

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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7 June 2023

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding
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

**With Secret *EX PARTE*, Annexes A and B
available only to the Prosecution and
the Victims and Witnesses Unit**

**Public redacted version of
“Prosecution’s request to maintain restrictions on
Mr Al Hassan’s contacts and access whilst in detention”, 20 April 2023,
ICC-01/12-01/18-2486-SECRET-Exp**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. Following Trial Chamber X (“Chamber”)’s “Order concerning review of contact restrictions imposed on Mr Al Hassan”,¹ the Prosecution requests that the Chamber maintain all existing restrictions on the Accused’s non-privileged communications and contacts in detention (“Restrictions”) pursuant to regulation 101(2) of the Regulations of the Court (“RoC”) until after the end of any appellate proceedings and/or the Accused’s departure from the ICC Detention Centre.

2. There remains an objectively justifiable risk to the security of witnesses that warrants continuation of all the Restrictions currently in place pursuant to the

[REDACTED]² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

3. Since the January 2022 [REDACTED] the political and security situation in Mali has continued to deteriorate, partly as a result of the withdrawal of the French *Barkhane* forces from Mali, and Mali’s withdrawal from the Group of Five for the Sahel, which affected regional/cross-border cooperation.³

4. Many witnesses in this case are still living in Mali and northern Mali where the security situation remains particularly volatile and where the al-Qaeda affiliated armed groups, under the umbrella of *Jama’at Nusrat al-Islam wa al-Muslimin* (“JNIM”),

¹ [REDACTED]
² [REDACTED]

³ See Annex A, para. 2. See also Report of the Secretary General: Situation in Mali, [S/2023/236](#), 30 March 2023 (“SG Report of March 2023”), para. 23-24, 55.

remain active.⁴ They are ruthless, violent and extremely organised.

5. The closure of the evidentiary phase of the proceedings does not affect the level of risks posed to witnesses because the objective of these groups is not simply to prevent someone from testifying, or to influence their testimony, but to target those perceived as cooperating with foreign entities to spread fear among the population and deter opposition to their power and control.

6. JNIM is headed by Iyad Ag GHALY, the founder and leader of Ansar Dine, to which the Accused belonged at the time relevant to the charges.⁵ By his own admission, the Accused was still working under Iyad Ag GHALY's instructions at the time of his arrest in April 2017.⁶ His prior violations of the Restrictions also confirm the risk that he would use the opportunity of unrestricted contacts to reveal confidential information concerning witnesses and others to third parties, including those associated with the armed groups. Even inadvertent disclosure will pose a real risk that witnesses and other persons will be targeted on account of their cooperation with the Court.

7. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8. [REDACTED]
[REDACTED]
[REDACTED]

⁴ MINSUMA, [Note trimestrielle sur les tendances des violations et atteintes aux droits de l'homme et au droit international humanitaire au Mali: 1er octobre - 31 décembre 2022](#), March 2023 ("MINUSMA Report of March 2023"), para. 29.

⁵ MLI-OTP-0051-1067, p. 1072-1074, l. 148-218.

⁶ See e.g. MLI-OTP-0051-1067 p. 1070-1072, l. 91-147, p. 1074-1076, l. 221-288, p. 1078, l. 352-361.

⁷ [REDACTED]
[REDACTED]

9. The Restrictions are necessary and proportionate to the legitimate aim pursued in mitigating the above risks. [REDACTED]

[REDACTED] The significant deterioration in the political and security situation in Mali further impacts on the Court's ability to protect witnesses and other persons at risk. Mitigating risks by maintaining the Restrictions is the most effective and least intrusive measures possible in these circumstances.

II. Confidentiality

10. In accordance with regulation 23bis(2) of the RoC, the Prosecution files this response and annexes as secret *ex parte* available only to the Prosecution and the Registry, since it makes reference to documents carrying the same classification.⁸

11. A confidential redacted version of the present filing will be made available to the Defence as soon as possible.

III. Applicable law

12. The Court's legal framework authorise the use of restrictions on detainees' communications "as long as they are necessary and proportionate to 'ensure the safety of witnesses, the preservation of evidence and the integrity of the proceedings'".⁹ Such restrictions must be based on the existence of an objectively justifiable risk.¹⁰ While detainees' rights to communicate with others outside the Detention Centre are not absolute, the restrictions imposed must be the least restrictive possible to the rights of

⁸ [REDACTED]

⁹ ICC-01/12-01/18-871-Conf-Exp-Red ("June 2020 Decision"), para. 16; [REDACTED]

¹⁰ June 2020 Decision, para. 16; [REDACTED]

the detained person.¹¹

13. Restrictions may granted to pre-empt risks if the commission of one of the offences listed under regulation 101(2) of the RoC would have “serious consequences for the lives of the witnesses and if imposing restrictions after an offence has been committed would be too late”.¹²

IV. Submissions

A. There remains an objectively justifiable risk to the safety of witnesses

14. There continues to be an objectively justifiable risk that Prosecution witnesses and others who cooperated with the Court might be targeted for violent reprisals such as killings and abductions, despite the conclusion of the evidentiary phase of the proceedings in this case.

(i) The security situation in Mali, in particular, in the Timbuktu region creates a risk for the safety of witnesses

15. As shown in the latest [REDACTED] in Annex A, it is assessed that the risk of physical harm to witnesses, specifically to insider witnesses [REDACTED] is high [REDACTED].¹³

16. [REDACTED]
[REDACTED]
[REDACTED].¹⁴ There has been no improvement since then.

17. In fact, the security situation Mali has continued to deteriorate in the past year, partly due to the French *Barkhane* forces and Taskforce Takuba forces’ withdrawals

¹¹ June 2020 Decision, para. 15; [REDACTED].

¹² June 2020 Decision, para. 16.

¹³ Annex A, para. 10.

¹⁴ [REDACTED].

from Mali, and Mali's withdrawal from the Group of Five for the Sahel, which affected regional/cross-border cooperation. The increased activities of the Russian Federation's Private Military Company, Wagner, fighting alongside the Malian forces, have also led to an increase in civilian casualties.¹⁵ Violent confrontations between JNIM and the Islamic State Sahel Province group have further contributed to the general insecurity in the Gao, Menaka and Timbuktu regions.¹⁶

18. The Malian authorities have limited effective control in certain areas, and even the United Nations Multidimensional Integrated Stabilization Mission in Mali ("MINUSMA") is subject to frequent and deadly attacks by the armed groups, including JNIM.¹⁷ For example:

- On 18 September 2022, JNIM claimed responsibility for an attack against a MINUSMA vehicle on the road linking the cities of Ber and Timbuktu, and an attack against a Malian army camp in the city of Niafunke in the Timbuktu region;¹⁸
- According to the recent report of the United Nations Secretary-General dated 30 March 2023, MINUSMA convoys were subjected to direct arm fire and improvised explosive devices on the Timbuktu-Ber axis on 9 and 10 January and 7, 16 and 17 February 2023;¹⁹ and
- More recently, in its statements issued on 25 and 26 March 2023, JNIM claimed responsibility for a series of attacks on Malian military targets in the Timbuktu

¹⁵ Annex A, para. 3. *See also* ACLED, "Wagner Group Operations in Africa Civilian Targeting Trends in the Central African Republic and Mali", 30 August 2022, available at <https://acleddata.com/2022/08/30/wagner-group-operations-in-africa-civilian-targeting-trends-in-the-central-african-republic-and-mali/#s6> (last accessed on 17 April 2023).

¹⁶ MINUSMA Report of March 2023, para. 9.

¹⁷ SG Report of March 2023, para. 27-29, 39; MINUSMA Report of March 2023, para. 9. *See also* Africa Intelligence, "Northern Mali: the junta's secret dealings with jihadists and local kingpins", 23 December 2022, available at <https://www.africaintelligence.com/west-africa/2022/12/23/northern-mali-the-junta-s-secret-dealings-with-jihadists-and-local-kingpins,109876372-eve> (last accessed on 17 April 2023).

¹⁸ Annex B, p. 2: [REDACTED] 18 September 2022.

¹⁹ SG Report of March 2023, para. 39.

region.²⁰

19. JNIM is active not only in the north of Mali, but also in the centre and the south of Mali, in particular, in areas near the borders with Burkina Faso and Niger.²¹ For example, in January 2023, its top leader, Iyad Ag GHALY personally visited the Menaka region near the border with Niger to recruit new members, as a result of which many Touareg notables pledged allegiance to him.²² Iyad Ag GHALY has reportedly become more mobile since the departure of the French *Barkhane* forces from Mali.²³ Abou Talha, who led the Security Battalion during the occupation of Timbuktu in 2012-2013, is now considered “emir of Timbuktu”.²⁴

20. In the current volatile context of Mali, reprisal attacks have become common *modes operandi* adopted by various armed groups.²⁵ JNIM and affiliated groups have issued warnings against persons cooperating with international or local entities they perceive to be their enemy, and have acted on these warnings by killings or abductions. Recent examples include:

- In June 2022, JNIM member group Katiba Macina was reportedly responsible for massacring 132 civilians in several villages in Central Mali as reprisals

²⁰ Annex B, p. 7: [REDACTED] 26 March 2023.

²¹ MINUSMA Report of March 2023, para. 9.

²² RFI, *Mali: le chef jihadiste Iyad Ag Ghaly recrute et s'affiche dans la région de Ménaka*, 23 January 2023, available at <https://www.rfi.fr/fr/afrique/20230123-mali-iyad-ag-ghaly-recrute-et-s-affiche-dans-la-r%C3%A9gion-de-m%C3%A9naka> (last visited on 17 April 2023).

²³ *Ibid.*

²⁴ *Le Monde, Au Sahel, l'émir Iyad Ag-Ghali toujours vivant, toujours influent, toujours traqué*, 18 April 2023, available at https://www.lemonde.fr/afrique/article/2023/04/18/sahel-iyad-ag-ghali-toujours-vivant-toujours-influent-toujours-traque_6169971_3212.html (last accessed on 20 April 2023). See also regarding Kidal : African Perceptions, *Le Chef De La JNIM, Alliée D'Al-Qaïda Au Sahel, Explique Le Sens Et La Raison De Ses Guerres*, 23 March 2023, available at <https://africanperceptions.org/fr/2023/04/exclusif-le-chef-de-la-jnim-alliee-dal-qaida-au-sahel-explique-le-sens-et-la-raison-de-ses-guerres/> (last accessed on 20 April 2023).

²⁵ MINUSMA Report of March 2023, para. 36. See also DW, “*Au Mali, le danger d'informer l'armée ou les djihadistes* – DW – 22/06/2022”, 22 June 2022, available at <https://www.dw.com/fr/mali-le-danger-de-t%C3%A9moigner/a-62224593> (last accessed on 17 April 2023); Human Rights Watch, “Mali: Coordinated Massacres by Islamist Armed Groups: Increase Protection Capabilities of Security Forces, UN Peacekeepers”, 27 October 2022, available at <https://www.hrw.org/news/2022/10/27/mali-coordinated-massacres-islamist-armed-groups> (last accessed on 17 April 2023).

against those alleged to have “collaborated with the Malian forces”;²⁶

- According to the MINUSMA’s report on the human rights situation in Mali dated March 2023, in November 2022, around 80 persons from a village in the Gourma-Rharous cercle, in the Timbuktu region, reportedly left their village for fear of reprisals by JNIM, which accused them of collaborating with the Malian authorities;²⁷
- In February 2023, JNIM claimed responsibility for three attacks against the Malian government forces’ checkpoints in the southern regions of Koulikoro and Sikasso, committed on 2-4 February 2023.²⁸ In one of the claims, JNIM reportedly warned Muslims against “spying or collaborating against JNIM”;²⁹ and
- On 4 April 2023, JNIM reportedly told residents of Doya village in the Timbuktu region to leave their homes in 24 hours or risk being attacked.³⁰

21. As the Court regularly relies on cooperation with the Malian Government and MINUSMA, those associated with the Court could be perceived as “collaborators” with the declared JNIM enemy. In addition, the two trials relating to the Mali situation that have been opened at the ICC concern members of Ansar Dine/AQIM, which are now part of the JNIM. Prosecution witnesses who testified against them are thus at risk of reprisals.

(ii) The Accused’s association with the armed groups creates a risk for the safety of witnesses

²⁶ See, e.g. FIDH, “Bankass massacre in Mali: Witnesses describe the attack”, 27 June 2022, available at <https://www.fidh.org/en/region/Africa/mali/bankass-massacre-in-mali-witnesses-describe-the-attack> (last accessed on 13 April 2023); *Le Monde*, “Au Mali, massacres en série perpétrés par des djihadistes dans le centre du pays”, 23 June 2023, available at (last accessed on 17 April 2023).

²⁷ MINUSMA Report of March 2023, para. 28.

²⁸ Annex B, p. 3: [REDACTED], 5 February 2023.

²⁹ *Ibid.*

³⁰ Annex B, p. 9: [REDACTED] 6 April 2023.

22. The Accused's profile also supports the existence of a risk that the Accused may use the opportunity of unrestricted contacts to pass on confidential information about witnesses to third parties, who may act upon it to conduct retaliatory attacks.

23. By his own admission, the Accused was still working under instructions of Iyad Ag GHALY at the time of his arrest by the French *Barkhane* forces in April 2017.³¹ The Accused was also the base commander of the *Congrès pour la justice dans l'Azawad* ("CJA") in the region of Timbuktu.³²

24. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³³

25. The Prosecution further recalls that according to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³⁴

(iii) The conduct of the Accused and his interlocutors confirms the existence of a risk for the safety of witnesses

26. The Accused's previous violations of contact restrictions during the pre-trial stage of the proceedings confirm the risk for the safety of witnesses.

27. In November 2018, [REDACTED]
[REDACTED]

³¹ See e.g. MLI-OTP-0051-1067 p. 1070-1072, l. 91-147, p. 1074-1076, l. 221-288, p. 1078, l. 352-361.

³² See e.g. MLI-OTP-0051-1067, p. 1078-1080, l. 352-432.

³³ See e.g. [REDACTED].

³⁴ [REDACTED]

[REDACTED] 35

28. In April 2019, [REDACTED]

[REDACTED] 36

[REDACTED] 37

29. In light of the above, there is a risk that if the Accused's contacts with third parties are not subject to restrictions, he may, intentionally or inadvertently, reveal to family members and other third parties confidential information relating to witnesses, with consequential risks to the latter's security.

[REDACTED]

35

36

37

30. [REDACTED]
[REDACTED]
[REDACTED]

31. [REDACTED]
[REDACTED]
[REDACTED]³⁸ [REDACTED]
[REDACTED]
[REDACTED]³⁹ [REDACTED]
[REDACTED]
[REDACTED]⁴⁰

32. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

33. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

38 [REDACTED]
39 [REDACTED]
40 [REDACTED]

C. The Restrictions are proportionate and the least restrictive

34. The Restrictions are proportionate and remain the least restrictive to the rights of the Accused as a detained person.

35. [REDACTED]
[REDACTED].⁴¹ In view of the existing risks as described above, no further reduction or lifting of Restrictions should be granted at this stage.

36. Protection measures [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED] The significant deterioration in the political and security situation in Mali further impacts on the Court's ability to protect witnesses and other persons at risk. Indeed, if the security situation continues to deteriorate, it is highly likely that the mitigation measures, such as [REDACTED]
[REDACTED]. Accordingly, maintaining the Restrictions remains critically important as they reduce the risk of intentional or inadvertent disclosure.

37. As the VWU noted previously, the monitoring regime and [REDACTED]
of the recordings of the Accused's conversations [REDACTED]
[REDACTED]⁴² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Accused's past violations also show the need for continuing

⁴¹ [REDACTED]
⁴² [REDACTED]
⁴³ [REDACTED]

other restrictions, such as the prohibition to have telephone calls or correspondence in obscure or coded language, to use a language other than French, Arabic or Tamasheq, and to discuss the present case.

38. Given that none of the current Restrictions limits the time available for the Accused to communicate with his family members, their impact on the Accused's right to privacy and family life is limited.

39. Maintaining the Restrictions is the least restrictive possible means of ensuring the safety of witnesses, the preservation of evidence and the integrity of the proceedings.

V. Requested Relief

40. For the foregoing reasons, the Prosecution requests the Chamber to order that the Restrictions and existing mechanisms to ensure compliance with those Restrictions, including [REDACTED] be maintained until the end of any appeal proceedings in this case and/or the Accused's departure from the ICC Detention Centre.



Karim A. A. Khan KC, Prosecutor

Dated this 20th April 2023

At The Hague, The Netherland