



Original: English

No. ICC-01/12-01/18

Date: 24 January 2020

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

Decision on outstanding protocols

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
Marie-Hélène Proulx
Sarah Bafadhel

Legal Representatives of Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

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 (the ‘Chamber’) of the International Criminal Court (the ‘Court’), in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 64(2), (3)(a), (6)(e) and 68(1) of the Rome Statute (the ‘Statute’) and Regulation 34 of the Regulations of the Court, issues this ‘Decision on outstanding protocols’.

1. On 26 November 2019, the Chamber issued its ‘Order scheduling First Status Conference’ and scheduled a status conference for 12 December 2019.¹ The Chamber requested the parties, participants, and the Registry to make written submissions on the potential agenda items listed in the scheduling order, including their views on the need for additional protocols.²
2. On 10 December 2019, the Chamber issued the ‘Order Setting the Agenda for the First Status Conference’, in which it indicated that deadlines for written submissions from the parties and participants on proposals for adoption of a ‘Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial’ (the ‘Familiarisation Protocol’), a ‘Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses’ (the ‘Vulnerability Protocol’) and a ‘Mechanism for exchange of information on individuals enjoying dual status’ (the ‘Protocol on dual status witnesses’) (together, the ‘Protocols’) would be set in due course.³
3. In its submissions in view of the status conference, the Registry informed the Chamber that the Protocols have been adopted in other cases and that, upon instruction from the Chamber, it was ready to provide the Protocols, as well as its comments thereon, to the Chamber.⁴
4. Concerning the Familiarisation Protocol, the Chamber notes that different versions of the protocol were adopted in the cases of *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’) and *The Prosecutor v. Bosco Ntaganda* (the

¹ Order Setting First Status Conference, ICC-01/12-01/18-507.

² Order Setting First Status Conference, ICC-01/12-01/18-507, paras 2, 3(H).

³ Order Setting the Agenda for the First Status Conference, ICC-01/12-01/18-521, fn. 3.

⁴ Registry Submissions in View of the 12 December 2019 Status Conference, 6 December 2019, ICC-01/12-01/18-517, paras 24-26.

‘*Ntaganda* case’), following the adoption of a witness preparation protocol in the latter case. In the context of this case, the Chamber notes that it is in favour of allowing witness preparation and considers that adopting a witness preparation protocol, such as the one adopted in the *Ntaganda* case,⁵ may facilitate the fair and expeditious conduct of the proceedings. Consequently, the Chamber is minded to adopt the version of the Familiarisation Protocol that was adopted in the *Ntaganda* case, which contains a specific section regulating witness preparation and familiarisation.⁶ The Chamber therefore instructs the Registry to submit this version of the Familiarisation Protocol into the record, subject to terminology amendments where needed, unless the parties and participants submit objections to the above procedure or propose amendments to these protocols by 13 February 2020.

5. In relation to the Vulnerability Protocol, the Chamber notes the observations of the Registry indicating that a single version of the protocol was adopted in previous cases, establishing a ‘uniform practice’ within the Court.⁷ Given the standardised nature of this protocol, which mainly regulates processes internal to the Victims and Witnesses Unit (the ‘VWU’), the Chamber authorises the VWU to continue using the protocol developed in other cases. Accordingly, there is no need for this Chamber to adopt a separate protocol for this case.⁸
6. Concerning the Protocol on dual status witnesses, the Chamber is minded to adopt the most recent version of the protocol, as adopted in the *Ongwen* case.⁹ The Chamber therefore instructs the Registry to submit this version of the Protocol on dual status witnesses into the record, subject to terminology amendments where needed, unless the parties and participants submit objections or propose amendments thereto by 13 February 2020.

⁵ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Witness preparation protocol, 16 June 2015, ICC-01/04-02/06-652-Anx.

⁶ Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Protocol on the practices to be used to familiarise witnesses for giving testimony at trial, 17 June 2015, ICC-01/04-02/06-656-AnxA.

⁷ Registry Submissions in View of the 12 December 2019 Status Conference, 6 December 2019, ICC-01/12-01/18-517, para. 25.

⁸ See also Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Protocols to be Adopted at Trial, 22 July 2016, ICC-02/04-01/15-504, paras 25-29.

⁹ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Mechanisms for exchange of information on individuals enjoying dual status, 22 July 2016, ICC-02/04-01/15-504-Anx2.

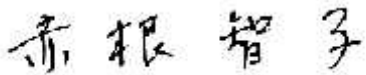
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ORDERS the Registry to submit the Familiarisation Protocol and the Protocol on dual status witnesses into the record, in accordance with paragraphs 4 and 6 above respectively, by 17 February 2020, unless the parties and participants submit objections or propose relevant amendments by 13 February 2020.

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 24 January 2020

At The Hague, The Netherlands