



Original: English

No. ICC-01/12-01/18

Date: 6 August 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

**Decision on the Prosecution's application for P-0102's testimony to be conducted
via video-link**

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

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Kimberly Prost, acting as Single Judge of Trial Chamber X (‘Single Judge’ and ‘Chamber’, respectively) 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 68 and 69(2) of the Rome Statute (the ‘Statute’) and Rule 67 of the Rules of Procedure and Evidence (‘Rules’), issues the following decision.

1. On 6 May 2020, the Chamber issued its directions on the conduct of proceedings pursuant to Rule 140 of the Rules (the ‘Directions’), in which it, *inter alia*, decided that ‘no request to hear a witness via video-link is necessary’ and clarified that ‘it suffices that the calling party or participant clearly provides notice of the prospective use of video-link in its list of witnesses, or any subsequent update thereof’.¹
2. On 28 May 2020, the Chamber rendered the ‘Decision on Defence request for leave to appeal the Decision on the conduct of proceedings’.² In this decision, the Chamber notably found that the issue as to ‘whether Article 69(2) requires the Trial Chamber to make case by case determination as to whether the use of video-link technology, for specific witnesses, is consistent with the rights of the accused’ was not an appealable issue and that the Defence’s related arguments regarding potential prejudice were premature and speculative.³
3. On 27 July 2020, the Prosecution filed a request seeking that the Chamber: i) authorises the testimony of Witness P-0102 to be heard via video-link (the ‘Request’); and ii) approves the sharing of the details regarding P-0102’s medical condition as described in Annex A to the Request to the accused’s lead counsel and co-counsel only (the ‘Interim Request’).⁴

¹ Annex A to the Decision on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, para. 54.

² ICC-01/12-01/18-831 (the ‘Leave to Appeal Decision’).

³ Leave to Appeal Decision, ICC-01/12-01/18-831, para. 15.

⁴ Prosecution’s request to hear Witness MLI-OTP-P-0102’s testimony *via* video-link, ICC-01/12-01/18-977-Conf-Exp, with a secret, *ex parte*, annex, only available to the Prosecution and the Victims and Witnesses Unit. A confidential redacted version of this filing was notified on 30 July 2020.

4. On 5 August, 2020, in accordance with the deadline set by the Single Judge,⁵ the Legal representatives of victims indicated that they did not oppose the Request.⁶ The Defence did not submit a response.
5. The Single Judge notes that the Request serves as notice of the prospective use of video-link for the testimony of Witness P-0102. For the sake of clarity, the parties and participants are reminded that it was decided that no request to hear witnesses via video-link was necessary. In this regard, the Single Judge stresses that, after provision of the required notice – ideally by way of a clear indication to that effect in an updated witness list –, the calling party does not have to seek the Chamber’s prior authorisation before proceeding with the required practical arrangements. Should there be any challenge from the other party following notification that video-link testimony is being relied upon for a specific witness, and where no agreement could be reached *inter partes*, this objection to the use of video-link should be raised with the Chamber at the earliest opportunity, that is sufficiently in advance of the testimony for the Chamber to review the matter.
6. In light of the foregoing, and having been presented with no reason not to proceed with the making of arrangements to facilitate the hearing of that testimony by way of video-link, the Single Judge confirms that the testimony of Witness P-0102 may be heard via video-link. In the circumstances, the Single Judge does not find it necessary to pronounce on the Interim Request and leaves this matter for the Prosecution’s determination.

⁵ Email from the Single Judge to the parties and participants on 30 July 2020 at 10:26.

⁶ Email from the Legal representatives to the Chamber on 5 August 2020 at 12:53.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

CONFIRMS that the testimony of Witness P-0102 may be heard via video-link; and

DECLARES the Request moot.

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 Thursday, 6 August 2020

At The Hague, The Netherlands