



Original: English

No.: ICC-01/12-01/18
Date: 15 October 2020
Date of submission:
23 October 2020

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 the “Prosecution application under rule 68(3)
to introduce MLI-OTP-P-0622’s statement into evidence”,
15 October 2020, ICC-01/12-01/18-1109-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. The Prosecution requests Trial Chamber X's ("Chamber") authorisation to (i) introduce into evidence Witness P-0622's statement¹ as specified in Annex A to the present application pursuant to rule 68(3) of the Rules of procedure and evidence ("Rules"); and (ii) conduct a succinct supplementary examination of Witness P-0622 ("Request").

2. Witness P-0622 ("P-0622") is [REDACTED]

[REDACTED] His prior recorded testimony relates to the situation in [REDACTED]

[REDACTED] His testimony is relevant to the charges of persecution (count 13), forced marriages as other inhumane acts (count 8), sexual slavery (counts 9 and 10) and rape (count 11) as well as the contextual elements of the crimes against humanity.

3. P-0622 has been scheduled to testify among the second block of witnesses after the end of 2020.² 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 2020.³ However, due to unforeseen circumstances

[REDACTED], the Prosecution envisages calling P-0622 during the month of December 2020 [REDACTED] in order to efficiently use court time and fill in any gap that may be caused by these unforeseen circumstances. [REDACTED]

¹ MLI-OTP-0065-0558.

² [REDACTED].

³ ICC-01/12-01/18-1004, para. 21.

4. Should this Request be granted, P-0622 will be asked to attest to the accuracy of his statement at the beginning of his testimony and to confirm his availability and willingness to be examined by the Parties, Legal Representatives if applicable, and the Chamber.
5. Based on past practices, the Prosecution estimates that it will require in total 45 minutes for the examination-in-chief of P-0622, for the formalities associated with the introduction into evidence of his statement and to conduct a succinct supplementary examination on the [REDACTED] [REDACTED] to further clarify his evidence.
6. Granting the Request would not be prejudicial to the rights of the Accused and would enhance the expeditiousness of the proceedings by keeping the length of Witness P-0622's in-court testimony short.

Confidentiality

7. Pursuant to regulation 23*bis*(1) of the RoC, the Prosecution files this submission and its accompanying annex as confidential because they contain confidential information including information regarding the identity of Prosecution witness P-0622, in addition to referring to filings classified as confidential. The Prosecution shall file a public redacted version in due course.

Prosecution's Submissions

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 the submission and the Parties and Chamber have the opportunity to examine the witness.

9. The Prosecution identified P-0622 as an appropriate witness for the procedure under rule 68(3) of the Rules and seeks to introduce into evidence P-0622's statement in full as set out in Annex A appended to this filing.

10. His statement which the Prosecution obtained [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These matters are relevant to a number of crimes which the Accused has been charged with. In particular, they are relevant to the charges of persecution (count 13), forced marriages as other inhumane acts (count 8), sexual slavery (counts 9 and 10) and rape (count 11) as well as the contextual elements of the crimes against humanity.

11. His statement is probative and reliable. It was given voluntarily to the investigators⁴ in a language that P-0622 understood and spoke perfectly.⁵ P-0622 was informed that his statement could be used in a judicial procedure in front of the ICC and that he could be called to testify.⁶ His statement was read back to him and he signed it on all pages. P-0622 will be in a position to explain, and be cross-examined on, all aspects of his testimony, [REDACTED].

12. P-0622 will be asked to attest to the authenticity and the accuracy of his statement at the beginning of his testimony⁷ and to confirm his availability and willingness to be examined by the Parties, Legal Representatives if applicable, and the Chamber. He will be asked whether he consents to the introduction of his materials into evidence. During its supplementary examination of P-0622, the

⁴ [REDACTED]

⁵ [REDACTED]

⁶ [REDACTED]

⁷ ICC-01/12-01/18-789-AnxA, para.65.

Prosecution intends to elicit limited *viva voce* evidence on [REDACTED]

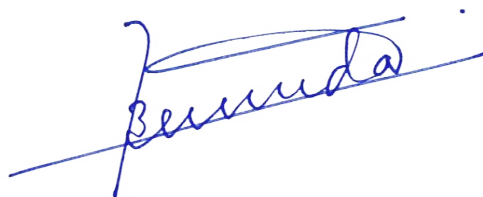
[REDACTED] to further clarify his evidence.

13. Therefore, granting the Request would not be prejudicial to, or inconsistent with, the rights of the Accused and would enhance the expeditiousness of the proceedings by significantly shortening the length of P-0622's in-court testimony.

14. The Prosecution estimates that it will only require around 45 minutes for the examination-in-chief of P-0622 for the formalities associated with the admission of his statement and the succinct supplementary examination-in-chief. Should this application be rejected, the Prosecution requests that the Chamber accord the Prosecution three hours for P-0622's examination-in-chief as originally estimated for this witness.⁸

Conclusion

15. For the foregoing reasons, the Prosecution requests the Chamber to authorise the introduction into evidence of Witness P-0622's statement pursuant to rule 68(3) of the Rules and to authorise the Prosecution to conduct a succinct supplementary examination-in-chief of Witness P-0622.



Fatou Bensouda, Prosecutor

Dated this 15 October 2020

At The Hague, The Netherlands

⁸ [REDACTED]