



Original: English

**No. ICC-01/12-01/18
Date: 03 February 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 of

Fifth Decision on in-court protective measures for witnesses

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

The Office of the Prosecutor

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Legal Representatives of Victims

Seydou Doumbia
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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

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(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 ‘Fifth 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 first request seeking in-court protective measures for Prosecution witnesses (the ‘First Application’).²
3. On 31 August 2020, the Prosecution filed a second application seeking in-court protective measures for Prosecution witnesses (the ‘Second Application’).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, indicating 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 request seeking in-court protective measures for Prosecution witnesses (the 'Third Application'), including P-0081 and P-0114.
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 28 January 2021, the Prosecution informed the Chamber that, in consultation with the Defence, it will now schedule P-0081 and P-0144 to testify in February 2021.¹⁰

II. Submissions and analysis

12. This is the Chamber's fifth decision on in-court protective measures for two witnesses that have recently been scheduled to testify in February 2021. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.¹¹

P-0081

13. The Prosecution seeks in-court protective measures for P-0081, in the form of use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.¹² The Prosecution submits that P-0081, a fact and overview witness [REDACTED].¹³
14. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that the VWU [REDACTED] and therefore cannot provide any in-depth assessment or make a recommendation to the Chamber on the need for the protective measures sought. The VWU submits it will meet with the witness immediately prior to testimony and provide recommendations to the Chamber.¹⁴

¹⁰ Email from the Prosecution on 28 January 2021 at 12:51.

¹¹ Corrigendum Fourth Decision on in-court protective measures for witnesses, 26 January 2021, ICC-01/12-01/18-1266-Conf-Exp-Corr; Third Decision on in-court protective measures for witnesses, 19 October 2020, ICC-01/12-01/18-1113-Conf-Exp (a confidential redacted version was filed that same date ICC-01/12-01/18-1113-Conf-Red and confidential redacted version was filed on 5 January 2021 ICC-01/12-01/18-1113-Red2); Second Decision on in-court protective measures for witnesses, 24 September 2020, ICC-01/12-01/18-1067-Conf-Exp (a confidential redacted version was filed on that same date ICC-01/12-01/18-1067-Conf-Red and a public redacted version was filed on 5 January 2021 ICC-01/12-01/18-1067-Red2); ICC-01/12-01/18-1019-Red2); First decision on in-court protective measures, 31 August 2020, ICC-01/12-01/18-1019-Conf-Exp (a confidential redacted version was filed on that same date ICC-01/12-01/18-1019-Conf-Red and a public redacted version was filed on 5 January 2021).

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

¹³ Third Application, ICC-01/12-01/18-1022-Conf-Exp, paras 42-44.

¹⁴ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 22.

15. The Chamber considers that an objectively justifiable risk with respect to P-0081 has not been demonstrated at this stage. Accordingly, and unless the VWU's later assessment recommends otherwise, the Chamber rejects the request for in-court protective measures as regards P-0081. The Chamber notes that this determination is without prejudice to the right of the witness to bring his own application for protective measures. The Chamber further stresses that such an application must clearly identify and specifically describe the security concerns and risks faced by the witness. It emphasises that a speculative or remote risk for the witness's safety is not a valid ground for granting protective measures.

P-0114

16. The Prosecution seeks in-court protective measures for P-0114, in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.¹⁵ The Prosecution submits that P-0114 is a fact and overview witness [REDACTED].¹⁶ It submits that the witness is at risk by the mere association with the Court and therefore that an objectively justifiable risk exists.¹⁷
17. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that the VWU [REDACTED].¹⁸ The VWU notes that P-0114 [REDACTED]. The VWU therefore submits that the protective measures afforded to P-0114 [REDACTED].¹⁹
18. The Chamber is satisfied that an objectively justifiable risk for P-0114 has been demonstrated. In particular, the Chamber notes that the witness [REDACTED]. Having regard to the current security situation [REDACTED],²⁰ the Chamber considers that P-0114 would face a significant and impermissible risk to his safety should his identity, and consequently his cooperation with the Court, become

¹⁵ Third Application, ICC-01/12-01/18-1022-Conf-Exp, para. 76.

¹⁶ Third Application, ICC-01/12-01/18-1022-Conf-Exp, para. 20.

¹⁷ Third Application, ICC-01/12-01/18-1022-Conf-Exp, para. 21.

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

¹⁹ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 19.

²⁰ 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.

known to the public. Accordingly, the Chamber grants P-0114 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 reminded to fully comply with the Chamber's recent directions on the use of private and/or closed sessions.²¹

²¹ Fourth decision on matters related to the conduct of proceedings, 26 January 2021, ICC-01/12-01/18-1265.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

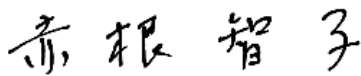
REJECTS the request for in-court protective measures with respect to P-0081; and

GRANTS the request for in-court protective measures with respect to P-0114.

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 3 February 2021

At The Hague, The Netherlands