

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/12-01/18
Date: 18 November 2020
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5 February 2021

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding
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 MAHMOUD***

Public

With confidential Annex

Public redacted version of “Prosecution application under rule 68(3) of the Rules to introduce into evidence MLI-OTP-P-0081’s prior recorded testimony and associated material”, 18 November 2020, ICC-01/12-01/18-1157-Conf

Source: 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. Pursuant to articles 64(9), 69(2)-(4)¹ and rules 63(2) and 68(3) of the Rules of Procedure and Evidence (“Rules”), the Prosecution requests Trial Chamber X’s (“Chamber”) authorisation to: (i) introduce into evidence Witness P-0081’s statements² and associated material,³ as specified in the Annex to the present filing; and (ii) conduct a succinct streamlined supplementary examination of Witness P-0081 (“Request”).

2. Witness P-0081 (“P-0081”) is [REDACTED]

[REDACTED]

[REDACTED]

3. The Prosecution seeks to introduce into evidence P-0081’s two statements and annexes thereto as well as seven documents mentioned in his first statement pursuant to rule 68(3) of the Rules. These documents are relevant, probative and reliable.

4. P-0081 is scheduled to testify in the second block of witnesses,⁴ which is expected to commence in early 2021. Should this Request be granted, P-0081 will be asked in court to confirm the accuracy of his statements and whether he consents to their submission.

5. Based on past experience, the Prosecution estimates that it will need one hour for the examination-in-chief of P-0081; approximately 30 minutes for addressing the formalities associated with the introduction into evidence of his prior recorded testimony and associated material, and an additional 30 minutes to conduct a

¹ Rome Statute (“Statute”).

² [REDACTED]

³ [REDACTED]

⁴ See [REDACTED]

succinct supplementary examination regarding the existence of the armed conflict during the period relevant to the charges and the information he received on the practice of forced marriage [REDACTED] The Prosecution also intends to show the Witness some videos relevant [REDACTED]

[REDACTED]

[REDACTED]

6. Granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by reducing the length of P-0081's examination-in-chief by approximately two hours.

Confidentiality

7. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), the Prosecution files this Request and its accompanying Annex as confidential because they contain confidential information including information regarding Prosecution Witness P-0081, in addition to referring to filings classified as confidential. The Prosecution shall file a public redacted version in due course.

Prosecution's Submissions

Request for authorisation to introduce P-0081's material into evidence

8. Rule 68(3) of the Rules provides that the Chamber may allow the introduction of the previously recorded testimony of a witness who is present before the Chamber where the individual does not object to its submission, and the Parties and Chamber have the opportunity to examine the witness.

9. The Prosecution has identified P-0081 as an appropriate witness for the procedure under rule 68(3) of the Rules.

10. P-0081 is listed in the second block of witnesses and his testimony is not scheduled to take place this year. This Request is therefore filed in accordance with the Chamber's instruction to submit by 30 November 2020 any rule 68(3) applications relating to those witnesses expected to be called after the end of the year 2020.⁵

11. As set out in section I of the Annex to this Request, the Prosecution seeks to introduce, in full, P-0081's two statements and three annexes to his first statement:

) Annex 1 is a [REDACTED]-OTP-0004-0245, which was shown to P-0081 during his first interview and on which he made markings to indicate [REDACTED]

[REDACTED]⁶

) Annex 2 is [REDACTED], MLI-OTP-0004-0246, which was shown to P-0081 during his first interview and on which he made markings to indicate the locations related to [REDACTED]

[REDACTED];⁷ and

) Annex 3 is a sketch made by P-0081 to indicate the locations where [REDACTED]

[REDACTED]⁸

12. The Prosecution also seeks to introduce into evidence the documents referred to in his first statement,⁹ as specified in section II of the Annex: (i) a report authored by P-0081 regarding [REDACTED]¹⁰ (ii) an

⁵

[REDACTED]

[REDACTED]¹¹ (iii) the notes taken by P-0081 regarding [REDACTED]¹² and (iv) documents relating to [REDACTED].¹³

13. The material listed in section I and II of the Annex is relevant to the issues in this case. It relates to, *inter alia*: (i) the contextual elements of war crimes and crimes against humanity, including the intensity of armed violence and the organised character of the armed groups; (ii) [REDACTED] and (iii) [REDACTED] P-0081's statements may assist the Chamber in its determination of the truth in this case.¹⁴

14. The material listed in section I and II of the Annex is also probative and reliable. P-0081 was interviewed by the Prosecution in [REDACTED] and his statements were taken in compliance with the requirements of rule 111 of the Rules. P-0081 has direct knowledge of the [REDACTED] [REDACTED]

15. When he appears before the Chamber, P-0081 will be asked to confirm the accuracy of his statements and whether he consents to the submission of his statements and associated material, in accordance with rule 68(3) of the Rules. The Parties, the Legal Representatives of the Victims if applicable, and the Chamber will have the opportunity to examine this witness during the proceedings. Therefore, the

¹¹ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

introduction of P-0081's material under rule 68(3) of the Rules is not prejudicial to or inconsistent with the rights of the Accused.

16. The Prosecution estimates that without recourse to rule 68(3) of the Rules, it would require approximately three hours for its examination-in-chief of P-0081 in order to cover all the issues discussed in his statements and associated material.¹⁵ Granting this Request would enhance the expeditiousness of the proceedings by reducing the length of P-0081's examination-in-chief by two hours.

Proposed procedure for the introduction of P-0081's statements and associated material

17. Should this Request be granted, the Prosecution submits that there will be no need to read into evidence the statements of P-0081 as the witness will be asked to confirm their accuracy and to provide corrections or amendments, if any.

18. During witness preparation, the Prosecution will ask P-0081, *inter alia*, to review his statements and associated material, advise of any corrections or clarifications he wishes to make, and to confirm the accuracy of his statements.¹⁶ In accordance with the Witness Preparation Protocol, this session will be video-recorded and the Prosecution will disclose a log of the session clearly indicating any changes or corrections made by the witness.¹⁷

19. When P-0081 appears in court, the Prosecution will seek to elicit any corrections or clarifications noted by the witness during witness preparation.¹⁸ The Prosecution will then ask the witness whether he has any further corrections or clarifications to make to his statements and to confirm whether he consents to the submission of his statements and associated material.

¹⁵ In [REDACTED] the Prosecution had initially estimated the examination-in-chief of P-0081 to require two hours. However, upon further consideration, such examination would rather require three hours in order to cover all the facts and items relevant to his evidence, should this Request be denied.

¹⁶ ICC-01/12-01/18-666-Anx, para.18-19.

¹⁷ ICC-01/12-01/18-666-Anx, para.12-15, 31.

¹⁸ ICC-01/12-01/18-666-Anx, para. 50.

20. After tendering his statements and associated material, with any changes or clarifications noted on the record, the Prosecution will conduct a succinct supplementary examination of P-0081 as outlined above (see paragraph 5 *supra*).

Conclusion

21. For the foregoing reasons, the Prosecution requests the Chamber to grant this Request.



Fatou Bensouda, Prosecutor

Dated this 18th day of November 2020

At The Hague, The Netherlands