



Original: English

**No. ICC-01/12-01/18
Date: 26 January 2021**

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***

**Public redacted version
Corrigendum
Fourth Decision on in-court protective measures for witnesses**

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants for
Participation/Reparations**

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Defence**

States Representatives

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**Victims Participation and Reparations
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Other

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), 64(6)(e) and (f), 64(7), 64(8)(b), 67(1) and 68(1) and (2) of the Rome Statute, Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 20 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Fourth Decision on in-court protective measures for witnesses’.

I. Procedural history

1. On 6 May 2020, the Chamber issued its ‘Directions on the conduct of proceedings’, instructing the Office of the Prosecutor (the ‘Prosecution’) to ‘file a motivated application seeking relevant in-court protective measures pursuant to Rule 87 of the Rules for all Prosecution Witnesses for whom it is reasonably foreseeable that protective measures are required no later than 40 days before the start of the presentation of evidence’.¹
2. On 27 July 2020, the Prosecution filed a request seeking in-court protective measures for several of its witnesses, including P-0654 (the ‘First Application’).²
3. On 31 August 2020, the Prosecution filed a second application pursuant to Rule 87 (the ‘Second Application’), seeking in-court protective measures for various witnesses, including P-0554 and P-0984.³
4. On 17 August 2020, the Legal Representatives of Victims (the ‘LRVs’) submitted their response, indicating that they do not object to the First Application.⁴

¹ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 74-76. The deadline was subsequently extended on 22 July 2020. *See* Decision on the Prosecution’s witness order and variation of time limit for filing applications for in-court protective measures, 22 July 2020, ICC-01/12-01/18-968, para. 31.

² Requête de l’Accusation sur le fondement de la règle 87 aux fins de mesures de protection pour des témoins du Bloc 1, 27 July 2020, ICC-01/12-01/18-976-Conf-Exp, (confidential *ex parte*, available only to VWU and the Prosecution; confidential redacted versions were filed on 28 July 2020, ICC-01/12-01/18-976-Red, and on 7 September 2020, ICC-01/12-01/18-976-Conf-Red2; a public redacted version was filed on 14 September 2020, ICC-01/12-01/18-976-Red3).

³ Deuxième requête de l’Accusation sur le fondement de la règle 87 aux fins de mesures de protection des témoins du Bloc 2 et du Bloc 3, 31 August 2020, ICC-01/12-01/18-1020-Conf-Exp (confidential *ex parte*, available only to VWU and the Prosecution; a confidential redacted version was filed on 4 September 2020, ICC-01/12-01/18-1020-Conf-Red) (hereinafter: the ‘Second Application’).

⁴ Email from the LRVs, 17 August 2020, at 12:09.

5. On the same date, the Defence submitted its response to the First Application. The Defence indicates that while it does not adopt a specific position on each protective measures requested, the proceedings should remain open and transparent and consequently protective measures should be granted only where necessary and proportionate.⁵
6. Also on the same date, the Victims and Witnesses Unit ('VWU') filed its observations (the 'VWU First Observations').⁶ The VWU indicates that these are 'general observations' as it did not have the opportunity to make an assessment of all the witnesses who are subject to the First Application. The VWU confirms that it will meet all witnesses prior to their testimony and will then provide the Chamber with a more detailed assessment on necessary in-court protective measures.⁷
7. On 1 September 2020, the Prosecution filed a third application pursuant to Rule 87 (the 'Third Application'), seeking in-court protective measures for various witnesses, including P-0431, P-0626 and P-0160.
8. On 11 and 14 September 2020, the LRVs submitted their response to the Second and Third Applications, stating they do not object to the protective measures requested.⁸
9. On 18 September 2020, the VWU filed its observations on the Second and Third Applications (the 'VWU Second Observations').⁹

⁵ Email from the Defence, 17 August 2020, at 13:07.

⁶ Victims and Witnesses Unit's Observations on the « Requête de l'Accusation sur le fondement de la règle 87 aux fins de mesures de protection pour des témoins du Bloc 1 », 17 August 2020, ICC-01/12-01/18-998-Conf-Exp (confidential *ex parte*, available only to the Registry and the Prosecution; a confidential redacted version was filed on the same date, ICC-01/12-01/18-998-Conf-Red) .

⁷ VWU First Observations, ICC-01/12-01/18-998-Conf-Red, para. 9.

⁸ Email from the LRVs to TC X Communications, 11 September 2020, at 14:31; Email from the LRVs to TC X Communications, 14 September 2020, at 17:08.

⁹ Victims and Witnesses Unit's Observations on the "Deuxième requête de l'Accusation sur le fondement de la règle 87 aux fins de mesures de protection des témoins du Bloc 2 et du Bloc 3", on the "Prosecution's third application for in court protective measures for Block 2 and Block 3 witnesses and request for additional time to contact Witness MLI-OTP- P-0660" and on the "Prosecution's application for in-court protective measures for MLI-OTP-P-0660", 18 September 2020, ICC-01/12-01/18-1052-Conf-Exp (confidential *ex parte*, available only to the Registry and the Prosecution; a confidential redacted version was filed on the same date, ICC-01/12-01/18-1052-Conf-Red) (hereinafter : the 'VWU Second Observations').

10. The Defence did not submit any response to the Second and Third Applications.
11. On 30 November 2020, the Prosecution submitted its list of witnesses for January 2021, which included P-0654 as expected to testify between 18 and 29 January 2021.¹⁰
12. On 28 December 2020, the Prosecution submitted its list of witnesses for the month of February 2021, in which it indicated that P-0554, P-0984, P-0431, P-0626 and P-0160, for whom it has requested in-court protective measures, are scheduled to testify.¹¹

II. Submissions and analysis

P-0654

13. The Prosecution seeks in-court protective measures for P-0654, in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions. P-0654 is [REDACTED].¹² The Prosecution submits that witness P-0654 can be easily identified as the number of [REDACTED].¹³
14. P-0654 [REDACTED].¹⁴ The Prosecution submits that should his cooperation with the Court become public, there is an objectively justifiable risk to P-0654's safety, noting in particular [REDACTED].¹⁵
15. The Chamber notes that the Defence and the LRVs do not oppose the protective measures sought. It also notes that the VWU observes that the measures sought by the Prosecution would assist in preventing threat actors from becoming aware of the witness's cooperation with the Court, and therefore supports the requested measures.¹⁶ The VWU submits that while it [REDACTED].¹⁷

¹⁰ Email from the Prosecution, 30 November 2020, at 14:52.

¹¹ Email from the Prosecution on 28 December 2020 at 12:59.

¹² First Application, ICC-01/12-01/18-976-Conf-Exp, para. 29.

¹³ First Application, ICC-01/12-01/18-976-Conf-Exp, para. 29.

¹⁴ First Application, ICC-01/12-01/18-976-Conf-Exp, para. 31.

¹⁵ First Application, ICC-01/12-01/18-976-Conf-Exp, para. 31.

¹⁶ VWU First Observations, ICC-01/12-01/18-998-Conf-Exp, para. 16.

¹⁷ VWU First Observations, ICC-01/12-01/18-998-Conf-Exp, para. 16.

16. The Chamber is satisfied that an objectively justifiable risk for P-0654 has been demonstrated. In particular, the Chamber notes that the witness, [REDACTED]. Having regard to the current [REDACTED],¹⁸ the Chamber considers that P-0654 would face a significant and impermissible risk to his safety should his identity, and consequently his cooperation with the Court, become known to the public. Accordingly, the Chamber grants P-0654 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions. The parties and participants are ordered to fully comply with the Chamber's recent directions on the use of private and/or closed sessions.¹⁹

P-0554 and P-0984

17. The Prosecution seeks in-court protective measures for P-0554 and P-0984, in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions. P-0554 and P-0984, [REDACTED] and are expected to testify about an alleged flogging. [REDACTED].²⁰
18. The Prosecution submits that P-0554 and P-0984 need in-court protective measures because they face 'important' risks for their safety.²¹ The Prosecution emphasises that if they were to testify in public they could be identified by armed groups who could act in reprisal against them. This would also nullify [REDACTED].²²
19. The VWU recommends the requested in-court protective measures for Witnesses P-0554 and P-0984, noting that [REDACTED].²³ The VWU considers that the requested protective measures are essential [REDACTED] safety of these witnesses.²⁴

¹⁸ Confidential redacted version of the "Second Registry Report on the Security Situation in Mali", 3 July 2020, ICC-01/12-01/18-928-Conf-Red, para. 26.

¹⁹ Fourth decision on matters related to the conduct of proceedings, 26 January 2021, ICC-01/12-01/18-1265.

²⁰ Second Application, ICC-01/12-01/18-1020-Conf-Exp, paras 13, 15.

²¹ Second Application, ICC-01/12-01/18-1020-Conf-Exp, paras 13, 37.

²² Second Application, ICC-01/12-01/18-1020-Conf-Exp, para. 19.

²³ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 8.

²⁴ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 8.

20. The Chamber notes that these witnesses [REDACTED], which has deemed necessary to adopt measures to preserve their safety. The Chamber therefore finds that the in-court protective measures sought are necessary to protect Witnesses P-0554 and P-0984 [REDACTED].

P-0431

21. The Prosecution seeks in-court protective measures for P-0431, in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.²⁵ P-0431 is an expert specialised in Mali's cultural heritage who worked [REDACTED].²⁶ [REDACTED].²⁷
22. The Prosecution submits that the same measures were requested and granted in [REDACTED]. It further notes that [REDACTED].²⁸
23. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that the VWU 'has not been introduced to P-0431' and therefore only refers [REDACTED].²⁹ The Chamber further observes that the VWU will conduct an independent assessment closer to the time of testimony, but that it already considers that the application of protective measures would assist in mitigating the potential risk to this witness.³⁰
24. The Chamber considers that the Prosecution has not fully explained the need for all the requested protective measures in respect of P-0431 [REDACTED]. In particular, as regards its request for voice distortion, the Chamber notes the Prosecution indicates that the concern is [REDACTED]. The Chamber considers that this proposed justification is speculative and does not meet the necessary threshold for objective risk. It follows that absent an explanation from the Prosecution and unless the VWU's later assessment recommends otherwise, the Chamber, consistently with its previous decisions on protective measures,³¹ is not

²⁵ Third Application, ICC-01/12-01/18-1022-Conf-Exp, para. 76.

²⁶ Third Application, ICC-01/12-01/18-1022-Conf-Exp, para. 50.

²⁷ Third Application, ICC-01/12-01/18-1022-Conf-Exp, p. 11.

²⁸ Third Application, ICC-01/12-01/18-1022-Conf-Exp, para. 52.

²⁹ VWU Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 25.

³⁰ VWU Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 25.

³¹ First Decision, ICC-01/12-01/18-1019-Conf-Exp, para. 15. .

convinced at this stage that the use of voice distortion is warranted. Accordingly, the Chamber rejects the request for use of voice distortion at the hearing for this witness. However, the Chamber having due consideration for the VWU's observations, decides to grant the use of pseudonym, face distortion and private sessions and/or closed sessions where appropriate. The Chamber notes that this determination is also without prejudice to the right of this witness to bring his own application for further protective measures.

P-0626

25. The Prosecution seeks in-court protective measures for P-0626, in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions. The Prosecution submits that P-0626, an insider witness [REDACTED] is particularly vulnerable, [REDACTED].³²
26. The VWU observes it has not been able to meet with P-0626, [REDACTED].³³ However, the VWU is of the view that his profile [REDACTED], are factors 'likely to influence his ongoing security'.³⁴ Although the VWU can only confirm the assessment once it has spoken to the witness, it considers that the requested measures 'appear appropriate to mitigate the risk given the circumstances described in [the Prosecution's] request'.³⁵
27. The Chamber notes that P-0626 [REDACTED]. In light of those circumstances and having due consideration for the VWU's Observations, it is reasonable to conclude that there is an objectively justifiably risk should his identity and the fact that he is appearing before the Court in this case become known to the public. Consequently, the Chamber grants the protective measures sought for P-0626.

P-0160

28. The Prosecution seeks in-court protective measures for P-0160, in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions. The Prosecution submits that P-0160, a fact-overview

³² Third Application, ICC-01/12-01/18-1022-Conf-Exp, paras 22-25.

³³ VWU Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 15.

³⁴ VWU Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 17.

³⁵ VWU Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 17.

witness who was an NGO worker documenting alleged human rights violations committed in Timbuktu at the time of the charges, has expressed concern that he may be targeted if his identity as a Prosecution witness is known.³⁶ [REDACTED].³⁷

29. The VWU observes that it assessed P-0160 [REDACTED]. However, based on its prior assessment the VWU supports the requested protective measures.³⁸
30. The Chamber notes that P-0160 [REDACTED]. Nonetheless, the Chamber, consistently with its previous decisions on protective measures,³⁹ is not convinced at this stage that the use of voice distortion is warranted. Accordingly, the Chamber rejects the request for use of voice distortion at the hearing for this witness. However, the Chamber having due consideration for the VWU's observations, decides to grant the use of pseudonym, face distortion and private sessions and/or closed sessions where appropriate. The Chamber notes that this determination is also without prejudice to the right of this witness to bring his own application for further protective measures.

³⁶ Third Application, ICC-01/12-01/18-1022-Conf-Exp, paras 45-46.

³⁷ Third Application, ICC-01/12-01/18-1022-Conf-Exp, p. 11.

³⁸ VWU Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 24.

³⁹ First Decision, ICC-01/12-01/18-1019-Conf-Exp, para. 15. .

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

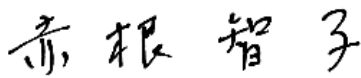
PARTIALLY GRANTS the request for in-court protective measures with respect to P-0431 and P-0160;and

GRANTS the requests for in-court protective measures with respect to P-0654, P-0554, P-0984 and P-0626.

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 26 January 2021

At The Hague, The Netherlands