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

Date: **31 August 2020**

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2 October 2020

TRIAL CHAMBER X

Before: Judge Kimberly Prost, Single Judge

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 “Prosecution’s third application for in-court protective measures for Block 2 and Block 3 witnesses and request for additional time to contact Witness MLI-OTP- [REDACTED]”,
31 August 2020, ICC-01/12-01/18-1022-Conf-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. Pursuant to articles 64(6)(e) and 68 of the Rome Statute (“Statute”) and rule 87 of the Rules of Procedure and Evidence (“Rules”), the Prosecution seeks in-court protective measures (“ICPMs”) for 23 witnesses.¹
2. Pursuant to regulation 35 of the Regulations of the Court (“Regulations”), the Prosecution seeks additional time to be able to contact [REDACTED] in order to ascertain any need for ICPMs in her situation. The Prosecution requests to be allowed to submit an additional ICPM request for [REDACTED] by 10 September, if necessary.
3. The current application is based on the vulnerability of these witnesses and the need to protect their physical and psychological well-being, dignity, and privacy, as mandated by article 68 of the Statute. For each witness, the Prosecution requests the least restrictive measures to achieve the necessary protection, while respecting the rights of the Accused.

II. Confidentiality

4. Under regulation 23*bis* of the Regulations of the Court (“Regulations”), the Prosecution files this application as confidential *ex parte*, available only to the Prosecution and to the Victims and Witnesses Unit (“VWU”), since it contains sensitive information related to Prosecution witnesses. Confidential redacted and public redacted versions will be submitted in due course.

III. Procedural History

5. The trial in the present case commenced on 14 July 2020, with the Prosecution delivering its opening statement on 14 and 15 July. The Defence and Legal Representatives of Victims opted to present their opening statements prior to the

¹ [REDACTED]

commencement of their presentation of evidence. The presentation of Prosecution evidence will commence on 8 September 2020.²

6. In its Decision on the conduct of proceedings, the Chamber ordered all requests for protection measures under rules 87 and 88 of the Rules to be filed 40 days before the start of the presentation of evidence.³

7. The Chamber granted the Prosecution request for additional time to file its rule 87 requests⁴ and directed the Prosecution to file its rule 87 requests for the first block of witnesses by 27 July 2020, and to seek ICPMs for the remaining Prosecution witnesses by 1 September 2020.⁵

8. On 27 July 2020, the Prosecution filed its rule 87 request for the block 1 witnesses (“Block 1 ICPM Request”).⁶

9. On 17 August 2020, VWU filed its observations on the Block 1 ICPM Request (“VWU Observations”).⁷

10. The Prosecution is filing two separate rule 87 requests for its remaining witnesses. The present application covers [REDACTED] witnesses while the other request addresses [REDACTED] witnesses.

IV. Applicable Law

11. The Prosecution refers to its prior submissions in the Block 1 ICPM Request regarding the applicable law and incorporates them by reference.⁸ The language of article 68(1) of the Statute serves to protect both the physical and psychological well-being of witnesses, along with their dignity and privacy.

² ICC-01/12-01/18-999.

³ ICC-01/12-01/18-789-AnxA, para. 76.

⁴ ICC-01/12-01/18-957-Conf.

⁵ ICC-01/12-01/18-968, para. 31.

⁶ ICC-01/12-01/18-976-Conf-Exp.

⁷ ICC-01/12-01/18-998-Conf-Red.

⁸ Block 1 ICPM Request, para. 11-13.

12. ICC jurisprudence provides that protective measures under rule 87 should be granted on an exceptional basis, following a case-by-case assessment of whether they are necessary in light of an objectively justifiable risk and are proportionate to the rights of the accused.⁹ Evidence of direct threats is not required to establish the existence of an objectively justifiable risk.¹⁰

13. The Prosecution submits that the “objectively justifiable risk” required by existing rule 87 case law need not be a risk to the physical safety or security of the witness, but may relate to any of the interests specified in article 68(1), namely “the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.”

V. Submissions

Request for additional time for [REDACTED]

14. The Prosecution has been unable to contact [REDACTED] and is therefore unable to ascertain if her current circumstances require ICPMs for her upcoming testimony.

15. The Prosecution therefore requests pursuant to regulation 35 of the Regulations, to be allowed to submit an additional ICPM request for [REDACTED] by 10 September if necessary.

Security situation in Mali

16. The Prosecution recalls its prior submissions in its Block 1 ICPM Request regarding the security situation in Mali and incorporates them by reference.¹¹ The 3 July 2020 Registry report entitled “Second Report of the Registry on the Security Situation in Mali” (“Registry Second Security Report”) discussed the continuing precariousness of the security situation in the Timbuktu region, with “high levels of

⁹ See, e.g., ICC-01/09-01/11-902-Red2, para. 13; ICC-01/04-02/06-824-Red, para. 5-6.

¹⁰ ICC-01/09-01/11-902-Red2, para. 14.

¹¹ Block 1 ICPM Request, para. 4-9.

armed incidents including armed attacks and abductions” with “extreme” threat levels of terrorism and criminality alongside a substantial threat of civil unrest.¹² The Registry cited the United Nations’ observation that “extremist armed combatants of JNIM [Al Qaeda-aligned *Jama’a Nusrat ul-Islam was al-Muslimin*] and ISGS [Islamic State of the Greater Sahara] maintain a presence in Timbuktu and continue to pose the most significant security threat.”¹³

17. The Registry concluded that ICC witnesses continue to be at risk of being targeted by JNIM for mere association with the Court and the ensuing perception of their collaboration with a JNIM-defined enemy.¹⁴ With the recent killing by French forces of Adbulmalek Droukel, leader of Al Qaeda in the Islamic Maghreb (“AQIM”), the Registry considers that JNIM’s interest in the Court may have increased, raising the risk of reprisal actions aimed at ICC witnesses, with kidnappings and killings as JNIM’s preferred *modus operandi*.¹⁵

18. According to VWU’s assessment, “JNIM would rather engage in actions that have catastrophic consequences, such as kidnapping or killing those deemed to be enemies or traitors.”¹⁶ VWU notes that JNIM has reportedly formed an assassination squad called “Brigade Mohamed Ben Masalmah” for the specific purpose of killing “foreign agents”.¹⁷ VWU recalls that in August and September 2019, this brigade allegedly killed four people in the Menaka and Kidal regions seen to be cooperating with France.¹⁸ VWU also cites the kidnapping and killing in February 2020 of a shepherd named Sadou Yehia by an extremist group, a few weeks after he had criticised jihadist groups during an interview.¹⁹

¹² ICC-01/12-01/18-928-Conf-Red, para. 26.

¹³ ICC-01/12-01/18-928-Conf-Red, para. 14, 26.

¹⁴ ICC-01/12-01/18-928-Conf-Red, para. 33.

¹⁵ ICC-01/12-01/18-928-Conf-Red, para. 20, 33.

¹⁶ VWU Observations, para. 6.

¹⁷ VWU Observations, para. 6.

¹⁸ VWU Observations, para. 6.

¹⁹ VWU Observations, para. 6.

Witnesses [REDACTED]

19. There are two [REDACTED] witnesses currently [REDACTED] [REDACTED] [REDACTED]
[REDACTED] Both are scheduled to testify in Block 2.

20. There are seven [REDACTED] witnesses [REDACTED] [REDACTED]s in Block 2, while [REDACTED] are in Block 3. [REDACTED]
[REDACTED].

21. [REDACTED]
[REDACTED]
[REDACTED], the Prosecution submits that there is an objectively justifiable risk to these witnesses' safety as well as to their physical and psychological well-being.

[REDACTED] [REDACTED]

22. [REDACTED] established by AQIM and Ansar Dine in Timbuktu during the period subject of the present case, [REDACTED] witnesses [REDACTED] are particularly vulnerable. [REDACTED]
[REDACTED]. JNIM is currently led by Iyad Ag GHALY, who is the founder of Ansar Dine, and with whom AL HASSAN had close ties during the period subject of this case and up until his arrest and detention in April 2017.²⁰

23. During the control of Timbuktu by Ansar Dine/AQIM, [REDACTED] worked as a [REDACTED].²¹

24. [REDACTED] in the Timbuktu region. In 2012, he was among other [REDACTED]
[REDACTED]

²⁰ Statement of the Accused, MLI-OTP-0051-1067 p. 1076, l. 278-288, p. 1078, l. 352-361.

²¹ ICC-01/12-01/18-740-Conf-AnxB.

29. [REDACTED]
[REDACTED]
[REDACTED].

30. [REDACTED] was [REDACTED] during the time when Timbuktu was under the control of Ansar Dine/AQMI in 2012-2013. In this capacity, he met many of the members of the armed groups during their occupation of Timbuktu.²⁸ [REDACTED]
[REDACTED]
[REDACTED].²⁹ [REDACTED]
[REDACTED].

31. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³⁰

32. [REDACTED] was [REDACTED] and personally interacted with various members of the armed groups during the occupation.³¹ During the events subject of this case, [REDACTED]
[REDACTED]

²⁸ ICC-01/12-01/18-740-Conf-AnxB.

²⁹ Witness Statement of [REDACTED] MLI-OTP-0022-0244, at 0247, 0281, para. 17-18, 167.

³⁰ ICC-01/12-01/18-740-Conf-AnxB.

³¹ ICC-01/12-01/18-740-Conf-AnxB.

33. [REDACTED] during the relevant period between April 2012 and January 2013. He is [REDACTED]

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

34. [REDACTED]
[REDACTED]
[REDACTED].

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

36. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

37. [REDACTED]
[REDACTED]
[REDACTED]

³² ICC-01/12-01/18-740-Conf-AnxB.

³³ ICC-01/12-01/18-740-Conf-AnxB.

[REDACTED] it will be very easy to identify and locate [REDACTED] should his identity be revealed in open session while testifying for the Prosecution.

38. [REDACTED] who was in Timbuktu for two periods of time during the control of Timbuktu and its regions by the armed groups, Ansar Dine and AQIM. She is a [REDACTED]

[REDACTED]

[REDACTED] 34

39. [REDACTED]

[REDACTED].

[illegible]

[REDACTED]

[REDACTED] 38

41. The Prosecution requests that the Chamber authorise the use of protective measures of pseudonym, facial and voice distortion, and the use of private and/or closed session to the extent necessary to protect their identities.

Witnesses _____:

42. [REDACTED]

[REDACTED]

[REDACTED] 39

³⁴ ICC-01/12-01/18-740-Conf-AnxB.

³⁴ ICC-01/12-01/18-740-Conf-AnxB.

³⁵ ICC-01/12-01/18-174-Conf-Exp.

³⁶ ICC-01/12-01/18-322-Conf-Exp.

³⁷ ICC-01/12-01/18-202-Conf-Exp.

³⁸ ICC-01/12-01/18-586-Conf.

39 [REDACTED]

43. [REDACTED]

[REDACTED].⁴⁰

[REDACTED]

44. [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED].⁴¹ [REDACTED]

[REDACTED].

45. [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] committed in Timbuktu during the control by Ansar Dine/AQIM in 2012-2013.⁴²

46. [REDACTED] has expressed concern that he may be targeted as [REDACTED]

[REDACTED] have often been targeted.

47. [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁰ [REDACTED].

⁴¹ ICC-01/12-01/18-740-Conf-AnxB.

⁴² ICC-01/12-01/18-740-Conf-AnxB.

48. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

49. During the pre-trial phase of this case, PTC I authorized the non-disclosure of the identity of [REDACTED]⁴³ to the Defence and the public due to security concerns.

[REDACTED]

50. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED].⁴⁴ [REDACTED]
[REDACTED]

51. [REDACTED]
[REDACTED] make him an easily identifiable person.

52. [REDACTED]
[REDACTED].⁴⁵ [REDACTED]
[REDACTED] in the event of a disclosure of his identity, the public release of his name or exposure of his face would make him easily traceable and would expose him or his family to risk of physical harm and killing. [REDACTED]
considered that there was a real risk of [REDACTED]

⁴³ ICC-01/12-01/18-150-Conf-Exp.

⁴⁴ ICC-01/12-01/18-740-Conf-AnxB.

⁴⁵ *Prosecutor v. Ahmad Al Faqi Al Mahdi*, 22 July 2016, ICC-01/12-01/15-136.

[REDACTED].⁴⁶ PSU maintains that [REDACTED] could be easily recognised if his name, face or voice were revealed during his testimony before the Court. [REDACTED]

[REDACTED].

53. [REDACTED]
[REDACTED].⁴⁷

[REDACTED] *witnesses*

54. There are [REDACTED] witnesses who will testify [REDACTED] [REDACTED]
[REDACTED]. They are all scheduled to testify in Block 2.

55. As explained above, [REDACTED]
[REDACTED]
[REDACTED] render them easily identifiable to the successor armed groups currently operating in Timbuktu region, [REDACTED].

56. More importantly, however, all these [REDACTED] witnesses are [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] armed groups may retaliate against them for cooperating with the Court. [REDACTED] [REDACTED]

[REDACTED]
[REDACTED].

57. [REDACTED]
[REDACTED]

⁴⁶ [REDACTED]

⁴⁷ [REDACTED]

58. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].⁴⁹

59. [REDACTED]

[REDACTED]

[REDACTED]. He [REDACTED] witnessed AL HASSAN exercise authority as Islamic police *commissaire* in several incidents. He provides information on the upper echelons of the leadership of the armed groups which occupied Timbuktu during the relevant period, including Iyad Ag GHALY, who was the leader of Ansar Dine, along with Abou ZEID, Yahia Abou AL HAMAM and Abdallah AL CHINGUETTI of AQIM. [REDACTED]

[REDACTED].⁵⁰

60. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

⁴⁸ ICC-01/12-01/18-740-Conf-AnxB.

⁴⁹ ICC-01/12-01/18-740-Conf-AnxB.

⁵⁰ ICC-01/12-01/18-0168-[REDACTED]; [REDACTED]

[REDACTED]⁵¹

61. [REDACTED]
[REDACTED]
[REDACTED]⁵²

62. [REDACTED] in the control of Timbuktu by Ansar Dine and AQIM during the relevant time period. [REDACTED]
[REDACTED]⁵³

63. During the pre-trial phase of this case, PTC I authorized the non-disclosure of the identities of [REDACTED]⁵⁴, [REDACTED]⁵⁵ and [REDACTED]⁵⁶ to the Defence and the public due to security concerns.

64. The Prosecution requests that the Chamber authorise the use of protective measures of pseudonym, facial and voice distortion, and the use of private and/or closed session to the extent necessary to protect their identities.

[REDACTED] [REDACTED] [REDACTED]

65. [REDACTED] witness, [REDACTED] [REDACTED] is part of Block 2.

66. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁷ [REDACTED]
[REDACTED]

⁵¹ ICC-01/12-01/18-740-Conf-AnxB.

⁵² ICC-01/12-01/18-740-Conf-AnxB.

⁵³ ICC-01/12-01/18-740-Conf-AnxB.

⁵⁴ ICC-01/12-01/18-314-[REDACTED]

⁵⁵ ICC-01/12-01/18-314-[REDACTED]

⁵⁶ ICC-01/12-01/18-314-[REDACTED]

⁵⁷ ICC-01/12-01/18-740-Conf-AnxB.

67. While [REDACTED], [REDACTED] there may be little risk to his physical safety from those associated with the armed groups operating in Mali, allowing him to testify publicly could attract the attention of jihadist sympathisers [REDACTED]. Such sympathisers may view [REDACTED]'s testimony against AL HASSAN and the armed groups as a betrayal of the jihadist cause of these groups. Viewed as a traitor, [REDACTED] could thereby become a target of retaliatory attacks by such sympathisers of jihadist groups.

68. The Prosecution requests that the Chamber authorise the use of protective measures of pseudonym, facial and voice distortion, and the use of private and/or closed session to the extent necessary to protect [REDACTED]'s identity.

69. Finally, the Prosecution seeks protective measures for four of its [REDACTED]

70. [REDACTED] are [REDACTED]

[REDACTED]⁵⁸.

71. As they work with [REDACTED], protective measures are necessary in order to preserve their anonymity and security in their activities as [REDACTED]

72. [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] She produced a report [REDACTED] [REDACTED]

⁵⁸ ICC-01/12-01/18-740-Conf-AnxB.

documents seized in Timbuktu. [REDACTED]

[REDACTED]

[REDACTED].⁵⁹ [REDACTED]

was included in the Block 1 ICPM Request.⁶⁰

73.

[REDACTED]

[REDACTED]. He produced a report [REDACTED]

[REDACTED].⁶¹

74. As [REDACTED] protective measures are necessary in order to preserve their anonymity and security in accordance with the operational needs of their current and future professional activities. These activities may concern [REDACTED]

[REDACTED].

75. The Prosecution requests that the Chamber authorise the use of protective measures of pseudonym, facial and voice distortion, and the use of private and/or closed session to the extent necessary to protect the identities of [REDACTED] [REDACTED] in particular have confirmed that they would like to testify anonymously, with at least the use of pseudonyms.

VI. Requested Relief

76. For the foregoing reasons, the Prosecution requests the Chamber to authorise the use of protective measures of pseudonym, facial and voice distortion, and the use of private and/or closed session to the extent necessary to protect the identities of

[REDACTED]

[REDACTED]

[REDACTED]

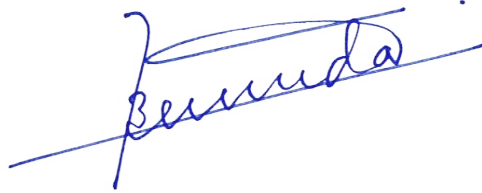
⁵⁹ ICC-01/12-01/18-740-Conf-AnxB.

⁶⁰ Block 1 ICPM Request, para. 19-22.

⁶¹ ICC-01/12-01/18-740-Conf-AnxB.

██████.

77. The Prosecution further requests that it be allowed to file an additional ICPM request for ██████ by 10 September if necessary.



Fatou Bensouda, Prosecutor

Dated this 31st of August 2020

At The Hague, The Netherlands