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No. ICC-01/12-01/18
Date: 17 January 2022
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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

Decision on in-court protective measures and Rule 74 assurances for P-0150

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

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Legal Representatives of Applicants

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**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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**Victims Participation and Reparations
Section**

Other

Counsel for P-0150

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) and (8)(b), 67(1) and 68(1) and (2) of the Rome Statute (the ‘Statute’), Rules 74 and 87 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 20 of the Regulations of the Court, issues the following decision.

I. Procedural history

1. On 27 July 2020, the Prosecution filed an application pursuant to Rule 87 of the Rules (the ‘First Application’), seeking in-court protective measures for P-0150, among other witnesses it had originally scheduled to testify first in the trial.¹
2. On 17 August 2020, the Legal Representative of Victims (the ‘LRVs’) submitted their response, indicating that they do not object to the First Application.²
3. On the same day, the Defence filed a response to the First Application. The Defence indicates it does not adopt a specific position on the protective measures requested, but submits that proceedings should remain open and transparent.³
4. On the same day, the Victims and Witnesses Unit (the ‘VWU’) filed observations,⁴ notably discussing P-0150’s security and that of his family.⁵
5. On 14 April 2021, the Chamber rendered a decision rejecting the protective measures sought by the Prosecution in its First Application in respect of P-0150 (the ‘Prior Decision’).⁶

¹ 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 to VWU and the OTP. A confidential redacted version was filed on 28 July 2020.

² Email from the LRVs to TCX Communications, 17 August 2020 at 12:09.

³ Email from the Defence to TCX Communications, 17 August 2020 at 13:07.

⁴ ‘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 »’ (the ‘VWU First Observations’), 17 August 2020, ICC-01/12-01/18-998-Conf-Exp, Confidential *ex parte* available to the the Registry and the OTP. A confidential redacted version was filed on that same date.

⁵ VWU First Observations, ICC-01/12-01/18-998-Conf-Exp, paras 18-19.

⁶ Eighth Decision on in-court protective measures for witnesses, 14 April 2021, ICC-01/12-01/18-1414-Conf-Exp A confidential redacted version, ICC-01/12-01/18-1414-Conf-Red, and a public redacted version, ICC-01/12-01/18-1414-Red2, were filed on that same date).

6. On 20 April 2021, the Prosecution filed a request for reconsideration of the Prior Decision (the ‘Prosecution Request’).⁷
7. On 21 April 2021, the Single Judge instructed VWU and Counsel for P-0150 to file their respective observations on the Prosecution Request no later than 30 April 2021.⁸
8. On 21 April 2021, Counsel for P-0150 filed observations on the Prosecution Request and also raised issues in relation to assurances under Rule 74 of the Rules (the ‘P-0150 First Observations’).⁹
9. On 23 April 2021, the Single Judge instructed the Prosecution to file by 30 April 2021 any observations on the discrete issue of Rule 74 assurances raised by Counsel for P-0150.¹⁰
10. On 30 April 2021, the Prosecution filed its submission, agreeing with Counsel for P-0150 that Rule 74(3)(c) assurances should be given to P-0150.¹¹
11. On the same day, the VWU filed updated observations on P-0150’s security as well as that of his family (the ‘VWU Second Observations’).¹²
12. On 3 May 2021, Counsel for P-0150 made supplementary observations, including in response to the above filings, in which he formally seeks that the Chamber gives Rule 74 assurances to P-0150.¹³ He also seeks that the Chamber orders that

⁷ Prosecution request for reconsideration of the “Eighth Decision on in-court protective measures for witnesses”, 20 April 2021, ICC-01/12-01/18-1419-Conf-Exp (with Secret *ex parte* Annex A). This annex contains the parts of the witness preparation log of P-0150 related to security issues.

⁸ Email from the Single Judge to the Registry on 21 April 2021 at 12:57.

⁹ Observations du Conseil de P-0150 en vertu de la Règle 74 du règlement en réponse à la requête du Procureur ICC-01/12-01/18-1419-Conf-Exp, 21 April 2021, ICC-01/12-01/18-1420-Conf-Exp.

¹⁰ Email from the Single Judge to the Prosecution and the Registry, 23 April 2021 at 8:25.

¹¹ Prosecution observations on rule 74 assurances, ICC-01/12-01/18-1449-Conf-Exp.

¹² Victims and Witnesses Unit’s Observations on P-0150’s security situation, 30 April 2021, ICC-01/12-01/18-1451-Conf-Exp (Prosecution and Registry only). On 3 May 2021, the Single Judge gave Counsel for P-0150 access to the VWU Second Observations following a Prosecution request to that effect (email from the Prosecution of 30 April 2021 at 18:44; and email from the Single Judge of 3 May 2021 at 9:11).

¹³ Observations supplémentaires du Conseil de P-0150 en vertu de la Règle 74 du règlement en réponse aux observations ICC-01/12-01/18-1449-Conf-Exp et ICC- ICC-01/12-01/18-1451-Conf-Exp et demande d’obtention de garanties de non-incrimination en faveur, notified on 4 May 2021, ICC-01/12-01/18-1453-Conf-Exp (the ‘P-0150 Second Observations’).

the holding of P-0150's testimony be conducted exclusively in closed sessions (the '*In Camera* Request').

13. On 5 May 2021, the Prosecution filed a 'response' to the VWU Second Observations in which it provides further arguments in support of two measures sought which were not specifically recommended by VWU.¹⁴
14. On 7 May 2021, the Chamber instructed the Defence to provide any views on the *In Camera* Request by 11 May 2021.¹⁵
15. On 11 May 2021, the Defence provided its response,¹⁶ opposing the *In Camera* Request as well as the granting of in-court protective measures which were previously rejected by the Chamber.

II. Submissions and analysis

A. Classification

16. The present decision, which refers to sensitive information related to P-0150's security, is classified *ex parte*. A confidential redacted version thereof is issued simultaneously.

B. Introduction

17. The Chamber recalls that it has the power to exceptionally reconsider its decisions upon request of the parties or *proprio motu*, particularly in light of Articles 64(2) and 67 of the Statute.¹⁷

¹⁴ Prosecution response to "Victims and Witnesses Unit's Observations on P-0150's security situation", ICC-01/12-01/18-1463-Conf-Exp.

¹⁵ Emails from the Single Judge to the Defence on 7 May 2021 at 10:56 and 13:49.

¹⁶ Email from the Defence to the Chamber on 11 May 2021 at 14:38 (the 'Defence Response').

¹⁷ See Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and familiarisation', 9 April 2020, ICC-01/12-01/18-734, para. 11; Decision on the Prosecution's request for reconsideration regarding the presentation of opening statements, 9 June 2020, ICC-01/12-01/18-867, para. 5.

18. The Chamber further recalls previous decisions that have dealt with in-court protective measures in the course of the trial.¹⁸ Specifically, it ruled as follows in relation to in-court protective measures for P-0150:

26. The Chamber notes that the Defence does not oppose the protective measures in question. It also notes that the VWU referred to the [REDACTED]. The VWU also mentions [REDACTED]. The VWU remarks that [REDACTED]. The VWU further states that [REDACTED].

27. The Chamber notes that P-0150's [REDACTED]. While the Chamber acknowledges that there are objectively justifiable risks to P-0150's safety, [REDACTED]. [REDACTED] if it became known that he was a witness in this case. Accordingly, mindful of the fair trial-related concerns which generally militate against shielding the identity of witnesses from the public, and having had particular regard to the length and scope of P-0150's expected testimony, the Chamber is of the view that the requested protective measures are not necessary and also that they would be disproportionate to the rights of the accused.

28. Accordingly, the Chamber rejects P-0150 in-court protective measures request. 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 notes this determination is without prejudice of any eventual request for assurances pursuant to Rule 74 of the Rules [emphasis added and footnotes omitted].¹⁹

19. In light of the above, the Chamber considers that it is not necessary for the reconsideration threshold to be met in the present instance. In particular, the Chamber notes that its Prior Decision was issued without prejudice to the witness's right to seek in-court protective measure. Since Counsel for P-0150 is now requesting in-court protective measures on behalf of his client, and also

¹⁸ Seventh decision on in-court protective measures, 8 March 2021, ICC-01/12-01/18-1344-Conf-Exp (a confidential redacted version, ICC-01/12-01/18-1344-Conf-Red, and a public redacted version, ICC-01/12-01/18-1344-Red2, were filed on that same date); Sixth decision on in-court protective measures, 24 February 2021, ICC-01/12-01/18-1318-Conf-Exp (a confidential redacted version, ICC-01/12-01/18-1318-Conf-Red, and a public redacted version, ICC-01/12-01/18-1318-Red2, were filed on that same date); Fifth decision on in-court protective measures, 3 February 2021, ICC-01/12-01/18-1280-Conf-Exp (a confidential redacted version, ICC-01/12-01/18-1280-Conf-Red, and a public redacted version, ICC-01/12-01/18-1280-Red2, were filed on that same date); Corrigendum Fourth decision on in-court protective measures for witnesses, 26 January 2021, ICC-01/12-01/18-1266-Conf-Exp-Corr (a confidential redacted version, ICC-01/12-01/18-1266-Conf-Red-Corr, and a public redacted version, ICC-01/12-01/18-1266-Red2-Corr, were filed on that same date); Third decision on in-court protective measures, 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 a public redacted version was filed on 5 January 2021, ICC-01/12-01/18-1113-Red2) ('Third decision on in-court protective measures'); Second decision on in-court protective measures, 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) ('Second decision on in-court protective measures'); 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, ICC-01/12-01/18-1019-Red2) ('First decision on in-court protective measures').

¹⁹ Prior Decision, ICC-01/12-01/18-1414-Conf-Exp, paras 26-28.

applied for Rule 74 assurances, the Chamber finds it appropriate to evaluate afresh and all together the measures sought for P-0150's testimony.

C. In-court protective measures

20. In its Request, the Prosecution submits that [REDACTED].²⁰ The Prosecution states that although P-0150 [REDACTED] the risk for him and his family is significantly higher.²¹ The Prosecution further submits that the scope of P-0150's anticipated testimony [REDACTED], which is also endangering P-0150.²² In this regard, the Prosecution reports that P-0150 feels certain that [REDACTED].²³ In addition to reiterating its prior submissions on P-0150's [REDACTED],²⁴ the Prosecution also submits that [REDACTED].²⁵ The Prosecution submits that the absence of in-court protective measures would [REDACTED].²⁶ The Prosecution submits that the use of private or closed sessions pursuant to Rule 74 of the Rules would be insufficient to protect P-0150 or his family.²⁷
21. The Prosecution further informs the Chamber that [REDACTED].²⁸ The Prosecution lastly submits that, in accordance with its duty to protect P-0150 and his family, [REDACTED].²⁹
22. Counsel for P-0150 submits that in-court protective measures are indispensable to the Rule 74 assurances which he also requests for his client.³⁰ He also states that in-court protective measures are essential to preserve P-0150's well-being and security, as well as the safety of his family, [REDACTED].³¹ Counsel for P-0150 submits there is a real and effective threat to his client at present but also in the near future.³² Counsel for P-0150 also states that [REDACTED].³³ P-0150

²⁰ Request, ICC-01/12-01/18-1419-Conf-Exp, paras 3, 13-14.

²¹ Request, ICC-01/12-01/18-1419-Conf-Exp, para. 15.

²² Request, ICC-01/12-01/18-1419-Conf-Exp, paras 19-20.

²³ Request, ICC-01/12-01/18-1419-Conf-Exp, paras 18 and Annex A; *see also* paras 21-22, 24.

²⁴ Request, ICC-01/12-01/18-1419-Conf-Exp, paras 26-27.

²⁵ Request, ICC-01/12-01/18-1419-Conf-Exp, para. 28.

²⁶ Request, ICC-01/12-01/18-1419-Conf-Exp, para. 30.

²⁷ Request, ICC-01/12-01/18-1419-Conf-Exp, paras 31-32.

²⁸ Request, ICC-01/12-01/18-1419-Conf-Exp, para. 34 and Annex A.

²⁹ Request, ICC-01/12-01/18-1419-Conf-Exp, para. 36.

³⁰ P-0150 First Observations, ICC-01/12-01/18-1420-Conf-Exp, para. 3.

³¹ P-0150 First Observations, ICC-01/12-01/18-1420-Conf-Exp, paras 4-5.

³² P-0150 First Observations, ICC-01/12-01/18-1420-Conf-Exp, para. 5.

³³ P-0150 First Observations, ICC-01/12-01/18-1420-Conf-Exp, para. 7.

therefore requests that his identity and the contents of his testimony remain confidential.³⁴ In this regard, and in reaction to the VWU not specifically recommending this measure, Counsel for P-0150 submits that voice distortion is warranted and necessary to ensure P-0150's anonymity. In support, reference is made to the level of risks but also [REDACTED] may increase the likelihood that he be recognised during the course of his testimony.³⁵

23. The VWU observes that, because of P-0150's [REDACTED].³⁶ Concerning P-0150's [REDACTED], the VWU informs that [REDACTED].³⁷ The VWU nonetheless already submits that (i) [REDACTED] will make for a more challenging set of circumstances; and (ii) [REDACTED]³⁸. The VWU also indicates that the use of face distortion throughout P-0150's testimony would be advantageous as [REDACTED].³⁹
24. The VWU informs that [REDACTED] is considered 'an adequate remedy to the assessed level of risk'.⁴⁰ The VWU specifies that [REDACTED]⁴¹ and reiterates its prior submission that [REDACTED].⁴² The VWU indicates that 'unwanted attention will [REDACTED]'.⁴³ The VWU also informs that it cannot discount the possibility that [REDACTED].⁴⁴
25. Concerning P-0150's extended family, the VWU notably informs that, [REDACTED].⁴⁵ [REDACTED], the VWU notes that [REDACTED].'⁴⁶ The

³⁴ P-0150 First Observations, ICC-01/12-01/18-1420-Conf-Exp, para. 8.

³⁵ P-0150 Second Observations, ICC-01/12-01/18-1453-Conf-Exp, paras 1-6.

³⁶ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 9.

³⁷ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 20.

³⁸ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 19.

³⁹ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 22.

⁴⁰ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 11.

⁴¹ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 6.

⁴² VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 8.

⁴³ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 11. In this regard, and referring in particular to children, the VWU observes that [REDACTED], para. 23.

⁴⁴ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 11.

⁴⁵ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 7.

⁴⁶ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 12.

VWU further informs that [REDACTED] is not possible.⁴⁷ Moreover, the VWU informs that it is of the view that [REDACTED].⁴⁸

26. Finally, the VWU observes that [REDACTED].⁴⁹ Generally, the VWU submits that [REDACTED].⁵⁰ The VWU however submits that it cannot predict if threat actors would do harm to his extended family since [REDACTED].⁵¹ In this regard, the VWU reports that [REDACTED] it is not aware of ‘any objectively assessed incident confirming that threat actors have made direct threats towards the extended family of P-0150’.⁵²
27. The Chamber is satisfied that objectively justifiable risks for P-0150’s ongoing safety have been demonstrated and notes that the related concerns raised by P-0150 through his counsel, as well as the Prosecution and the VWU, are specific [REDACTED].
28. Notably, the Chamber finds that it is sufficiently established that P-0150 and his family would be at heightened risk if the fact that he is being called as a witness in this case becomes known to the public and threat actors. In this regard, the Chamber observes that information newly provided suggests that, for both P-0150’s immediate and extended family, [REDACTED]. In particular, the Chamber refers to VWU Second Observations, which submits that preventing P-0150’s name and image from being broadcasted publically would reduce the need for [REDACTED]. The Chamber also takes note of VWU’s preliminary views concerning the existence of a ‘challenging set of circumstances’ as regards P-0150’s [REDACTED] and, relatedly, the advantages the recommended in-court protective measures would have for the mitigation of anticipated security risks. Finally, and as noted above as well as in the Prior Decision, the Chamber recalls that the Defence did not oppose the protective measures initially sought in the First Application.

⁴⁷ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 14.

⁴⁸ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 14.

⁴⁹ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 16.

⁵⁰ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 16.

⁵¹ VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 17.

⁵² VWU Second Observations, ICC-01/12-01/18-1451-Conf-Exp, para. 17.

D. Rule 74 Assurances

29. Counsel for P-0150 submits that, in addition to the in-court protective measures sought by the Prosecution, the Chamber should issue the necessary order pursuant to Rule 74 of the Rules to give effective assurances of non-incrimination to P-0150.⁵³ It is requested that assurances be provided for the entirety of P-0150's evidence and, as such, Counsel for P-0150 seeks that the content of his upcoming testimony be heard exclusively in closed session to ensure that it is not disclosed to the public or a third State, including his country of origin.⁵⁴ Counsel for P-0150 notably argues that this measure is essential to ensure the fluidity and coherence of his testimony, as well as avoid interruptions and repetitive in-court submissions on self-incriminatory risks in relation to specific lines of questioning.
30. The Prosecution agrees that Rule 74(3)(c) assurances should be given to P-0150. In support, the Prosecution refers to the importance and uniqueness of P-0150's expected evidence and further submits that 'the requested [in-court protective measures] are a complement to the rule 74(3)(c) assurances'.⁵⁵
31. In its response to the *In Camera* Request, and relying on Mr Al Hassan's rights to a public trial under Articles 64(7) and 67(1) of the Statute, the Defence argues that it would be highly prejudicial for [REDACTED] to be examined exclusively in closed sessions. The Defence further submits that hearing P-0150's testimony 'shrouded from view' 'impedes a fair evaluation of his testimony', 'does not assist the Chamber in determining the truth, and thus threads heavily on Article 69(4)'.⁵⁶ Finally, to avoid a 'profound, disproportionate and irremediable violation of Mr Al Hassan's fundamental right to a public hearing', the Defence submits that a less intrusive measure, such as the use of closed sessions when necessary and appropriate, should be favoured. In relation to the Rule 74 assurances more generally, the Defence also brings to the Chamber's attention a document disclosed earlier this year which reports [REDACTED].⁵⁷

⁵³ P-0150 First Observations, ICC-01/12-01/18-1420-Conf-Exp, paras 11-13.

⁵⁴ P-0150 Second Observations, ICC-01/12-01/18-1453-Conf-Exp, paras 8-10.

⁵⁵ Prosecution observations on rule 74 assurances, ICC-01/12-01/18-1449-Conf-Exp, para. 8.

⁵⁶ Defence Response.

⁵⁷ Referring to MLI-OTP-0081-0078.

32. The Chamber notes that pursuant to Rule 74(3)(a) of the Rules, the default rule is that witnesses may object to making any statement that might tend to incriminate him or her.⁵⁸ Consequently, assurances under Rule 74 are in a way an exception to this rule that enables the Chamber to require a witness to answer self-incriminatory questions provided certain conditions are met.
33. In light of the factors listed under Rule 74(5) of the Rules, given the nature and scope of P-0150's expected testimony,⁵⁹ and having had regard to the views expressed by the Prosecution as well as P-0150 himself, the Chamber considers it necessary to provide Rule 74(3)(c) assurances to P-0150. In line with the requirements of this provision, and to allow P-0150 to testify without fear of the consequences of possible self-incrimination, the Chamber hereby assures P-0150 that the evidence provided in response to potentially self-incriminatory questions which could be asked during the course of his upcoming testimony: (i) will be kept confidential and will not be disclosed to the public or any State; and (ii) will not be used either directly or indirectly against him in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Rome Statute, which govern offences against the Court should P-0150 be untruthful in testifying.
34. Finally, and although the Chamber will address P-0150 directly when he appears in court, the Chamber instructs Counsel for P-0150 to discuss with his client the assurances hereby provided, as well as the exceptions provided for in Articles 70 and 71 of the Statute.

E. Conclusion

35. In light of the above, pursuant to Rules 74 and 87 of the Rules, and to prevent the release to the public or any State of P-0150's identity as a witness in this case, the Chamber grants P-0150 in-court protective measures in the form of: use of a pseudonym for the duration of the trial and holding of his testimony entirely in closed session. Further, the Chamber directs that any information regarding the

⁵⁸ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Request for Rule 74 Assurances for P-40, 6 December 2017, ICC-02/04-01/15-1096, para. 6.

⁵⁹ Witnesses Summaries, ICC-01/12-01/18-740-Conf-AnxB, pp 573-643.

scheduled testimony of P-0150 be temporarily kept confidential, including the fact that the Chamber is hearing evidence in June and July 2021.⁶⁰

36. The Chamber considers that only these exceptional measures will sufficiently mitigate existing risks to the safety of P-0150, as well as his family, and give full effect to the Rule 74 assurances provided. The Chamber is further of the view that these measures will ensure the best and most efficient hearing of his evidence in court and also allow P-0150 to testify without fear of the consequences of possible self-incrimination. The Chamber is unconvinced by the Defence's suggestion that this measure would impede the Chamber's evaluation of P-0150's testimony or disproportionately impact Mr Al Hassan's fair trial rights.
37. In reaching this conclusion, and in addition to the escalated risks identified above, the Chamber had particular regard to: (i) [REDACTED]; (ii) the fact that [REDACTED] and (iii) the nature of the possible incrimination. The Chamber notes in this regard that given [REDACTED], public hearings for the testimony of P-0150 [REDACTED] would very likely defeat the purpose of the protective measures imposed. The use of private session and other related measures will not address this concern.
38. In addition, the Chamber notes that, when hearing parts of a testimony in public sessions, it is impossible to completely prevent that confidential information is (inadvertently) revealed to the public. Given the circumstances at hand, the Chambers finds that the risk of such inadvertent disclosure occurring during his lengthy testimony would constitute an added and unacceptable risk for P-0150 and his family, particularly in light of [REDACTED]. Also with respect to the Rule 74 assurances, the inadvertent disclosure of self-incriminatory evidence will negate the effectiveness of those assurances as the Court will have no control over the use of such information once publically disclosed. In this respect, the Chamber notes the material submitted by the Defence whereby [REDACTED]. While this is helpful and supportive of the Court's assurances, it does not prevent

⁶⁰ The Registry is therefore instructed to remove from the Court calendar references to the Chamber sitting between 31 May and 23 July 2021.

[REDACTED] nor does it reduce the responsibility of the Court to ensure effective assurances.

39. The Chamber is fully mindful of Mr Al Hassan's rights to a public trial under Articles 64(7) and 67(1) of the Statute and has in fact issued several decisions and directions for the purpose of safeguarding this right and ensuring transparency of the proceedings. While the initial taking of this evidence will be in closed session for all the reasons outlined above, the testimony, redacted as necessary, will ultimately be made available to the public. The transcripts of P-0150's testimony shall be reviewed and redacted following the procedure already established by the Chamber for this process.⁶¹ The Chamber further instructs that voice and face distortion be applied to the broadcast of P-0150's testimony, distribution of which shall be delayed until after completion of the process of issuing public redacted transcripts of the hearings. The Chamber orders the Prosecution and the Registry to (jointly) report back on the completion of this process by 20 September 2021. This necessitates a delay in the public disclosure, which is justified by virtue of the safety risks and concerns with respect to Article 74 assurances. At the same time, it will allow public scrutiny of the same part of the testimony which would have been available during a public hearing safely and in a coherent fashion and will avoid the frustrations and interruptions inherent in the use of public/private sessions. In the Chamber's view, this sufficiently safeguards the rights to a public trial. In addition, the Chamber is of the view that such an approach serves the interests of justice in ensuring that this testimony will be given in a manner which will best assist the Chamber in its search for the truth.

⁶¹ The Prosecution shall have 21 days following the conclusion of the hearing where P-0150 last testified to review the transcripts and propose public redacted versions (Directions on the Conduct of Proceedings, ICC-01/12-01/18-789-AnxA, para. 89). Within 10 days of receiving the proposed redacted versions, the Defence may raise any objections (para. 90). The Chamber considers it appropriate for Counsel for P-0150 to also be given an opportunity to raise objections, but on issues relating to self-incrimination alone. Should no objections to the proposal be made, the Registry shall file it in the record of the case with the appropriate document number designation.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS in-court protective measures as specified at paragraphs 35-39 above;

GRANTS assurances pursuant to Rule 74(3)(c) of the Rules as specified at paragraph 33 above;

INSTRUCTS the Prosecution and the Registry to report back on the process of issuing public redacted transcripts and broadcast of P-0150's testimony by 20 September 2021; and

INSTRUCTS the Prosecution, Counsel to P-0150 and the VWU to file confidential redacted versions of their respective filings at the latest by 24 May 2021.

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 Wednesday, 12 May 2021

At The Hague, The Netherlands