

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 14 September 2020

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
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**

Confidential

**Decision on the Prosecution request for an order giving effect to conditions to
testimony of Witness P-0151**

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
Nicoletta Montefusco

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

Detention Section

**Victims Participation and Reparations
Section**

Other
UNESCO

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 Article 64(2), (6)(c) and (e) of the Rome Statute (the ‘Statute’), issues the following decision.

1. On 20 August 2020, the Prosecution filed the ‘Prosecution Request for an order giving effect to conditions in relation to the testimony of Witness MLI-OTP-P-0151’ (the ‘Request’).¹ The Prosecution informs that P-0151 is a former United Nations Educational, Scientific and Cultural Organization (‘UNESCO’) official who was designated by the UNESCO to give a statement and testify on information sought by the Prosecution concerning the procedures, legal framework, effects and consequences of the inscription of sites on the UNESCO World Heritage List and more particularly with regard to the World Heritage Sites in the city of Timbuktu (the ‘Topics’). The Prosecution reports that UNESCO agreed to waive the immunity from legal process that is enjoyed by P-0151, so as to allow him to provide expert testimony before the Court, upon certain conditions being met. The Prosecution submits that the conditions requested are reasonable, necessary to limit the exposure of UNESCO, as well as to protect confidential information, the witness, and any other innocent third parties, and that they will not affect the substance of P-0151’s testimony.²
2. Specifically, UNESCO’s waiver is conditional upon:
 - i) the testimony of P-0151 being limited to the above Topics;
 - ii) the Trial Chamber authorising a UNESCO representative to attend P-0151’s testimony before the Court;
 - iii) the representative be authorised to consult with the witness and be consulted by him in the course of his testimony; and
 - iv) that such a representative be authorised to make submissions to the Trial Chamber that P-0151 not be required to respond to a question or to

¹ Notified on 21 August 2020, ICC-01/12-01/18-1005-Conf (with one confidential annex).

² Request, ICC-01/12-01/18-1005-Conf, para. 14.

supply certain information if so doing would result in certain risks or consequences as further detailed in the Request.³

3. On 2 September 2020, the Defence filed its response to the Request.⁴ The Defence submits that the Chamber should refuse to hear P-0151 under the conditions sought, particularly as regards the intervention of the UNESCO representative. In its view, this would unfairly restrict Mr Al Hassan's right to cross-examine the witness. In this regard, the Defence argues that the presence of and interventions by the representative during the testimony will interfere with the Defence's ability to effectively test the credibility and reliability of the witness's evidence or will amount to unacceptable coaching or preparation. In the alternative, the Defence requests the Chamber retain control of proceedings and that it order that any intervention by the UNESCO representative be conditioned on prior leave sought from the Chamber, with input from the Defence.
4. In light of the submissions received, and having considered the nature of the conditions sought, as well as their potential impact on the proceedings, the Chamber grants the Request and decides that the testimony of P-0151 shall proceed under the conditions sought by UNESCO, with the below caveat.
5. The Chamber considers that the Defence's request for the UNESCO representative's interventions to be conditioned upon leave being granted by the Chamber is reasonable and constitutes an appropriate way forward. The Chamber will therefore not allow the representative to interrupt the witness or to communicate with him directly in the courtroom, without prior leave of the Chamber. Accordingly, any intervention by the UNESCO representative in application of the conditions iii) and iv) listed above will be subject to the authorisation of the Chamber.

³ Request, ICC-01/12-01/18-1005-Conf, para. 12 and Annex A to the Request, ICC-01/12-01/18-1005-Conf-AnxA.

⁴ Defence Response to 'Prosecution Request for an order giving effect to conditions in relation to the testimony of Witness MLI-OTP-P-0151', ICC-01/12-01/18-1031-Conf.

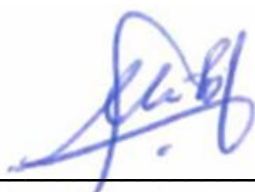
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Prosecution Request;

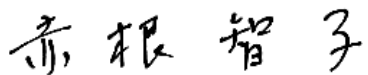
INSTRUCTS the Prosecution to file a public redacted version of the Request within one week of notification of the present decision; and

INSTRUCTS the Defence to file a public redacted version of the Response within one week of notification of the public redacted version of the Request.

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



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this Monday, 14 September 2020

At The Hague, The Netherlands