

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 19 March 2020

TRIAL CHAMBER X

Before: Judge Kimberly Prost, Single Judge

SITUATION IN THE REPUBLIC OF MALI

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

Confidential redacted version

**Decision on the Prosecution request concerning protective measures for
Prosecution Witness P-0639 and related disclosure matters**

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
Marie-Hélène Proulx

Legal Representatives of Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Kimberly Prost, acting as Single Judge of Trial Chamber X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 54(3)(f), 64(2), (3)(c) and (6), 67 and 68 of the Rome Statute, and Rules 76, 81(4) and 84 of the Rules of Procedure and Evidence, issues this 'Decision on the Prosecution request concerning protective measures for Prosecution Witness P-0639 and related disclosure matters'.

I. Procedural history

1. On 30 December 2019, the Single Judge issued a decision authorising the Prosecution to withhold the identities of Witnesses MLI-OTP-P-0636, MLI-OTP-P-0638, MLI-OTP-P-0639 ('P-0639') and MLI-OTP-P-0641 by redacting all identifying information from their statements.¹ She further decided that the relevant redactions should be lifted by 10 February 2020, without prejudice to any further application the Prosecution might wish to make on this subject until that date.
2. The same day, the Single Judge rendered a decision setting up a procedure and relevant time limits concerning the disclosure and re-disclosure of evidence (the 'Disclosure Decision').² By way of this decision, the Single Judge notably instructed the Prosecution to file any application to seek authorisation to delay the disclosure of the identity of a witness by 10 February 2020.³
3. On 6 January 2020, the Chamber issued a decision setting the commencement date of the trial to 14 July 2020 and adopting a calendar leading up to this date. It notably set 14 April 2020 as the deadline for the Prosecution to finalise its evidence disclosure.⁴

¹ Decision on the Prosecution motion for authorisation to withhold information identifying Witnesses MLI-OTP-P-0636, MLI-OTP-P-0638, MLI-OTP-P-0639 and MLI-OTP-P-0641 from their statements, ICC-01/12-01/18-545-Conf-Exp (a confidential *ex parte* redacted version of the decision, accessible to the Defence, ICC-01/12-01/18-545-Conf-Exp-Red, and a public redacted version of the decision, ICC-01/12-01/18-545-Red2, were filed the same day).

² Decision on the evidence disclosure protocol and other related matters, ICC-01/12-01/18-546.

³ Disclosure Decision, ICC-01/12-01/18-546, para. 20.

⁴ Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548.

4. On 22 January 2020, the Single Judge partially granted a Prosecution request to vary the time limits set in the Disclosure Decision and notably postponed the deadline initially set for the filing of any application to maintain non-standard redactions, including the identity of witnesses expected to be called by the Prosecution, to 10 March 2020.⁵
5. On 6 March 2020, the Prosecution filed a request seeking the authorisation to temporarily maintain the redactions to the identifying information of P-0639 [REDACTED] (the 'Prosecution Request').⁶ The Prosecution argues that there is good cause to grant this request, as P-0639 [REDACTED] and [REDACTED].⁷ It further anticipates that the disclosure of P-0639's identity should take place before the final deadline for disclosure.⁸
6. On 19 March 2020, the Prosecution provided updated information regarding the situation of P-0639, informing the Single Judge that P-0639 is now [REDACTED] and that, while [REDACTED], the VWU does not have any objections to the disclosure of P-0639's identity to the Defence (the 'Prosecution Update').⁹ It further submits that, due to the current situation relating to the spread of COVID-19 and the resulting measures implemented by the Court, it is not in a position to proceed with disclosure of evidence as per the eCourt Protocol, as this procedure cannot be facilitated remotely.¹⁰ The Prosecution nonetheless notes that it is able to prepare disclosure packages in Records Manager ('RM') remotely and send links thereto to the Defence, and proposes to proceed with communicating identifying information of P-0639 to the Defence as soon as practicable *via* RM links only.¹¹

⁵ Decision on Prosecution request for a variation of time limits relating to the disclosure of evidence and scheduling a second status conference, ICC-01/12-01/18-558.

⁶ Prosecution request relating to protective measures for Prosecution Witness MLI-OTP-P-0639, ICC-01/12-01/18-639-Conf-Exp (*ex parte* Prosecution and VWU only; a confidential redacted version of the request, ICC-01/12-01/18-639-Conf-Red, was filed on 9 March 2020).

⁷ Prosecution Request, ICC-01/12-01/18-639-Conf-Exp, paras 1-2, 10-11.

⁸ Prosecution Request, ICC-01/12-01/18-639-Conf-Exp, para. 12.

⁹ Prosecution's Update regarding Prosecution Witness MLI-OTP-P-0639 and disclosure of evidence, ICC-01/12-01/18-673-Conf-Exp, para. 3 (*ex parte* Prosecution and VWU only).

¹⁰ Prosecution Update, ICC-01/12-01/18-673-Conf-Exp, paras 4-5.

¹¹ Prosecution Update, ICC-01/12-01/18-673-Conf-Exp, paras 5-6.

II. Analysis

7. To ensure that disclosable material is provided to the Defence at the earliest opportunity, and on an exceptional basis, the Single Judge finds it appropriate to render the present decision without first receiving a Defence response.
8. The Single Judge notes that, in its initial request, the Prosecution sought to maintain the redactions applied to the identifying information of P-0639 pending [REDACTED].¹² The Single Judge further observes that, as indicated by the Prosecution, P-0639 has now [REDACTED] and the VWU does not have any objections to the disclosure of P-0639's identity to the Defence.¹³
9. In light of the foregoing, the Single Judge considers the Prosecution Request moot and is of the view that the Prosecution should proceed with the disclosure of P-0639's identity to the Defence and the lifting of redactions applied to the corresponding material at the earliest opportunity.
10. The Single Judge however takes note of the difficulties faced in relation to disclosure of evidence, a procedure which cannot currently be facilitated remotely.¹⁴ In view of the circumstances, the Single Judge authorises the alternative method proposed by the Prosecution to proceed with disclosure outside eCourt, *via* RM links only.

¹² Prosecution Request, ICC-01/12-01/18-639-Conf-Exp, para. 1.

¹³ Prosecution Update, ICC-01/12-01/18-673-Conf-Ex, para. 3.

¹⁴ Prosecution Update, ICC-01/12-01/18-673-Conf-Exp, paras 5-6.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

DECLARES the Prosecution Request moot;

ORDERS the Prosecution to disclose to the Defence the identity and identifying information of Witness P-0639, within one day of notification of this decision;

ORDERS the Prosecution to disclose all related disclosable material, applying only standard redactions, at the earliest opportunity, but no later than two weeks after the notification of this decision; and

AUTHORISES the Prosecution to temporarily proceed with disclosure outside eCourt, through the alternative method proposed.

Done in both English and French, the English version being authoritative.



Judge Kimberly Prost, Single Judge

Dated this Thursday, 19 March 2020

At The Hague, The Netherlands