whether he had, as instructed by the Defence and required by the Protocol, asked the Person of Interest if he had previously met with representatives of the International Criminal Court or had agreed to be a witness for the Office of the Prosecutor. The Resource Person confirmed that he has asked this question, and that the response was negative.
7. On 17 October 2019, during a meeting at the Detention Centre, Mr. Al Hassan informed the Defence that the Person of Interest could be heard on the recording mentioning that he had met “people from the Hague” [REDACTED]. The recording continues for about five minutes after this is mentioned.
8. On 18 October 2019, the Resource Person clarified to the Defence that during an off-recording conversation, the Person of Interest had told him that he was not sure whom he met [REDACTED].
9. On 22 October 2019, the Defence contacted VWU to report the events and request guidance as to which measures, if any, should be taken.
10. On 5 November 2019, VWU and the Defence had a meeting, during which VWU expressed the opinion that the situation described by the Defence was not regulated by the terms of the Protocol on the Handling of Confidential Information, and that absent a risk posed to a witness or possible witness, the VWU could not intervene in any meaningful way.

IV. Submissions

11. The Prosecution has sought and obtained permission to withhold the identity of a large number of witnesses in the Al Hassan case. It is therefore impossible for the Defence to make an assessment as to whether the Person of Interest provided a statement to the Prosecution.
12. The subject of the interview with the Person of Interest was [REDACTED], and the Resource Person has not sought any information from the Person of Interest in relation to [REDACTED].

13. Out of an abundance of caution, the Defence seeks guidance from the Chamber as to whether contact between the Defence and the Person of Interest can be maintained at this stage. Any future contact would be conducted by Defence lawyers (rather than the Resource Person). If there is any ambiguity as to whether the Person of Interest constitutes a ‘Prosecution witness’ for the purposes of the Protocol, the Defence could restrict the content of its communications to issues concerning [REDACTED].
14. In the event that the Single Judge has authorised the Prosecution to withhold disclosure of any information concerning the Person of Interest, the Defence further requests the Single Judge to lift such measures, as concerns any statement [REDACTED], investigator’s notes or any other document emanating from any interaction between the Office of the Prosecution and the Person of Interest, which pertains to [REDACTED]. This information is material to the preparation of the defence pursuant to Rule 77, in particular given the indication that if the Person of Interest was indeed interviewed by the Prosecution, [REDACTED].
15. Given that firstly, the Defence is aware of the Person of Interest’s identity, and secondly, the Person of Interest has expressed his willingness to be interviewed by the Defence in relation to such matters, there is also no justification for withholding the requested information from the Defence.

V. Conclusion

16. For the above reasons, the Defence respectfully requests the Chamber to:
 - i. Clarify whether the Defence may contact the Person of Interest, either in general, or in relation to [REDACTED]; and
 - ii. Order the Prosecution to disclose, without delay, any statement [REDACTED], investigator’s notes or any other document emanating from any interaction between the Office of the Prosecution and the Person of Interest, [REDACTED], or which otherwise falls under either Article 67(2) of the Statute or Rule 77 of the Rules of Procedure and Evidence.



Melinda Taylor

Lead Counsel for Mr Al Hassan



Marie-Hélène Proulx

Associate Counsel for Mr Al Hassan

Dated this 7th Day of November 2019
At The Hague, The Netherlands