

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/18

Date: 16 September 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

**Public Redacted Version of the 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* » 17 August 2020,
(ICC-01/12-01/18-998-Conf-Exp)**

Source: Registry

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

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**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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States' Representatives

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REGISTRY

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Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. On 22 July 2020, Trial Chamber X (“Chamber”) issued a “Decision on the Prosecution’s witness order and variation of time limit for filing applications for in-court protective measures” (“Decision”).¹ In its Decision, the Chamber stated that any responses to applications for in-court protective measures for block 1 witnesses, as well as observations by the VWU on those applications, should be submitted by 17 August 2020.
2. The Victims and Witnesses Unit (“VWU” or “Unit”) herewith submits its observations in accordance with the Decision. The VWU would like to stress that not all the witnesses listed by the Office of the Prosecution (“Prosecution”) in its « *Requête de l’Accusation sur le fondement de la règle 87 aux fins de mesures de protection pour des témoins du Bloc 1* » (“Request”) are known to the VWU at this stage. Therefore the Unit is providing the information that is currently known and available.

II. Classification

3. In accordance with regulation 23 *bis*(1) of the Regulations of the Court (“RoC”) the present observations are classified as confidential *ex parte* because they refer to a Request with the same classification and contain confidential information about the witnesses.

III. Observations

A. The background context, the threat actors

4. [REDACTED]. JNIM’s constituent groups are known to carry out brutal and targeted retribution against individuals they consider as traitors, spies or collaborators. In its propaganda, JNIM equates this behaviour to apostasy, labelling ‘guilty’ individuals as “enemies of Islam.” This applies equally to

¹ Trial Chamber “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.

individuals collaborating or cooperating with Barkhane forces, MINUSMA, other Western actors, Malian Forces (“FAMa”) or other Malian state apparatuses. [REDACTED]. The organisation has issued several warnings to the general public instructing them not to collaborate with their enemies and numerous reports exist of individuals being intimidated, abducted and assassinated for non-compliance.

5. [REDACTED] JNIM has a well-established history of committing violence against collaborators, [REDACTED].
6. In terms of the type of reprisals, [REDACTED] JNIM would rather engage in actions that have catastrophic consequences, such as kidnapping or killing those deemed to be enemies or traitors. [REDACTED]. The kidnapping and killing in February 2020 of Sadou Yehia, a Malian shepherd, by an armed extremist group, a few weeks after he had given an interview and criticised the jihadist groups, raised a debate within the journalistic community about the protection of sources.
7. [REDACTED] JNIM remains a highly capable threat actor. [REDACTED] JNIM operates [REDACTED] in vast areas in Mali, primarily in Northern and Central Mali, and has increased its area of operations in recent years, expanding to the south, and to Niger and Burkina Faso. In early 2017, JNIM kidnapped a Columbian nun from Southern Mali and in June 2017, JNIM attacked a resort just outside Bamako. [REDACTED].
8. [REDACTED]. In that regards it should be noted as well that clashes with the Islamic State group are on the rise and have increased the instability in central and Northern Mali.

B. Observations on the Request

9. The VWU reiterates that although it has met and discussed security issues with some of the witnesses,² it has not had the opportunity to make an assessment of all that are subject to the Request. As such, for the witnesses not yet introduced, the VWU is only able to provide general observations based on the profile of the witness and other associated factors. Notwithstanding, the VWU will meet all witnesses prior to their testimony and will furnish its ICPM assessment to the Chamber as per the Chamber's instructions.

a) [REDACTED] (P-0193, P-0075 and P-0635)

10. [REDACTED]. Limiting the exposure of their identity appears a crucial element in being able to maintain their safety for the future. On this basis, the VWU agrees with the in court protective measures ("measure" or "measures") proposed by the Prosecution.
11. In relation to P-0635, based on the Prosecution's submission, the VWU notes that [REDACTED]. Aside from that provided in the submission, VWU has not received any further information into the request for protective measures. The absence of additional information permits the VWU to provide only general observations.
12. The VWU notes that [REDACTED] does not fall within the main areas of threat and that it has no information to suggest that threat actors have the capability to operate in [REDACTED]. Additionally, [REDACTED] does not generate any immediate concerns in terms of a threat actor's ability to penetrate undetected nor does its [REDACTED] ability to protect citizens. The potential impact on the witness future professional activities is not specific enough for VWU to make any observation.

² [REDACTED]

13. In the absence of further information on the specific concerns of this witness, the VWU considers that the proposed measures would represent a position of significant caution in terms addressing risk levels. Nonetheless, the VWU will be able to provide a more detailed assessment closer to the witness testimony and after having had the opportunity to discuss security issues with the witness.

b) [REDACTED] (P-0057, P-0621, P-0653, P-104 and P-0152)

14. The VWU has not yet discussed security issues with P-0057, P-0621 or P-0653, but notes [REDACTED]. Based on the nature of their specific duties, the VWU acknowledges that there may be a need to protect their identity. However in the absence of additional specific information and without having had the opportunity to conduct an independent assessment of the witnesses, the VWU considers that the proposed measures represent a position of caution in terms addressing risk levels to these [REDACTED]. Nonetheless, the VWU will clarify these issues directly with the witnesses during its assessment that is conducted immediately prior to the witnesses testifying.

15. For witnesses P-0104 and P-0152, the VWU notes that both [REDACTED] their professional capacities. [REDACTED] the VWU considers that these witnesses may be subject to escalated levels of risk. As such, the VWU is in agreement with the measures proposed by the Prosecution. The VWU considers that the proposed measures may assist in preserving the witness's identity during future [REDACTED]. The VWU will specifically address this issue during its assessment.

c) Witnesses who [REDACTED] (P-0643, [REDACTED])

16. The VWU has not yet discussed P-0643's security situation in person, but has previously met both [REDACTED]. All witnesses remain [REDACTED] with

the latter two [REDACTED]. For this reason, the VWU is supportive of measures that assist in preventing threat actors from becoming aware of a witness's cooperation with the Court. On this basis, the VWU agrees with the Prosecution proposed measures.

d) Witnesses [REDACTED] (P-0065 and P-0638)

17. The VWU agrees with the proposed measures for P-0065 and P-0638. [REDACTED]. The proposed measures will assist to ensure that the future VWU risk mitigation actions [REDACTED].

e) [REDACTED] (P-0150)

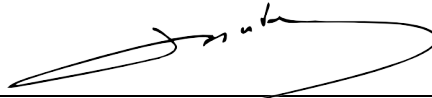
18. The VWU notes [REDACTED]. The witness's current [REDACTED] with those engaging in such activities likely to be targeted by [REDACTED]. For this reason, the VWU supports any measure that would assist in keeping his assistance to the Court confidential.

19. Additionally, as indicated by the Prosecution, [REDACTED]. The VWU considers that associated threat levels will likely. [REDACTED]. As such, the VWU is of the view that the proposed measure will assist in managing the safety of [REDACTED]. Key to this will be minimising the [REDACTED].

f) Fact witnesses residing [REDACTED] (P-0623 and P-0136)

20. The VWU has not had any contact with either of these witnesses and is reliant on the information provided by the Prosecution as to their specific circumstances. Given the nature of their employment and [REDACTED], the VWU is supportive of the proposed measures. Although, further consideration may be required on the need to augment the measures proposed for P-0136 to include the use of a pseudonym. The VWU will be better placed

to provide its assessment once having had the opportunity to speak directly with the witness.



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

Dated this 16 September 2020

At The Hague, the Netherlands