

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 6 May 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

**Confidential redacted version of 'Decision on the urgent Prosecution request
seeking authorisation to apply a non-standard redaction to the material of
screened individual P-0128'**

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
Thomas Hannis

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*, issues the present decision.

1. On 1 May 2020, the Prosecution filed an urgent request seeking the Chamber's authorisation to apply a non-standard redaction to an excerpt of the screening note of P-0128 (the 'Request').¹ The Request was notified in redacted form to the Defence on 4 May 2020.²
2. On 4 May 2020, the Single Judge shortened the deadline for any response to the Request.³
3. Also on 4 May 2020, the Defence sent an email seeking to obtain the screening note of P-0128 in its proposed redacted form in advance of the deadline set to file its response.⁴ Also via email, the Single Judge recalled her prior direction in this regard and instructed the Prosecution to disclose the item forthwith.⁵ The screening note, MLI-OTP-0030-0661, was provided in redacted form to the Defence that same day.⁶
4. On 5 May 2020, the Defence submitted its response to the Request via email.⁷ It states that '[t]he Prosecution's request does not illuminate the type of information that is covered' by the redaction sought and notes that 'it is apparent from the size of the redaction, that it does not involve a specific name or source, but an entire element of information'. Further indicating that it has reasons to believe that P-0128 has information that is relevant to the reliability

¹ Urgent Prosecution Request to Apply a Non-Standard Redaction to a Discrete Portion of MLI-OTP-P-0128 Screening Note, registered on 30 April 2020, notified on 1 May 2020, ICC-01/12-01/18-780-Conf-Exp, with one annex, both being confidential, *ex parte*, Prosecution and VWU only.

² A confidential redacted version of the Request was filed on 1 May 2020 and notified on 4 May 2020 (ICC-01/12-01/18-780-Conf-Red).

³ Email from the Chamber to the parties and participants, 4 May 2020, at 9:15.

⁴ Email from the Defence to the Chamber, 4 May 2020, at 10:22.

⁵ Email from the Chamber to all parties and participants, 4 May 2020, at 11:08, referring to Decision on the evidence disclosure protocol and other related matters, 30 December 2019, ICC-01/12-01/18-546, para. 15 ('[...] the Single Judge finds it appropriate for the relevant material in its proposed redacted form to be disclosed to the receiving party simultaneously with the application [seeking the Chamber authorisation for redactions falling outside the standard categories]').

⁶ Email from the Prosecution to the Chamber, the Defence and the LRVs, 4 May 2020, at 12:47.

⁷ Email from the Defence to the Chamber, the Prosecution and the LRVs, 5 May 2020, at 11:11.

of testimony provided by other Prosecution witnesses, the Defence indicates that it would therefore 'oppose any redaction that relates to alleged members of the common plan, Prosecution witnesses, individuals/NGOs involved in the collection of evidence in this case, or which would otherwise be relevant to the reliability of such individuals'.

5. The Single Judge refers to Articles 54(3)(f), 64(2), 3(c) and (6), 67(1) and 68(1) and (5) of the Statute and Rules 77 and 81(4) of the Rules of Procedure and Evidence (the 'Rules') and incorporates by reference the relevant applicable law set out in her decision of 27 March 2020.⁸
6. At the outset, and in light of the Defence's response, the Single Judge clarifies that the redactions applied by the Prosecution to its Request are necessary and that revealing the details withheld to the Defence would defeat the very purpose of the relief sought.
7. Turning to the merits of the Request, the Single Judge recalls that the Prosecution does not rely on P-0128's information and will not call him to testify at trial.⁹ The Single Judge also recalls that, in rendering her decision varying the protective measures ordered for P-0128, and deciding that there was an objective risk to his safety and privacy were his identity to be disclosed to the Defence,¹⁰ she notably considered his personal circumstances, in particular the fact that [REDACTED], as well as his profile, including that [REDACTED].¹¹ Nonetheless, having found that P-0128's information is potentially relevant and material to Defence preparations, and that the other available measures were unduly prejudicial to the Defence, the Single Judge decided to order the

⁸ Decision on the Prosecution requests concerning the variation of protective measures for screened individuals P-0105, P-0120, P-0128, P-0129, P-0140 and P-0154, 27 March 2020, ICC-01/12-01/18-684-Conf-Red (the 'First Decision'), paras 11-17 and jurisprudence cited therein.

⁹ Prosecution Request to Maintain Protective Measures for Screened Individuals MLI-OTP-P-0105, MLI-OTP-P-0128, MLI-OTP-P-0129 and MLI-OTP-P-0154, 4 March 2020, ICC-01/12-01/18-627-Conf-Red, para. 30.

¹⁰ First Decision, ICC-01/12-01/18-684-Conf-Red, para. 33.

¹¹ First Decision, ICC-01/12-01/18-684-Conf-Exp, para. 33.

disclosure of P-0128's identity, as well as relevant material, to the Defence team only and not Mr Al Hassan.¹²

8. While it is uncontested the screening note of P-0128 contains information that is relevant, the discrete excerpt sought to be redacted does not relate to these matters.¹³ The Single Judge further recalls how the fact that P-0128 [REDACTED] was considered to be a factor which could further increase his risk of being targeted.¹⁴ Accordingly, having considered the justification provided by the Prosecution,¹⁵ and in light of the potential risks to the individual which could result from disclosure of the relevant excerpt, the Single Judge considers that the application of a discrete redaction is a necessary and appropriate measure in the circumstances. The Single Judge considers that this represents the least intrusive measure available and recalls that the relevant material, in redacted form, has otherwise been provided to the Defence in full, except for the limited standard redactions applied.
9. Finally, the Single Judge finds that the measure does not impact the Defence's ability to rely on P-0128 as a potential source and, as such, the restriction to disclosure, which does not limit the Defence's access to relevant information, is proportionate and not inconsistent with the rights of Mr Al Hassan.

¹² Decision on the Prosecution requests concerning the variation of protective measures for non-trial witnesses P-0107, P-0121, P-0123, P-0128, P-0357 and P-0523, 17 April 2020, ICC-01/12-01/18-758-Conf-Exp (a confidential redacted version was notified on the same day, ICC-01/12-01/18-758-Conf-Red), paras 40-44. *See also*, First Decision, ICC-01/12-01/18-684-Conf-Red, paras 34-40.

¹³ Annex A to the Request, ICC-01/12-01/18-780-Conf-Exp-AnxA, p.4; MLI-OTP-0030-0661, at 0263.

¹⁴ First Decision, ICC-01/12-01/18-684-Conf-Exp, para. 33.

¹⁵ Request, ICC-01/12-01/18-780-Conf-Exp, paras 14-16.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Requests; and

AUTHORISES to the Prosecution to apply the redaction sought to P-0128's screening note.

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

A handwritten signature in grey ink, appearing to read 'K Prost', is written over a horizontal line.

Judge Kimberly Prost, Single Judge

Dated this Wednesday, 6 May 2020

At The Hague, The Netherlands