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No. ICC-01/12-01/18
Date of original: 10 March 2020
Date: 18 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

Public

**Public redacted version of ‘Decision on the Prosecution’s request regarding
disclosure of Witness P-0114’s identity’**

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 on behalf 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 64, 67 and 68 of the Rome Statute (the ‘Statute’), Rule 81 of the Rules of Procedure and Evidence and Regulation 42 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on the Prosecution’s request regarding disclosure of Witness P-0114’s identity’.

I. Background and submissions

1. On 3 December 2015, the Single Judge of Pre-Trial Chamber I (hereinafter: ‘PTC I’) in the *Al Mahdi* case granted the Prosecution’s application to redact all identifying information of Witness P-0114 and for non-disclosure of documents associated with P-0114.¹
2. On 4 December 2018, the Single Judge of PTC I in the *Al Hassan* case confirmed the continuation of the above mentioned protective measure for Witness P-0114, and authorised the Prosecution to take additional measures consisting of further redactions on Witness P-0114’s statements and non-disclosure of certain documents.²
3. On 30 January 2020, the Prosecution filed a request before the *Al Mahdi* Trial Chamber, seeking variation of protective measures for several witnesses, including Witness P-0114.³
4. On 10 February 2020, the Single Judge of the *Al Mahdi* Trial Chamber declared that it was unable to rule on requests for variation of protective measures as Trial Chamber VIII was no longer ‘seized of the proceedings’ within the meaning of Regulation 42 of the Regulations.⁴ It was therefore decided that

¹ Decision on the Prosecutor's requests for redactions, ICC-01/12-01/15-53-Red.

² Confidential Redacted Version of the Decision on the Prosecutor’s Motions for Authorization to Withhold the Identities of Witnesses MLI-OTP-P-0114 and MLI-OTP-P-0147, ICC-01/12-01/18-198-Conf-Exp-Red-tENG.

³ Public redacted version of the “Prosecution’s request for variation of protective measures for witnesses MLI-OTP-P-0004, MLI-OTP-P-0113, MLI-OTP-P-0114 and MLI-OTP-P-0147”, 30 January 2020, ICC-01/12-01/15-342-Conf-Exp, ICC-01/12-01/15-342-Red2.

⁴ Decision on Prosecution’s Requests for Variation of Protective Measures, ICC-01/12-01/15-344.

requests concerning the variation of protective measures ordered in the *Al Mahdi* case must be brought before Trial Chamber X in the *Al Hassan* case.

5. On 13 February 2019, the Single Judge of the Chamber issued her ‘Decision on the variation of protective measures for Witnesses P-0004, P-0113, P-0114, P-0147, and P-0431’ (the ‘First Decision’) where it was decided, *inter alia*, that the identity and identifying information of P-0114 should be disclosed to the Defence.⁵ The Single Judge however directed the Prosecution to file an application seeking delayed disclosure of Witness P-0114’s identity, should it become [REDACTED].⁶
6. On 6 March 2020, the Prosecution filed a request seeking the Chamber’s authorisation to disclose the identity and identifying information of Witness P-0114 (the ‘Request’).⁷ The Prosecution informs the Chamber that [REDACTED].⁸ The Prosecution observes that owing, *inter alia*, to [REDACTED] and the active monitoring of Mr Al Hassan’s non privileged communications, the risk arising from the disclosure of the identity of Witness P-0114 to the Defence is manageable.⁹ Given that Witness P-0114 agreed to the disclosure of his identity, the Prosecution requests the Single Judge to authorise the disclosure of his identity and identifying information [REDACTED].¹⁰
7. On 9 March 2020, the Victims and Witness Unit (the ‘VWU’) submitted its observations on the Request.¹¹ The VWU informs the Chamber that following [REDACTED], it [REDACTED]. [REDACTED]. The VWU also informs the Chamber that, at the same time, it learned that the witness [REDACTED].
8. The VWU indicates that it is not of the view that [REDACTED] and submits that the [REDACTED]. It notes in this regard that [REDACTED]. However, the VWU observes that [REDACTED]. It notes [REDACTED] as proposed by the

⁵ Public redacted version of ‘Decision on the variation of protective measures for Witnesses P-0004, P-0113, P-0114, P-0147, and P-0431’, ICC-01/12-01/18-586-Red.

⁶ First Decision, ICC-01/12-01/18-586-Red, para. 17.

⁷ Prosecution’s update and request regarding disclosure of Witness MLI-OTP-P-0114’s identity, ICC-01/12-01/18-638-Conf-Exp.

⁸ Request, ICC-01/12-01/18-638-Conf-Exp, paras 16-17.

⁹ Request, ICC-01/12-01/18-638-Conf-Exp, paras 18-21.

¹⁰ Request, ICC-01/12-01/18-638-Conf-Exp, para. 22.

¹¹ Email from VWU to the Chamber, 9 March 2020, at 14:37.

Prosecution, as well as the [REDACTED].¹² In light of this, and [REDACTED], the VWU ‘finds no reason to recommend against disclosure by the set deadline’.

9. On 9 March 2020, the Prosecution filed a confidential redacted version of the Request.¹³

II. Analysis

10. At the outset, the Single Judge recalls her interpretation of the relevant statutory provisions, as set out in the First Decision.¹⁴
11. To ensure that disclosable material is provided to the Defence at the earliest opportunity, and on an exceptional basis, the Single Judges finds it appropriate to render the present ruling without first receiving a Defence response.
12. The Single Judge notes that Witness P-0114 is expected to be called at trial by the Prosecution, notably to testify about the history of the mausoleums and the persecution on religious grounds.¹⁵ The Single Judge recalls that the Prosecution is to disclose any incriminating material it intends to rely on at trial no later than 14 April 2020.¹⁶
13. The Single Judge further recalls that, in her First Decision of 13 February 2020, she decided that, despite the risks faced by Witness P-0114, the withholding of identifying information from the Defence was no longer justified at this stage of the proceedings and ordered disclosure of his identity upon [REDACTED].¹⁷
14. In this regard, the Single Judge observes that, as noted by the Prosecution, [REDACTED]. The Single Judge notes in this regard that the VWU

¹² [REDACTED].

¹³ Confidential redacted version of the “Prosecution’s update and request regarding disclosure of Witness MLI-OTP-P-0114’s identity”, 6 March 2020, ICC-01/12-01/18-638-Conf-Exp, ICC-01/12-01/18-638-Conf-Red.

¹⁴ First Decision, ICC-01/12-01/18-586-Red, paras 6-10.

¹⁵ Provisional list of Prosecution witnesses *annexed* to Prosecution submission of Provisional list of Prosecution witnesses, 31 January 2020, ICC-01/12-01/18-572-Conf-AnxA, p. 2.

¹⁶ Decision Setting the Commencement Date of the Trial, 6 January 2020, ICC-01/12-01/18-548, para. 8.

¹⁷ First Decision, ICC-01/12-01/18-586-Red, para. 15.

[REDACTED].¹⁸ It also appears that [REDACTED].¹⁹ Furthermore, the Single Judge observes that the witness [REDACTED], that he [REDACTED], and also that he [REDACTED].²⁰

15. For the aforementioned reasons, and recalling that Witness P-0114 has provided his consent to the disclosure of his identity to the Defence, the Single Judge grants the Request as she remains of the view that it is appropriate to terminate the non-disclosure orders for the purposes of the present case. Accordingly, and by the deadline set for full disclosure, the Prosecution shall provide to the Defence all disclosable material related to Witness P-0114 without applying redactions to his identifying information. In the circumstances, the Single Judge also finds it appropriate to order the Prosecution to immediately reveal to the Defence the identity of Witness P-0114.

¹⁸ Email from VWU to the Chamber, 9 March 2020, at 14:37, para. 7.

¹⁹ Request, ICC-01/12-01/18-638-Conf-Exp, para. 19; Email from VWU to the Chamber, 9 March 2020, at 14:37, para. 7.

²⁰ Request, ICC-01/12-01/18-638-Conf-Exp, paras 18-19; Email from VWU to the Chamber, 9 March 2020, at 14:37, paras 5, 7.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Prosecution's Request;

CONFIRMS the prior order in the First Decision and **INSTRUCTS** the Prosecution to reveal to the Defence the identity of Witness P-0114 today and to disclose at the earliest opportunity, and at the latest by the deadline for full disclosure, all related disclosable material, applying only standard redactions.

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

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

Judge Kimberly Prost

Single Judge

Dated this Tuesday, 10 March 2020

At The Hague, The Netherlands