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No. ICC-01/12-01/18

Date: 18 August 2022

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

**Fourth decision on in-court protective measures for witnesses called by the
Defence**

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

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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)(e) 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 decision.

I. Procedural history

1. On 6 May 2020, the Chamber issued its ‘Directions on the conduct of proceedings’, setting out the procedure for the filing by the Office of the Prosecutor (the ‘Prosecution’) of applications seeking in-court protective measures pursuant to Rule 87 of the Rules.¹
2. On 22 September 2021, the Chamber rendered in its ‘Fifth decision on matters related to the conduct of proceedings: presentation of evidence by LRVs and Defence’, in which it decided that the above-mentioned procedure in relation to in-court protective and special measures will remain applicable, *mutatis mutandis*, with the deadline for the Defence being 30 days prior to the start of the scheduled testimony of the relevant witness.²
3. On 22 July 2022, the Defence filed an application seeking in-court protective measures for witnesses D-0240 and D-0605 (the ‘First Application’).³
4. On 26 July and 2 August 2022 respectively, the Prosecution and the LRVs informed the Chamber that they do not oppose 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 Fifth decision on matters related to the conduct of proceedings: presentation of evidence by the LRVs and Defence, 22 September 2021, ICC-01/12-01/18-1756, para. 17.

³ Defence application for in-court protective measures for Witness D-0240 and D-0605, ICC-01/12-01/18-2290-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on 26 July 2022, ICC-01/12-01/18-2290-Conf-Red).

⁴ Email from the Prosecution, at 17:16; Email from the LRVs, at 17:23.

5. On 2 August 2022, the Defence filed an application seeking in-court protective measures for D-0544 (the ‘Second Application’).⁵
6. On that same day, the Prosecution sent an email in response to the Second Application, making no specific submissions.⁶
7. On 5 August 2022, the Defence filed an application seeking in-court protective measures for witnesses D-0551, D-0514, D-0516 and D-0213 (the ‘Third Application’).⁷
8. On 8 August 2022, the Prosecution responded to the Third Application, submitting that: (i) for D-0551, the request is unsubstantiated; and (ii) for D-0213, the request contains only succinct and generic explanations, which are further unsubstantiated (the ‘Response’).⁸ No specific submissions are formulated with respect to D-0514 and D-0516 in the Response.
9. The VWU is yet to make its recommendation with respect to the abovementioned pending requests.

II. Submissions and analysis

10. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.⁹

⁵ Defence application for in-court protective measures for Witness D-0544, ICC-01/12-01/18-2291-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on that same date, ICC-01/12-01/18-2291-Conf-Red).

⁶ Email from the Prosecution, at 18:12.

⁷ Defence application for in-court protective measures for Witness D-0551, D-0514, D-0516 and D-0213, ICC-01/12-01/18-2292-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on that same date, ICC-01/12-01/18-2292-Conf-Red).

⁸ Email from the Prosecution, at 08:50.

⁹ Third Decision on in-court protective measures for witnesses called by the Defence, 15 June 2022, ICC-01/12-01/18-2255-Conf-Exp (confidential *ex parte*, available to the Defence and the Registry; a public redacted version was filed on that same date); Second Decision on in-court protective measures for witnesses called by the Defence, 6 June 2022, ICC-01/12-01/18-2237-Conf-Exp (one public redacted version was filed on the same date); First Decision on in-court protective measures for witnesses called by the Defence, 25 May 2022, ICC-01/12-01/18-2232-Conf-Exp (confidential *ex parte*, available only to the Defence and the Registry; confidential *ex parte*, confidential and public redacted versions were filed on the same date); Decision on in-court protective measures for witnesses called by the LRVs, 28 January 2022, ICC-01/12-01/18-2094-Conf-Exp (confidential and public redacted versions filed on the same date); Eighth Decision on in-court protective measures for witnesses, ICC-01/12-01/18-1414-Conf-Exp; Seventh Decision on in-court protective measures, 8 March 2021, ICC-01/12-01/18-1344-Conf-

11. The Chamber also recollects its assessment of the security situation in Mali,¹⁰ that was based on the latest Registry report on the security situation in Mali, provided in the lead-up to the start of the Defence case.¹¹
12. The Chamber notes that, with the abovementioned applications, the Defence seeks in-court protective measures for witnesses scheduled to appear in the coming weeks, *i.e.* between 23 August and 4 October 2002.¹² The measures sought are in the form of: use of a pseudonym, face and voice distortion, and use of private/closed sessions, notably for when the relevant witnesses testify on any information which could lead to their identification. The Defence submits that no prejudice arises to the Prosecution because it is still able to test the evidence of these witnesses in Court.¹³

D-0240

13. With regard to D-0240, the Defence submits that he resides in [REDACTED].¹⁴ The Defence further submits that D-0240 will testify in relation to [REDACTED], and that this could result in harm or reprisal against him and his family should his identity be known to the public.¹⁵ The Defence also reports that

Exp (confidential and public redacted versions filed on the same date); Sixth Decision on in-court protective measures for witnesses, 24 February 2021, ICC-01/12-01/18-1318-Conf-Exp (confidential and public redacted versions filed on the same date); Fifth Decision on in-court protective measures for witnesses, 3 February 2021, ICC-01/12-01/18-1280-Conf-Exp (confidential and public redacted versions filed on the same date); Corrigendum Fourth Decision on in-court protective measures for witnesses, 26 January 2021, ICC-01/12-01/18-1266-Conf-Exp-Corr (confidential and public redacted versions filed on the 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 the same date, and a public redacted version was filed on 5 January 2021); 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 the same date, and a public redacted version was filed on 5 January 2021); 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 the same date, and a public redacted version was filed on 5 January 2021).

¹⁰ First Decision on in-court protective measures for witnesses called by the Defence, ICC-01/12-01/18-2232-Conf-Exp and its redacted versions.

¹¹ Third Registry Report on the Security Situation in Mali, 6 May 2022, ICC-01/12-01/18-2215 (with one confidential annex, ICC-01/12-01/18-2215-Conf-AnxI, one confidential *ex parte* annex only available to the Defence and the Registry, ICC-01/12-01/18-2215-Conf-Exp-AnxII, and one confidential *ex parte* annex only available to the Registry, ICC-01/12-01/18-2215-Conf-Exp-AnxIII).

¹² Email from the Chamber, 8 August 2022, at 9:06.

¹³ First Application, ICC-01/12-01/18-2290-Conf-Red, para. 13; Second Application, ICC-01/12-01/18-2291-Conf-Red, para. 9; Third Application, ICC-01/12-01/18-2292-Conf-Red, para. 17.

¹⁴ First Application, ICC-01/12-01/18-2290-Conf-Exp, para. 9.

¹⁵ First Application, ICC-01/12-01/18-2290-Conf-Red, para. 7.

D-0240 expressed fear that, should his collaboration with the Defence be known to the public and his employer, he could lose his job [REDACTED].¹⁶

D-0605

14. With regard to D-0605 the Defence refers to the content of his expected testimony, particularly the fact that he is an insider who will testify about his own experiences with the armed groups.¹⁷ The Defence also reports the witness has expressed concerns for his safety and that of his family.¹⁸

D-0544

15. The Defence states that D-0544 requested that his identity remain confidential. In support, the Defence argues that the content of his testimony could put him at risk because of the possibility he could be recognised, as [REDACTED] make him easy to identify.¹⁹ The Defence relatedly submits that this witness, who [REDACTED] in Timbuktu in 2012, [REDACTED]²⁰ and that his testimony relates directly to individuals in this neighbourhood.²¹

D-0551

16. With respect to D-0551, the Defence argues that the nature of the witness's expected testimony militates for in-court protective measures to be granted. In this regard, the Defence refers to his role as [REDACTED] in Timbuktu in 2012, as well as the fact that he was [REDACTED].²² The Defence further argues that D-0551's role and prominence put him at risk of reprisal in his community and that he could be easily recognised from the description of his activities and specific role and actions.²³

¹⁶ First Application, ICC-01/12-01/18-2290-Conf-Red, para. 8.

¹⁷ First Application, ICC-01/12-01/18-2290-Conf-Red, para. 10.

¹⁸ First Application, ICC-01/12-01/18-2290-Conf-Red, para. 11.

¹⁹ Second Application, ICC-01/12-01/18-2291-Conf-Red, para. 8.

²⁰ Second Application, ICC-01/12-01/18-2291-Conf-Red, para. 7.

²¹ Second Application, ICC-01/12-01/18-2291-Conf-Red, para. 8.

²² Third Application, ICC-01/12-01/18-2292-Conf-Red, para. 7.

²³ Third Application, ICC-01/12-01/18-2292-Conf-Red, para. 8.

D-0514

17. Turning to D-0514, the Defence submits that he will give evidence in relation to various Prosecution witnesses who have benefited from protective measures.²⁴ The Defence also reports that D-0514 [REDACTED].²⁵ Considering the above, and the fact that [REDACTED], the Defence argues that revealing his identity to the public would heighten the risk of retaliation against and stigmatisation of him and/or his family members.²⁶

D-0516

18. The Defence informs the Chamber that D-0516 [REDACTED] and is a vulnerable witness who requires protective measures.²⁷ Moreover, the Defence notes that her expected testimony is related to [REDACTED].²⁸ The Defence finally reports the witness's own concerns and stresses that, should she testify publicly, it would make her easy to identify and locate and she could face reprisals.²⁹

D-0213

19. With respect to D-0213, the Defence submits that [REDACTED] and could easily be identified if he was to testify publicly.³⁰ Notably, the Defence submits that he will testify about Prosecution witnesses who have benefited from protective measures.³¹

III. Chamber's determination

20. In light of the above, the Chamber is of the view that the Defence has demonstrated there exist objective justifiable risks to the safety and security of D-0240, D-0605, D-0544, D-0514, D-0516, and D-0213. Furthermore, the Chamber finds that these risks can only reasonably be mitigated by granting the requested in-court protective measures. Indeed, having had regard to their

²⁴ Third Application, ICC-01/12-01/18-2292-Conf-Red, para. 9.

²⁵ Third Application, ICC-01/12-01/18-2292-Conf-Exp, para. 11.

²⁶ Third Application, ICC-01/12-01/18-2292-Conf-Exp, para. 11.

²⁷ Third Application, ICC-01/12-01/18-2292-Conf-Exp, para. 13.

²⁸ Third Application, ICC-01/12-01/18-2292-Conf-Exp, para. 14.

²⁹ Third Application, ICC-01/12-01/18-2292-Conf-Red, para. 13.

³⁰ Third Application, ICC-01/12-01/18-2292-Conf-Exp, paras 15-16.

³¹ Third Application, ICC-01/12-01/18-2292-Conf-Red, para. 15.

personal and/or professional situations, the nature of their expected testimony, as well as the security situation in their respective places of residence, the Chamber is of the view that D-0240, D-0605, D-0544, D-0514, D-0516, and D-0213 would face significant and impermissible risks should their identity, and consequently their cooperation with the Court and the Defence, become known to the public. The Chamber accordingly grants these six witnesses in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions as necessary to protect their identity from being disclosed to the public.

21. With respect to D-0551, the Chamber agrees with the Prosecution and considers that the request was insufficiently substantiated. Indeed, the nature of the witness's expected evidence, including his role and interactions with group members between 2008 and 2016, is not – on its own – sufficient to demonstrate existing risks *today*. Information such as his current personal situation, including place of residence and/or occupation, may complement the present request which, in the circumstances, is dismissed without prejudice.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the First, Second, and, in parts, Third Applications;

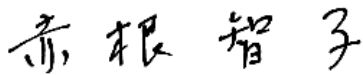
ORDERS in-court protective measures with respect to D-0240, D-0605, D-0544, D-0514, D-0516, and D-0213 in the form of use of a pseudonym, facial and voice distortion, as well as use of private sessions, as necessary, for their testimony;

DISMISSES the remainder of the Third Application (request with respect to D-0551), without prejudice.

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 Thursday, 18 August 2022

At The Hague, The Netherlands