

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/18
Date: 13 October 2020
Date of submission:
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 A

**Public redacted version of “Prosecution application under rule 68(3) to introduce
MLI-OTP-P-0114’s statement and associated material into evidence”,
13 October 2020, ICC-01/12-01/18-1106-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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I. 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-0114’s (“P-0114”) two statements,² annexes to his first statement,³ and material associated with his two statements, as specified in sections I to III of Annex A to the present application; and (ii) conduct a streamlined supplementary examination of P-0114 (“Request”).

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁴

3. Annexed to P-0114’s first statement is one [REDACTED] image [REDACTED], along with [REDACTED] documents [REDACTED].

4. The material associated with P-0114’s first statement which the Prosecution seeks to introduce into evidence is comprised [REDACTED] photographs,⁵ [REDACTED]

¹ Rome Statute (“Statute”).

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ Annex A, Section II.

[REDACTED], which were shown to the witness and on which he commented. Also included in the associated material are [REDACTED]

[REDACTED],⁶ screening note of P-0114,⁷ an investigation note [REDACTED]

[REDACTED]¹⁰ [REDACTED]

[REDACTED].¹¹

5. P-0114's second statement¹² [REDACTED]

[REDACTED]. Associated with this statement are [REDACTED] photographs [REDACTED]

[REDACTED]¹³ [REDACTED]¹⁴ [REDACTED]

6. P-0114's evidence is relevant to the charges [REDACTED] and to the contextual elements of crimes against humanity and war crimes.

7. Should this Request be granted, P-0114 will be asked to attest to the accuracy of his two statements and associated material at the beginning of his testimony and to confirm his availability and willingness to be examined by the Parties, the Legal Representative of Victims (if applicable), and the Chamber.

8. The Prosecution estimates that it will require in total about 1.5 hours for the examination-in-chief of P-0114: approximately 30 minutes will be devoted to the formalities associated with the introduction into evidence of the witness's statement

6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]

and associated exhibits, and an additional one hour to conduct a supplementary examination to elicit further focused *viva voce* evidence of certain issues, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹⁵

9. As the Defence will have the opportunity to cross-examine P-0114, granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by significantly shortening the length of P-0114's in-court testimony, which was originally projected to last seven hours.¹⁶

II. Confidentiality

10. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this Request and its annex as confidential because they contain information identifying P-0114. The Prosecution shall file a public redacted version in due course.

III. Submissions

11. 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.

12. The Prosecution identified P-0114 as an appropriate witness for the procedure under rule 68(3) of the Rules.

¹⁵ The Prosecution recalls the case law of the Court which permits the introduction into evidence *via* rule 68(3) of prior recorded testimony on issues concerning the acts and conducts of the accused. [REDACTED]

¹⁶ [REDACTED].

13. P-0114 is scheduled to testify among the third block of witnesses.¹⁷ This Request is filed in accordance with the Chamber's instruction that rule 68(3) applications relating to any witnesses due to appear beyond the end of this year be filed by 30 November 2020.¹⁸

14. Attached as Annex A to this application is a table which lists the associated material which the Prosecution seeks to introduce into evidence for P-0114, and also [REDACTED] [REDACTED] photographs necessary to understand P-0114's evidence but which the Prosecution does not seek to introduce into evidence. These [REDACTED] photographs were shown to the witness but he did not recognise them.

15. Listed in section I of Annex A are P-0114's two witness statements, and two annexes to his first statement.¹⁹

I. Annex I is a [REDACTED] image [REDACTED] which was shown to P-0114 [REDACTED]
[REDACTED].²⁰

II. Annex II consists [REDACTED] [REDACTED] documents [REDACTED]
[REDACTED].²¹ [REDACTED]
[REDACTED].²²

16. Listed in section II of Annex A are material associated with P-0114's first statement which the Prosecution seeks to introduce into evidence. These materials are comprised of [REDACTED] photographs, [REDACTED]
[REDACTED], which were shown to the witness and on which he commented. Also included in the associated material are [REDACTED]

¹⁷ [REDACTED].

¹⁸ ICC-01/12-01/18-1004, para. 21.

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED]

²² [REDACTED].

[REDACTED]²³
 screening note of P-0114,²⁴ an investigation note [REDACTED]
 [REDACTED]²⁵ [REDACTED]
 [REDACTED]²⁶ [REDACTED]
 [REDACTED]²⁷ [REDACTED]
 [REDACTED]²⁸ [REDACTED]
 [REDACTED]²⁹.

17. Listed in section III of Annex A are material associated with P-0114's second statement which the Prosecution seeks to introduce into evidence. These are comprised of [REDACTED] photographs [REDACTED]³⁰ [REDACTED]
 [REDACTED]³¹ [REDACTED]
 [REDACTED].

18. The Prosecution seeks to introduce all of these materials into evidence. They are relevant to the charges [REDACTED]
 [REDACTED] and to the contextual elements of crimes against humanity and war crimes.

19. All of these materials are probative and reliable. P-0114 [REDACTED]
 [REDACTED] can speak to their reliability and accuracy. P-0114 was interviewed by the Prosecution [REDACTED]
 [REDACTED] under rule 111 of the Rules.

23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED]
 28 [REDACTED]
 29 [REDACTED]
 30 [REDACTED]
 31 [REDACTED]

20. P-0114 will be asked to attest to the authenticity and the accuracy of his prior statements and associated material at the beginning of his testimony³² and whether he objects to the submission thereof into evidence. The Parties, the Legal Representative of Victims (if applicable), and the Chamber will have the opportunity to examine P-0114 during the proceedings. As the Defence will have the opportunity to cross-examine the witness, the admission of P-0114's prior statements and associated material under rule 68(3) of the Rules will neither be prejudicial to nor inconsistent with the rights of the Accused.

21. Listed in section IV of annex A are material associated with P-0114's first statement which the Prosecution does not seek to admit under rule 68(3) of the Rules. These are [REDACTED] photographs which were shown to P-0114 but whose subjects he did not recognise.³³

22. The Prosecution estimates that it will require in total about 1.5 hours for the examination-in-chief of P-0114: approximately 30 minutes will be devoted to the formalities associated with the introduction into evidence of the witness's statement and associated exhibits, and an additional one hour to conduct a supplementary examination to elicit further focused *viva voce* evidence of certain issues, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

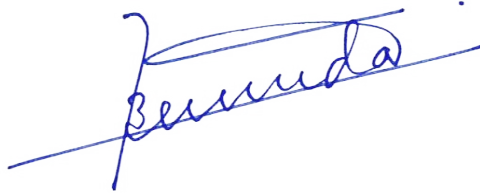
23. Granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by significantly shortening the length of P-0114's in-court testimony, which was originally projected to last

³² ICC-01/12-01/18-789-AnxA, para.65.

³³ [REDACTED].

seven hours.³⁴ Should this application be rejected, the Prosecution will request that the Chamber accord the Prosecution seven hours for P-0114's examination-in-chief.

24. For the foregoing reasons, the Prosecution asks that the Chamber grant this Request.



Fatou Bensouda, Prosecutor

Dated this 14 October 2020

At The Hague, The Netherlands

³⁴ [REDACTED]