



Original: English

No. ICC-01/12-01/18

Date: 11 August 2021

Date of original: 19 May 2021

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 redacted version

**Second decision on the disclosure of information related to
Prosecution intermediary P-0572**

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
Kirsty Sutherland
Antoine Vey

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 (the ‘Court’), in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Article 54(3)(f), 64, 67(2), 68(3) of the Rome Statute (the ‘Statute’) and Rules 77 and 81(2) and (4) of the Rules of Procedure and Evidence (the ‘Rules’), issues the following decision.

1. On 29 April 2021, the Defence requested, notably, that the Chamber order the Office of the Prosecutor (the ‘Prosecution’) to respond to certain questions in relation to Prosecution intermediary P-0572 and to disclose P-0572’s name in the event that he or she is a person of interest in the case (the ‘Request’).¹
2. On 4 May 2021, the Prosecution provided its submissions in response to the Request (the ‘Submissions’).²
3. On 7 May 2021, the Legal Representatives of Victims (the ‘LRVs’)³ and the Defence⁴ provided their responses to the Prosecution’s Submissions.
4. On 12 May 2021, the Single Judge rendered a decision which notably rejected the Request (the ‘Decision of 12 May 2021’).⁵
5. Also on 12 May 2021, the Prosecution filed an addendum to its Submissions (the ‘Addendum’),⁶ providing additional *ex parte* information to the Chamber, including the identity of P-0572.

¹ Email from the Defence to the Chamber on 29 April 2021 at 12:10.

² Prosecution’s request to retain redactions on one item related to Prosecution Witness MLI-OTP-P-0570 and to the identity of Prosecution intermediary MLI-OTP-P-0572, ICC-01/12-01/18-1462-Conf (the ‘Prosecution Submissions’) with one confidential, *ex parte*, annex (only available to the Prosecution).

³ Observations à la requête de l’Accusation sollicitant le maintien d’une expurgation relative au témoin MLI-OTP-P-0570 et de l’expurgation de l’identité de l’intermédiaire MLI-OTP-P-0572 (ICC-01/12-01/18-1462-Conf), ICC-01/12-01/18-1465-Conf.

⁴ Defence Response to ‘Prosecution’s request to retain redactions on one item related to Prosecution Witness MLI-OTP-P-0570 and to the identity of Prosecution intermediary MLI-OTP-P-0572’, ICC-01/12-01/18-1466-Conf (with two confidential annexes).

⁵ Decision on redactions applied to medical documents related to P-0570 and disclosure of information related to Prosecution intermediary P-0572, ICC-01/12-01/18-1473-Conf-Exp. A confidential redacted version was issued on the same day.

⁶ Prosecution addendum to “Prosecution’s request to retain redactions on one item related to Prosecution Witness MLI-OTP-P-0570 and to the identity of Prosecution intermediary MLI-OTP-P-0572”, ICC-01/12-01/18-1471-Conf-Exp, with one confidential *ex parte* Annex.

6. On 19 May 2021, the LRVs filed observations on the Addendum.⁷
7. The Single Judge is of the view that, in order to ensure full respect for the rights of the accused, the information newly provided requires that she conducts a new assessment with respect to the Request.⁸
8. The Single Judge recalls that she initially considered that the information sought to be disclosed was not disclosable because ‘the *prima facie* materiality of the information sought by the Defence in relation to P-0572, including concerning P-0572’s role as a Prosecution intermediary and potential interactions with certain individuals or organisations, has not been established.’⁹ While the Defence’s claim¹⁰ that certain organisations, associations and intermediaries may have ‘contaminated’ the evidence of victims in this case remains at this stage unsubstantiated,¹¹ there is enough before the Single Judge to find that the materiality of P-0572’s identity, beyond her role as a Prosecution intermediary, most notably in light of her involvement vis-à-vis Witness P-0570, has been established in light of the additional information provided in the Addendum.
9. The Single Judge notes in particular that the Defence sought to confirm: (i) whether the name or identity of P-0572 has come up in the proceedings so far; and (ii) whether P-0572 is associated or involved with [REDACTED].¹² It has become clear, with the additional information contained in the Addendum, that the answers to these two questions are positive and that the Defence expressed a particular interest in tracing P-0572’s involvement in relation to the evidence in this case.¹³

⁷ Observations à l’Addendum à la Requête de l’Accusation sollicitant le maintien d’une expurgation relative au témoin MLI-OTP-P-0570 et de l’expurgation de l’identité de l’intermédiaire MLI-OTP-P-0572 (ICC-01/12-01/18-1471-Conf-Exp), ICC-01/12-01/18-1485-Conf-Exp (the ‘LRVs Submissions’).

⁸ See Decision on the Evidence Disclosure Protocol, 30 December 2019, ICC-01/12-01/18-546, para. 18.

⁹ Decision of 12 May 2021, ICC-01/12-01/18-1473-Conf-Red, para. 18.

¹⁰ Defence Response, ICC-01/12-01/18-1466-Conf, para. 14.

¹¹ The Single Judge agrees with the LRVs that there is nothing before the Chamber that suggests [REDACTED] (LRVs Submissions, ICC-01/12-01/18-1485-Conf-Exp, paras 16-18). The Single Judge however considers that such indication is in no way required to establish *prima facie* materiality of an individual’s identity or involvement. Rather, it is a case-by-case assessment which must be conducted, in light of all relevant information available.

¹² Defence Response, ICC-01/12-01/18-1466-Conf, para. 10.

¹³ Defence Response, ICC-01/12-01/18-1466-Conf, para. 14.

10. The Single Judge also notes that, beyond general arguments under Rule 81(2) of the Rules, providing the basis for the standard justification under category A.5. ('Identifying and contact information of intermediaries'), no further justifications were presented by the Prosecution for the non-disclosure sought with respect to P-0572 specifically.¹⁴ The Single Judge gave due consideration to the LRVs Submissions in this regard,¹⁵ but finds that they do not identify additional or sufficiently specific risks which would arise from disclosing P-0572's name or roles to the Defence.
11. In light of the above, pursuant to the legal framework set out in the 'Decision on the evidence disclosure protocol and other related matters',¹⁶ and having weighed the competing interests at stake, the Single Judge considers that redactions to P-0572's identifying information are no longer appropriate nor proportionate. Accordingly, the Single Judge grants the Request and orders that P-0572's identity be disclosed to the Defence and related redactions be lifted.

¹⁴ Prosecution Submissions, ICC-01/12-01/18-1462-Conf, para. 32.

¹⁵ LRVs Submissions, ICC-01/12-01/18-1485-Conf-Exp, paras 15 and 20-21.

¹⁶ Decision on the Evidence Disclosure Protocol, ICC-01/12-01/18-546.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request;

ORDERS the Prosecution to disclose forthwith to the Defence the identity of P-0572 and to lift at the earliest opportunity any redaction applied to her identifying information from material disclosed; and

ORDERS the Prosecution and the LRVs to respectively file confidential redacted versions of the Addendum and LRVs Submissions, or seek reclassification thereof, by 24 May 2021.

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 Wednesday, 19 May 2021

At The Hague, The Netherlands