

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

With *EX PARTE* Confidential Annex only available to the Office of the Prosecutor

Registry Submissions in View of the 12 December 2019 Status Conference

Source: Registry

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

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I. Introduction

Pursuant to the “Order Scheduling First Status Conference” (“Order”), issued by Trial Chamber X (“Chamber”) on 26 November 2019, the Registry mainly submits its views on issues of (1) transcription and translation/interpretation at trial and (2) protective measures of witnesses in view of the status conference scheduled on 12 December 2019.¹ Following a consultation with the Chamber² and with the aim to further assist, the Registry also elaborates on item H) of the Order and shares views on the need for additional protocols or amendments to existing protocols in place in other cases before the International Criminal Court (“Court”).

II. Classification

1. In accordance with regulation 23 *bis* (1) of the Regulations of the Court (“RoC”), the annex to the present submissions is classified as confidential *ex parte* only available to the Office of the Prosecutor (“Prosecution”), as it refers to personal and case-specific information regarding potential witnesses.

III. Applicable law

2. The following provisions are of particular relevance to the present submissions: articles 43, 50, 67(1)(a), 68, 87(2) of the Rome Statute (“Statute”), rules 16 to 19, 87 and 88 of the Rules of Procedure and Evidence, regulations 27, 39(1), 40, 41 of the RoC, and regulations 57(1), 58(3), 61, 64(7), 66, 67, 68(4), 69, and 80 to 96 of the Regulations of the Registry (“RoR”).

IV. Submissions

3. At the outset and in anticipation of the issuance of the order on the conduct of the proceedings, the Registry wishes to inform the Chamber that the Court Management Section (“CMS”) is preparing a detailed presentation to the

¹ Trial Chamber X, “Order Scheduling First Status Conference”, 26 November 2019, ICC-01/12-01/18-507.

² Telephone communication between the Chamber and the VWU on 27 November 2019.

Chamber and the Chamber's staff on court management services provided to support the smooth running of the court proceedings. Furthermore, CMS will coordinate the amendments, if any, to the E-Court protocol, taking into account the views of all concerned.

1 - Transcription and Translation/Interpretation

4. As to transcription, the Registry through CMS will provide the Chamber, parties and participants with the real-time transcripts of the proceedings in English and French based on the original speech and on the simultaneous interpretation effected by interpreters within the Language and Services Section ("LSS"). The edited versions of the transcripts in both languages will be provided to all parties and participants by CMS.
5. As to the languages other than French and English to be used at trial, namely the "situation languages", the Registry through LSS will provide the following services:

Arabic for the accused person

6. Four simultaneous conference interpreters in Arabic will have to be recruited for the duration of the trial. In accordance with the accused person's statutory right under article 67 of the Statute, they will provide simultaneous Arabic interpretation to the accused person, as well as during the testimony of Arabic speaking witnesses.
7. Although Arabic is a situation language in the present case, it is also an official language both at the Court and at the United Nations. Conference interpreters interpreting from and into Arabic will be recruited. The recruitment process (i.e. selection, testing, interviews, vetting) of these temporary staff members may take up to six months from the vacancy announcement to the entry of duty at the Court.

Anticipated situation languages of the witnesses

8. Based on information provided by the Prosecution, the languages of the witnesses to be called are the following: Arabic, Bambara, Songhai and Tamasheq. Apart from Arabic as stated above, there are to date no trained court or conference interpreters for the remaining three other languages.
9. For Bambara, LSS will recruit four freelance conference interpreters who, apart from French and English, have Bambara as their mother tongue. They will provide simultaneous interpretation from and into Bambara and French.
10. For Songhai and Tamasheq, simultaneous interpretation cannot be provided. Accredited field interpreters, who are limited in number, will provide court interpretation in the consecutive mode. To do so, they will have to be trained for at least three weeks in accordance with, *inter alia*, regulations 64(7) and 69 of the RoR.
11. Consecutive interpretation impacts on the duration of the testimony. Even though the interpreters will be seated in the interpretation booth, consecutive interpretation means that the Songhai and Tamasheq interpreters will interpret only after the speaker has stopped speaking. They will take notes during the intervention of the speaker and then deliver the segment which will be interpreted simultaneously into English. Accordingly, the segments should be kept fairly short in order to ensure that there are no omissions or inaccuracies on the part of the interpreter. Based on past experience in other trial proceedings, it is estimated that the duration of the testimony may last up to 30% longer.
12. In light of the above, the scheduling of witnesses' testimonies in Tamasheq, Songhai and/or any other "situation language" speaking witnesses (other than

English and French), needs to be done with ample notice, namely six to eight weeks. This is to allow time for the accredited field interpreters, who are hired as individual contractors, to free themselves from any other commitments they may already have. These interpreters will have to travel from Mali to the seat of the Court in The Hague. The notice period of six to eight weeks is required for making the necessary logistical and contractual arrangements, such as visa procedures, travel arrangement and substantial preparation.

13. Once at the seat of the Court, these interpreters will be required to support other activities before, during and after a given witness testimony such as witness familiarisation, protection and vulnerability assessments, and courtesy meetings, among others.

14. The Registry further draws the Chamber's attention to the limited resources in these languages. As a result, when field interpreters are deployed to The Hague, this necessarily impacts on the availability of interpreters in the field to support the Court's local activities. This impact should be kept in mind by all parties and participants even when testimonies are given by video-link. In such a case, the interpreters would still need to be in The Hague, preventing them from being available in the field. Accordingly, this field reality must be considered when video-link testimonies are envisaged by all concerned. Moreover, for the purpose of logistical arrangements, it would be desirable that the witnesses who will testify in Songhai and/or in Tamasheq are grouped together respectively, if possible, and without prejudice to any protective measures and strategy of the calling party.

15. Furthermore, given the scarcity of field interpreters who are accredited, they might have concerns about their security when asked to provide interpretation services at trial sessions. Should such a risk exist and

materialise, this would need to be properly addressed by the Court in accordance with regulation 68(4) of the RoR.

16. Finally, for completeness with regard to language requirements during trial proceedings, the Registry would like to inform the Chamber that the oral and written communications with the national competent authorities of the Republic of Mali are made in French, its official language. Pursuant to article 87(2) of the Statute, the choice of the French has been specified as the language to be used for any requests for cooperation and any documents supporting the said requests.³

2 - Protective measures for witnesses

17. Pursuant to articles 68(4) and 43(6) of the Statute, the Victims and Witnesses Unit ("VWU" or "Unit") provides its assessment and recommendations to the Chamber on the security and related in-court protection measures witnesses may need in accordance with rule 87 of the Rules. The Unit may also implement non procedural protective measures. These measures depend on the level of risk incurred by the witness concerned and range from the implementation of good practices, to the set-up of an Immediate Response System, an assisted move, an internal resettlement within the relevant country or an international relocation. Internal resettlement and international relocation both require an inclusion of the witnesses into the Court's protection program ("ICCPP"). For international relocations, the Court needs the cooperation of the relevant partner States that have signed a relocation agreement with the Registry or accepted to relocate witnesses on their territory on an *ad hoc* basis.

³https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-10&chapter=18&clang=en#EndDec

18. The admission of a witness in the ICCPP is a voluntary measure of last resort.

Considering the extremely heavy impact an inclusion in the ICCPP has on the life of a person and his family members, the VWU always strikes a balance between the intrusiveness of the protection measure and the risk and/or threat that the individual may face. This measure is only applied where no other alternative protection measure exists and where a person is considered to be severely at risk. An inclusion in the ICCPP also requires that the persons be assessed as suitable for that program from a psychological viewpoint.

Protection referrals

19. The Unit encourages the parties and participants to follow the procedure established in regulations 80(1) and 96(2) of the RoR for any issues concerning the protection of witnesses and victims referrals to the ICCPP or other forms of protection. Upon receipt of a referral for protection, the Unit will perform a threat and risk assessment of the security situation of the referred individual. For the purpose of assessment and recommendation of the appropriate protective measures, the VWU would like to stress that it is essential that the parties provide the Unit with specific information on the nature of the threat or risk the individual could be exposed to. The Unit remains available to assist the parties in that regard and provide them with a protection referral form to facilitate any request.

20. Finally, as stated above, more specific case-related information is annexed to the present submissions.

3 - Protocols

Familiarisation Protocol

21. The Registry respectfully takes the opportunity of this submission to inform the Chamber that prior to any witness giving testimony, the VWU is generally required to carry out a witness familiarisation procedure. In this respect, the

Unit recommends the adoption of a "Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial" ("Familiarisation Protocol"), which outlines the procedures that serve the best interests of witnesses and provides for sustainable working solutions for all entities involved. The Familiarisation Protocol covers issues pertinent to the familiarisation process taking into account the practices and experiences concerning witnesses appearing before the Court and matters relating to, *inter alia*, travel's preparation of the witnesses in the field, arrangements for witnesses falling under the scope of rule 74 of the Rules and courtroom familiarisation.

22. Subject to the approach of the Chamber in the present case, the Unit informs the Chamber that different versions of Familiarisation Protocols were adopted for two different scenarios. In the case *The Prosecutor v. Dominic Ongwen* ("Ongwen Case"), the Chamber adopted with minor amendments the same Familiarisation Protocol than the one adopted in the cases of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* ("Gbagbo and Blé Goudé Case") and *The Prosecutor v. Jean-Pierre Bemba Gombo et al.* ("Bemba Case"). The Chambers in these cases did not opt for the preparation of witnesses. As a result, in the Ongwen and Gbagbo and Blé Goudé Cases, due to the absence of a Witness Preparation Protocol, the VWU was the entity conducting the exercise of the statement reading with the respective witnesses.

23. A different version of Familiarisation Protocol was adopted in the case *The Prosecutor v. Bosco Ntaganda* ("Ntaganda Case"), which is an amended version of the respective protocols previously filed in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang and The Prosecutor v Uhuru Muigai Kenyatta* ("Kenya Cases"). Unlike the Familiarisation Protocol adopted in the Ongwen Case, these protocols take into consideration the fact that a Witness Preparation Protocol was adopted.

24. The VWU would recommend the adoption of the latest version of one of the two Familiarisation Protocols (the one as adopted in the Ongwen Case⁴ or the one as adopted in the Ntaganda⁵ Case, which is including a Witness Preparation Protocol) in order to promote a uniform practice of management of witnesses appearing before the Court. The Registry stands ready to provide the present Chamber with the Familiarisation Protocol for the two above-mentioned different scenarios.

Vulnerability Protocol

25. The Registry also informs the Chamber that in accordance with rule 88 of the RPE, the Unit, upon the Chamber's request, will provide its assessment on the need for special measures to be implemented for the benefit of potentially vulnerable witnesses. In this regard, the VWU refers to the "Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses" ("Vulnerability Protocol"), which was adopted in the Bemba, Kenya, Ntaganda and Gbagbo and Blé Goudé Cases. This is the single version of the Vulnerability Protocol adopted before the Court. Therefore, in order to maintain this uniform practice, the VWU would recommend adopting the same protocol in the present case subject to minor terminology amendments.

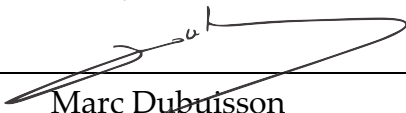
Other Protocols

26. In the event the parties and participants call dual status witnesses, the Unit respectfully informs the Chamber of the "Mechanism for exchange of information on individuals enjoying dual status ("Protocol")" which was

⁴ Trial Chamber IX, "Decision on Protocols to be Adopted at Trial", 22 July 2016, ICC-02/04-01/15-504-Anx1.

⁵ Trial Chamber IV, "Decision on the protocol on witness familiarisation", 17 June 2015, ICC-01/04-02/06-656-AnxA.

adopted in the Ongwen case.⁶ Should the Chamber decide to adopt the same approach, the Unit stands ready to provide its comments on that Protocol as well as on the “Protocol on the handling of confidential information during investigations and contact between a party or Participant and witnesses of the opposing party or of a Participant”.



Marc Dubuisson
Director Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 6 December 2019

At The Hague, The Netherlands

⁶ Trial Chamber IX, “Decision on Protocols to be Adopted at Trial”, 22 July 2016, ICC-02/04-01/15-504-Anx2.