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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 redacted version of

Decision on the measures restricting Mr Al Hassan's contacts while in detention

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

The Office of the Prosecutor

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Legal Representatives of Applicants

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**Unrepresented Applicants for
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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*, issues this ‘Decision on the measures restricting Mr Al Hassan’s contacts while in detention’.

I. Procedural history and submissions

1. In a series of seven decisions (the ‘Pre-Trial Decisions’),¹ the Pre-Trial Chamber I (hereinafter: ‘PTC I’) Single Judge ordered restrictions on Mr Al Hassan’s contacts and accesses while in pre-trial detention (the ‘Pre-Trial Restrictions’). These orders were implemented by the Registry who reported thereon in several filings.²

¹ Decision on the Prosecution’s Application under Regulation 101 of the Regulations of the Court, 5 April 2018, ICC-01/12-01/18-16-Conf-Exp-tENG (confidential *ex parte*, only available to the Prosecution and the Defence) (hereinafter: ‘First PTC Decision’); Second Decision on the Restrictions on Contact with Other Persons during the Pre-Trial Proceedings, 20 July 2018, ICC-01/12-01/18-93-Conf-Exp-tENG (confidential *ex parte*, only available to the Prosecution; a confidential *ex parte* redacted version available to the Defence and the Prosecution was filed on that same date, ICC-01/12-01/18-93-Conf-Exp-Red-tENG) (hereinafter: ‘Second PTC Decision’); Third Decision on the Restrictions on Contact with Other Persons during the Pre-Trial Proceedings, 20 July 2018, ICC-01/12-01/18-95-Conf-Exp-tENG (confidential *ex parte*, only available to the Prosecution and the Registrar; a confidential *ex parte* redacted version available to the Defence, the Prosecutor and the Registrar was filed on 8 August 2018, ICC-01/12-01/18-95-Conf-Exp-Red-tENG) (hereinafter: ‘Third PTC Decision’); Fourth Decision on the Measures Restricting Mr Al Hassan’s Non-Privileged Contact, 9 May 2019, ICC-01/12-01/18-340-Conf-Exp-tENG (confidential *ex parte*, only available to the Registry; confidential *ex parte* redacted versions were filed on that same date; and a public redacted version was filed on 5 July 2019, ICC-01/12-01/18-340-Red3) (hereinafter: ‘Fourth PTC Decision’); Décision suite au dépôt par le Greffe de rapports concernant deux incidents allégués survenus lors de [REDACTED], 7 June 2019, ICC-01/12-01/18-367-Conf-Exp (confidential *ex parte*, only available to the Chamber; confidential *ex parte* redacted versions were filed on that same date) (hereinafter: ‘Fifth PTC Decision’); Décision suite au dépôt par la défense d’une requête urgente sollicitant l’autorisation de recevoir des visites conjugales et la variation des modalités de la visite familiale de M. Al Hassan, 7 June 2019, ICC-01/12-01/18-368-Conf-Exp (confidential *ex parte*, only available to the Registrar and the Detention Section; confidential *ex parte* redacted versions were filed on that same date) (hereinafter: ‘Sixth PTC Decision’); Décision suite au dépôt par la défense d’une requête urgente aux fins de révision par le juge unique de sa décision d’interdire les visites conjugales, 18 June 2019, ICC-01/12-01/18-378-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registrar; a confidential *ex parte* redacted version available to the Defence, the Prosecution and the Registrar was filed on that same date, ICC-01/12-01/18-378-Conf-Exp-Red) (hereinafter: ‘Seventh PTC Decision’). *See also* Décision relative à la requête du Greffier sur les communications vidéo au centre de détention, 1 November 2019, ICC-01/12-01/18-481-Conf (reclassified as confidential on 14 April 2020) (hereinafter: ‘Eighth PTC Decision’).

² Registry Report on the Implementation of the Monitoring Measures Ordered by the Single Judge, 21 May 2018, ICC-01/12-01/18-34-Conf-Exp (confidential *ex parte*, only available to the Prosecution and the Defence); Second Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud’s Contact, 24 May 2019, ICC-01/12-01/18-355-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry); Third Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag

2. On 21 November 2019, the Office of the Prosecutor (the ‘Prosecution’) filed an urgent request, seeking to maintain the restrictions on non-privileged communications of Mr Al Hassan whilst in detention and for the Chamber to impose additional restrictions (the ‘Prosecution Request’).³
3. On 9 December 2019, the Defence filed its response, opposing the Prosecution Request (the ‘Defence First Response’).⁴

Mahmoud’s Contact, 22 August 2019, ICC-01/12-01/18-457-Conf-Exp (confidential *ex parte*, only available to the Detention Section and the VWU; a confidential *ex parte* redacted version available to the Defence, the Detention Section and the VWU was filed on that same date); Fourth Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud’s Contact, 21 November 2019, ICC-01/12-01/18-503-Conf-Exp (confidential *ex parte*, only available to the Detention Section and the VWU; a confidential *ex parte* redacted version available to the Defence, the Detention Section and the VWU was filed on that same date). *See also* Registry Report on an incident that occurred during the [REDACTED], 25 October 2018, ICC-01/12-01/18-162-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry; with confidential *ex parte* Annexes I to III, only available to the Defence and the Registry; a confidential redacted version of the main filing was filed on 12 May 2020); Registry Report on the Implementation of the Measures Restricting Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud’s Contact, 22 February 2019, ICC-01/12-01/18-254-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry; with confidential *ex parte* annex, only available to the Defence and the Registry); Registry Report on the Implementation of the Monitoring Regime in Detention and Request for Guidance, 6 March 2019, ICC-01/12-01/18-262-Conf-Exp (confidential *ex parte*, only available to the Registry; with confidential *ex parte* Annex, only available to the Registry; a confidential redacted version of the main filing was filed on 12 May 2020); Registry Report on an Incident Occurred during the [REDACTED], 19 March 2019, ICC-01/12-01/18-286-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry; with confidential *ex parte* Annexes I and II, only available to the Defence and the Registry; a confidential *ex parte* redacted version of the main filing and Annex I available to the Prosecution, the Defence and the Registry were filed on 28 June 2019); Registry Report on a Second Incident Occurred during the [REDACTED], 26 March 2019, ICC-01/12-01/18-293-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry; with confidential *ex parte* Annexes I and II, only available to the Defence and the Registry; a confidential *ex parte* redacted version of the main filing and Annex I available to the Prosecution, the Defence and the Registry were filed on 28 June 2019).

³ Prosecution’s urgent application to maintain restrictions on Mr Al Hassan’s contacts and access to others whilst in detention, 21 November 2019, ICC-01/12-01/18-505-Conf-Exp (confidential *ex parte*, only available to the Prosecution, the VWU and the Detention Section; with confidential *ex parte* Annexes A and B, only available to the Prosecution, the VWU and the Detention Section; a confidential *ex parte* redacted version of the main filing available to the Prosecution, the Defence, the VWU and the Detention Section was filed on 26 November 2019, ICC-01/12-01/18-505-Conf-Exp-Red; a public redacted version was filed on 6 February 2020, ICC-01/12-01/18-505-Red2).

⁴ Defence response to Prosecution urgent application to maintain restrictions on Mr. Al Hassan’s contacts and access to others while in detention, ICC-01/12-01/18-520-Conf-Exp (confidential *ex parte*, only available to the Defence; with confidential *ex parte* Annexes A and B only available to the Defence and the Prosecution, and the Defence, respectively; a confidential *ex parte* redacted version of the main filing available to the Defence, the Prosecution, the VWU and the Detention Section was filed on 17 December 2019, ICC-01/12-01/18-520-Conf-Exp-Red; a public redacted version was filed on 11 February 2020, ICC-01/12-01/18-520-Red2).

4. On 13 January 2020, the Registry filed its observations on the Prosecution Request and the Defence First Response (the ‘Registry Observations’).⁵
5. On 21 January 2020, the Chamber decided that the Pre-Trial Restrictions shall, in the *interim*, remain in place, pending review of the measures (the ‘First Decision on Restrictions’).⁶ In order to undertake this review, the Chamber requested a report from the Registry on the measures, including potential alternatives to the regime currently in place, and any other relevant information; submissions from the Prosecution containing up to date, concrete and detailed information as to [REDACTED] arrangements and any other relevant information; and a response from the Defence to these filings.⁷
6. On 8 April 2020, pursuant to instructions from the Chamber, the Registry filed its report on the measures restricting Mr Al Hassan’s contacts (the ‘Registry Report’).⁸ The Registry considers that the current monitoring regime applicable to Mr Al Hassan is clear and it has no challenge to report in the implementation of the restrictions.⁹ Concerning in particular the implementation of the [REDACTED] measures, the Registry submits that, as a whole, Mr Al Hassan’s conversations are understandable, he is clear about any third parties he is speaking about, appears to have a solid understanding and respect for his restrictive measures, and does not hesitate to inform his interlocutors of the restrictions if

⁵ Registry Observations to Defence Request to Access Audio Files (ICC-01/12-01/18-525-Conf-Exp) and the Prosecutor’s Application on Restrictions on Contact (ICC-01/12-01/18-505-Conf-Exp), ICC-01/12-01/18-550-Conf-Exp (confidential *ex parte*, only available to the Detention Section and the Victims and Witnesses Unit; two confidential *ex parte* redacted versions, available to the Prosecution and the Defence, were notified on 14 January 2020, ICC-01/12-01/18-550-Conf-Exp-Red and ICC-01/12-01/18-550-Conf-Exp-Red2, respectively; a public redacted version was notified on 13 February 2020, ICC-01/12-01/18-550-Red3). An extension of time limit was granted to the Registry to submit its observations; *see* email from the Chamber, 6 January 2020, at 13:51.

⁶ Decision on Mr Al Hassan’s restrictions and accesses while in detention, ICC-01/12-01/18-557-Conf-Exp (confidential *ex parte*, available only to the Registry; separate confidential *ex parte* redacted versions available only to the Registry and Defence, ICC-01/12-01/18-557-Conf-Exp-Red, and only to the Registry and the Prosecution, ICC-01/12-01/18-557-Conf-Exp-Red2, were filed simultaneously; a public redacted version was filed on 14 February 2020, ICC-01/12-01/18-557-Red3).

⁷ First Decision on Restrictions, ICC-01/12-01/18-557-Red3, para. 11 and p. 10.

⁸ Registry Report pursuant to the “Decision on Mr Al Hassan’s restrictions and accesses while in detention”, ICC-01/12-01/18-557-Conf-Exp, ICC-01/12-01/18-732-Conf-Exp (confidential *ex parte*, only available to the Registry; a confidential *ex parte* redacted version, available to the Defence and the Prosecution, was filed on the same day, ICC-01/12-01/18-732-Conf-Red).

⁹ Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 17.

necessary.¹⁰ The Registry further reports on potential alternatives to current restrictions, including: (i) [REDACTED];¹¹ (ii) [REDACTED];¹² and (iii) [REDACTED].¹³ The Registry nonetheless [REDACTED].¹⁴

7. The Victims and Witnesses Unit (the 'VWU') adds that it is in favour of maintaining [REDACTED], as this has proven to be useful (i) to enhance the efficiency of the [REDACTED] measures in place; (ii) to give valuable information about individuals to be put on Mr Al Hassan's list of contacts; and (iii) to detect any potential threats to witnesses.¹⁵ Regarding this last point, the VWU submits that it is particularly mindful of the current stage of the case, which implies disclosure of witnesses' identities and an increased risk as the date of the trial is approaching, particularly in view of [REDACTED].¹⁶ In this regard, the VWU argues that [REDACTED].¹⁷ The VWU further submits that [REDACTED].¹⁸
8. On 23 April 2020, pursuant to instructions from the Chamber, the Prosecution filed a response to the Registry Report (the 'Prosecution Response').¹⁹ The Prosecution requests that the Chamber maintain the Pre-Trial Restrictions until the end of the proceedings and impose additional measures concerning Mr Al Hassan's list of non-privileged contacts, consisting of (i) limiting this list to only his immediate family members; and (ii) excluding from this list individuals who are members of, affiliated with, or in contact with any of the armed groups operating in Mali, including Ansar Dine, Al-Qaeda in the Islamic Maghreb (hereinafter: 'AQIM'), *Jama'at Nusrat Al-Islam wal-Muslimin* (hereinafter:

¹⁰ Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 18.

¹¹ Registry Report, ICC-01/12-01/18-732-Conf-Red, paras 19-20.

¹² Registry Report, ICC-01/12-01/18-732-Conf-Red, paras 21-22.

¹³ Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 25.

¹⁴ Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 24.

¹⁵ Registry Report, ICC-01/12-01/18-732-Conf-Red, paras 30-31.

¹⁶ Registry Report, ICC-01/12-01/18-732-Conf-Exp, para. 29.

¹⁷ Registry Report, ICC-01/12-01/18-732-Conf-Exp, paras 29, 33-34.

¹⁸ Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 32.

¹⁹ Prosecution's response to Registry report, provision of updated information and continued application to maintain restrictions on Mr Al Hassan's contacts and access to others whilst in detention and to impose additional measures, ICC-01/12-01/18-769-Conf-Exp, (confidential *ex parte*, only available to the Prosecution, the Defence, the VWU and the Detention Section; with one confidential *ex parte* annex A, only available to the Prosecution and the VWU, ICC-01/12-01/18-769-Conf-Exp-AnxA; a corrigendum of the main filing was filed on 29 April 2020, ICC-01/12-01/18-769-Conf-Exp-Corr).

‘JNIM’) or any nationalist armed group (the ‘Additional Measures’).²⁰ The Prosecution submits that there is no change in circumstances warranting any lifting or reduction of the Pre-Trial Restrictions.²¹ Further, in light of the disclosure of the identity of Prosecution witnesses and the upcoming trial, and notably of the additional information provided [REDACTED],²² the Prosecution argues that the Pre-Trial Restrictions and the Additional Measures are necessary and warranted on the continued existence of an objectively justifiable risk of [REDACTED] to Prosecution witnesses and to the integrity of the proceedings as a result.²³ It further submits that, in light of the Registry Report, the Pre-Trial Restrictions and Additional Measures are proportionate as the least restrictive measures available to mitigate the risks at this stage.²⁴ Finally, the Prosecution requests the Chamber to order the Registry to provide it with a lesser redacted version of the Registry Report, together with any underlying material, as well as to be allowed to make additional submissions, if necessary, once the Prosecution is provided with confidential redacted versions of certain filings.²⁵

9. On 5 May 2020, the Chamber issued a decision rejecting a Defence request for interim release (the ‘Decision on interim release’), in which it *inter alia* slightly amended the restrictions regime applicable to Mr Al Hassan at the Detention Centre.²⁶ The Chamber notably determined that exceptionally, and until such time that COVID-19 measures are lifted at the Detention Centre, [REDACTED].²⁷

²⁰ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 1, 5, 52; *see also* Prosecution Request, ICC-01/12-01/18-505-Conf-Exp-Red, paras 2-3, 8, 39, 74-77, 92.

²¹ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 2; *see also* Prosecution Request, ICC-01/12-01/18-505-Conf-Exp-Red, paras 4, 41, 44-45.

²² [REDACTED], ICC-01/12-01/18-769-Conf-Exp-AnxA (confidential *ex parte*, only available to the Prosecution and the VWU) *annexed to* the Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr.

²³ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 2, 4, 8-30, 51; [REDACTED], ICC-01/12-01/18-769-Conf-Exp-AnxA. *See also* Prosecution Request, ICC-01/12-01/18-505-Conf-Exp-Red, paras 5-6, 42, 78-86.

²⁴ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 4, 30-41, 51; *see also* Prosecution Request, ICC-01/12-01/18-505-Conf-Exp-Red, paras 78, 87-91.

²⁵ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 1, 43.

²⁶ Decision on the Defence request for interim release, ICC-01/12-01/18-786-Conf, p. 37 and para. 39(d) (a public redacted version was filed on 29 May 2020, ICC-01/12-01/18-786-Red).

²⁷ Decision on the Defence request for interim release, ICC-01/12-01/18-786-Conf, para. 39(d).

10. On 7 May 2020, the Defence filed its response to the Registry Report (the ‘Defence Second Response’), opposing the ongoing imposition of [REDACTED] to all non-privileged Detention Centre communications, as well as the imposition of the Additional Measures.²⁸ The Defence submits that the legal threshold for imposing restrictive measures must be interpreted and applied strictly, and must be consistent with Mr Al Hassan’s fundamental rights and status as a vulnerable detainee.²⁹ In this context, the Defence argues that it is necessary to establish the existence of reasonable grounds to believe that there is a risk that contacts between the accused and third persons could engage any of the specific scenarios set out in Regulation 101(2) of the Regulations of the Court.³⁰ Further, according to the Defence, the need to pre-empt potential risks of disclosure violations through [REDACTED] is outweighed by the right to privacy and the prejudice occasioned by [REDACTED].³¹ In line with the principle of proportionality, the Chamber should consider whether the objective served by the measures is outweighed by the prejudice caused to the accused and whether less intrusive measures could achieve the same objective, taking notably account in its assessment the fact that Mr Al Hassan is a vulnerable individual.³² In applying these principles to the current proceedings, the Defence first argues that the Prosecution has failed to establish a reasonable belief that there is a risk of Mr Al Hassan engaging in witness interference or that his communications would give rise to such a risk, but it has instead relied on a series of highly prejudicial claims, which are unsupported by reliable evidence.³³ Second, the Defence argues that no weight can be given to the VWU’s submissions concerning the general utility of

²⁸ Defence response pursuant to the “Decision on Mr Al Hassan’s restrictions and accesses while in detention” (ICC-01/12-01/18-557-Conf-Exp-Red), ICC-01/12-01/18-791-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registry, with confidential Annexes A and B, notified on 8 May 2020; a confidential redacted version was notified on the same day, ICC-01/12-01/18-791-Conf-Red). An extension of time limit was granted to the Defence to submit its response after 16:00; *see* email from the Defence to the Chamber, 7 May 2020, at 11:53 and email from the Chamber, 7 May 2020, at 13:09. *See also* Defence First Response, ICC-01/12-01/18-520-Conf-Exp-Red, paras 2-3, 50, 53.

²⁹ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 9-14.

³⁰ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 10.

³¹ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 11.

³² Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 13-14. *See also* Defence First Response, ICC-01/12-01/18-520-Conf-Exp-Red, para. 45.

³³ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 15-36. *See also* Defence First Response, ICC-01/12-01/18-520-Conf-Exp-Red, paras 2, 12-40.

[REDACTED].³⁴ Finally, the Defence submits that the use of [REDACTED], as concerns all communications, is unnecessary and disproportionately prejudicial, and that the regime should be varied to allow Mr Al Hassan to have private visits and more meaningful contacts with his family.³⁵

11. In the alternative, should the Chamber decide to maintain the Pre-Trial Restrictions and the [REDACTED] regime, the Defence requests the Chamber to confirm that Mr Al Hassan will nonetheless be entitled to: (i) receive private visits; (ii) enjoy standard visiting hours during family visits; (iii) maintain an additional funded hour for communications with his family; and (iv) enjoy such forms of communication that are necessary to maintain meaningful relations with his immediate family during the trial process.³⁶

II. Applicable law

12. The Chamber refers to Articles 21(3), 43(6), 64, 67 and 68 of the Rome Statute (the ‘Statute’), Rule 18 of the Rules of Procedure and Evidence (the ‘Rules’), Regulations 90-92 and 99-101 of the Regulations of the Court (the ‘Regulations’) and Regulations 169, 173-175, 179-180, 183-185 and 187 of the Regulations of the Registry.
13. The Chamber recalls that, pursuant to Regulation 99(1)(h) and (i) of the Regulations, a detained person is entitled to, *inter alia*, ‘receive correspondence, mail and packages’ and ‘communicate by letter or telephone with his or her family and other persons’, as well as, pursuant to Regulation 100(1) of the Regulations, to ‘receive visits’. These entitlements are not absolute and are subject to ‘any restrictions necessary in the interests of the administration of justice or for the maintenance of the security and good order of the detention centre’, as set out in the Regulations of the Registry.³⁷ Access to forms of communication, including visits and phone calls,³⁸ can further be limited by the

³⁴ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 15, 37-45.

³⁵ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 15, 46-56. *See also* Defence First Response, ICC-01/12-01/18-520-Conf-Exp-Red, paras 3, 41-49, 51-52.

³⁶ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 57.

³⁷ Regulation 99(2) and 100(3) of the Regulations.

³⁸ Regulation 180(1) and 185 of the Regulations of the Registry.

Chamber pursuant to Regulation 101 of the Regulations, which provides in its second paragraph that:

The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact:

- (a) Is for the purposes of attempting to arrange the escape of a detained person from the detention centre;
- (b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation;
- (c) Could be harmful to a detained person or any other person;
- (d) Could be used by a detained person to breach an order for non-disclosure made by a judge;
- (e) Is against the interests of public safety; or
- (f) Is a threat to the protection of the rights and freedom of any person.

14. The Chamber further notes that Article 68(1) of the Statute provides that '[t]he Court shall take measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses'.
15. The Chamber emphasises that contact with the outside world and visits are imperative for a detained person's well-being. Restrictions imposed on the contact of the accused person must be justified and proportionate, in accordance with internationally recognised human rights, as provided in Article 21(3) of the Statute.³⁹ A balance must be struck between the right of every detained person to maintain family life and contact with the outside world, and the absolute necessity of ensuring the safety of witnesses, the preservation of evidence and the integrity of the proceedings.⁴⁰ While detainees' rights to communicate with others outside

³⁹ First Decision on Restrictions, ICC-01/12-01/18-557-Red3, para. 10; Second PTC Decision, ICC-01/12-01/18-93-Conf-Exp-Red-tENG, para. 50.

⁴⁰ First Decision on Restrictions, ICC-01/12-01/18-557-Red3, para. 10; Second PTC Decision, ICC-01/12-01/18-93-Conf-Exp-Red-tENG, para. 88.

the Detention Centre are not absolute, the restrictions imposed must be the least restrictive possible to the rights of the detained person.⁴¹

16. Furthermore, as noted by the PTC I Single Judge, ‘such restrictions, because they interfere with the rights of the detained person, must be based on the existence of an objectively justifiable risk’.⁴² The general security situation in Mali, [REDACTED], and the fact that there is a general threat to Prosecution witnesses cannot be the sole basis to continue to impose all of the Pre-Trial Restrictions.⁴³ In this context, the Chamber refers to the PTC I Single Judge’s findings that ‘regulation 101(2) of the Regulations of the Court does not preclude a Single Judge or a Chamber from grounding a decision on the existence of a risk or, consequently, from ordering restrictions on contact so as to pre-empt that risk’ and that ‘[...] recalling his duty to ensure the safety of witnesses under articles 68(1) and 57(3) of the Statute, the Single Judge considers that pre-emptive restrictions on contact with other persons could be warranted if the commission of one of the offences listed under regulation 101(2) of the Regulations of the Court would have serious consequences for the lives of the witnesses and if imposing restrictions after an offence has been committed would be too late’.⁴⁴
17. The Chamber notes that the provisions of the Court’s legal framework referred to above authorise the use of restrictions as long as they are necessary and proportionate to ‘ensure the safety of witnesses, the preservation of evidence and the integrity of the proceedings’.⁴⁵

⁴¹ First Decision on Restrictions, ICC-01/12-01/18-557-Red3, para. 10; Second PTC Decision, ICC-01/12-01/18-93-Conf-Exp-Red-tENG, para. 88.

⁴² First Decision on Restrictions, ICC-01/12-01/18-557-Red3, para. 10; Second PTC Decision, ICC-01/12-01/18-93-Conf-Exp-Red-tENG, para. 63.

⁴³ First Decision on Restrictions, ICC-01/12-01/18-557-Red3, para. 10.

⁴⁴ Second PTC Decision, ICC-01/12-01/18-93-Conf-Exp-Red-tENG, paras 59, 63. *See also* Second PTC Decision, ICC-01/12-01/18-93-Conf-Exp-Red-tENG, paras 60-62.

⁴⁵ Second PTC Decision, ICC-01/12-01/18-93-Conf-Exp-Red-tENG, para. 70.

III. Analysis

A. The restrictions currently in place

18. The Pre-Trial Restrictions ordered by the PTC I Single Judge,⁴⁶ as amended by the Trial Chamber,⁴⁷ which are still applicable are as follows:
 - [REDACTED]⁴⁸;
 - [REDACTED];
 - [REDACTED],⁴⁹ [REDACTED];⁵⁰
 - [REDACTED];⁵¹
 - [REDACTED]; and
 - [REDACTED].
19. Furthermore, the PTC I Single Judge authorised Mr Al Hassan to receive [REDACTED] of his family members,⁵² as well as to send [REDACTED] to his family.⁵³
20. The PTC I Single Judge also authorised the VWU to [REDACTED].⁵⁴
21. Further, in the Decision on interim release, the Chamber confirmed that [REDACTED], are compatible with the current restrictions regime applicable to Mr Al Hassan's contacts.⁵⁵ The Chamber also strongly encouraged the Registry to continue efforts in its assessment of the feasibility of video-conferencing communications more generally.⁵⁶

⁴⁶ Fourth PTC Decision, ICC-01/12-01/18-340-Red3, paras 6, 12; p. 23.

⁴⁷ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 39(d).

⁴⁸ First PTC Decision, ICC-01/12-01/18-16-Conf-Exp-tENG, para. 17.

⁴⁹ Eighth PTC Decision, ICC-01/12-01/18-481-Conf, paras 8, 10; *See also* Transcript of confidential *ex parte* status conference with the Defence and the Registry on 13 December 2019, ICC-01/12-01/18-T-010-CONF-EXP-ENG, p. 16, line 12 to p. 17, line 2.

⁵⁰ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 39(d).

⁵¹ [REDACTED], 30 April 2018, ICC-01/12-01/18-24-Conf-Exp-tENG.

⁵² Fourth PTC Decision, ICC-01/12-01/18-340-Red3, para. 62.

⁵³ Eighth PTC Decision, ICC-01/12-01/18-481-Conf, paras 8-9.

⁵⁴ Third PTC Decision, ICC-01/12-01/18-95-Conf-Exp-Red-tENG, para. 42.

⁵⁵ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 39(a).

⁵⁶ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 39(e).

B. Review of the current restrictions regime

1. General considerations

22. As indicated in the Decision on interim release, the Chamber takes particular note of the situation that Mr Al Hassan is currently facing in detention, notably in light of the impact of measures taken at the Detention Centre in response to the COVID-19 pandemic.⁵⁷
23. The Chamber also notes the Defence submissions on Mr Al Hassan's rehabilitative rights and needs as a torture survivor, which it submits should be duly considered when evaluating the restrictions to Mr Al Hassan's contacts that are currently in place.⁵⁸ In this context, the Chamber refers to the information provided by the Defence about the state of Mr Al Hassan's health, as set out in the Decision on interim release, and stresses that it has taken Mr Al Hassan's reported health condition into consideration in its proportionality assessment below.⁵⁹
24. The Chamber further observes that the Defence considers it both impermissible and highly improper for the Prosecution to rely upon Mr Al Hassan's statements for any purpose, as it submits that they constitute the fruits of torture and arbitrary detention.⁶⁰ As set out in the Decision on interim release,⁶¹ the Chamber notes that the Defence's foreshadowed motion on the arrest, detention and interrogation of Mr Al Hassan [REDACTED] in Mali is pending. As such, the Chamber finds that it is not, at this stage, in a position to make any determination on whether the statements of Mr Al Hassan 'constitute the fruits of torture or arbitrary detention' as alleged by the Defence and does not make any determinations on this basis.
25. The Chamber will now turn to its review of the restrictions of Mr Al Hassan's contacts, and analyse whether: (i) there exists an objectively justifiable risk that continues to warrant the current restrictions, as well as the implementation of

⁵⁷ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 41.

⁵⁸ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 3, 14.

⁵⁹ Decision on interim release, ICC-01/12-01/18-786-Conf, paras 23-25.

⁶⁰ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 3, 21.

⁶¹ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 53.

Additional Measures; and (ii) the measures are necessary and proportionate to the legitimate aim pursued.

26. In conducting this assessment, the Chamber shall have particular regard to developments occurring since the Fourth Decision from the PTC I Single Judge on the measures restricting Mr Al Hassan's non-privileged contact.⁶² The Chamber stresses that it has also taken into consideration the arguments presented by the parties and participants ahead of the First Decision on Restrictions, as summarised in that decision.⁶³

2. *The continued existence of an objectively justifiable risk*

27. The Chamber notes the Prosecution's submission that there is an objectively justifiable risk [REDACTED] to Prosecution witnesses and to the integrity of the proceedings should restrictions to Mr Al Hassan's contacts be lifted, notably in light of the general security situation that currently prevails in Mali.⁶⁴ In this regard, the Chamber agrees with the Prosecution that, while the general security situation in Mali cannot be the sole basis to maintain the restrictions on Mr Al Hassan's contacts, it constitutes a relevant factor for the Chamber's assessment of the existence of a risk in the present case.⁶⁵
28. In this context, the Chamber refers to the information provided by the Registry concerning the general situation in Mali,⁶⁶ which *inter alia* indicates that (i) the security situation in Mali continues to deteriorate;⁶⁷ (ii) the Malian government, the UN and international forces are themselves regularly targeted by extremist groups;⁶⁸ (iii) [REDACTED];⁶⁹ (iv) JNIM has a well-established history of

⁶² Fourth PTC Decision, ICC-01/12-01/18-340-Red3.

⁶³ ICC-01/12-01/18-557-Conf-Exp, paras 2-3, 6.

⁶⁴ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 2, 4, 8-30, 51; [REDACTED], ICC-01/12-01/18-769-Conf-Exp-AnxA. *See also* Prosecution Request, ICC-01/12-01/18-505-Conf-Exp, paras 6, 44, 63-73.

⁶⁵ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 19.

⁶⁶ First Registry Report on the Security Situation in Mali, 31 January 2020, ICC-01/12-01/18-571-Conf (with confidential Annex I and confidential, *ex parte* Annex II, only available to the Registry) (the 'Registry Security Report').

⁶⁷ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 35.

⁶⁸ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 20.

⁶⁹ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 20.

taking ruthless action [REDACTED];⁷⁰ (v) risks [REDACTED] in Timbuktu city and the surrounding region,⁷¹ and the security situation in the North continues to deteriorate and become increasingly complex;⁷² (vi) the security situation in Mali has a significant impact on [REDACTED];⁷³ and (vii) [REDACTED].⁷⁴ In addition, more recent information from the Registry indicates that the COVID-19 pandemic has to date not stopped the activity of JNIM in Mali, whose attacks increased significantly in March,⁷⁵ and that the pandemic situation has, rather, emboldened extremist groups operating in Mali.⁷⁶

29. Further, the Chamber notes the extremely violent working methods of the armed groups in the North of Mali and the information that their primary targets continue to be national defence and security forces, the United Nations Multidimensional Integrated Stabilization Mission ('MINUSMA'), and international forces.⁷⁷ The Chamber also notes the recent information provided by the Prosecution, which in its view demonstrates the armed groups' continued ability to target and harm persons associated with Malian state authorities and foreign entities.⁷⁸ Recent security information also indicates persistent insecurity and lack of State authority in certain areas in the North of Mali.⁷⁹
30. The Chamber further takes note of the information, highlighted in the Decision on interim release, indicating that Mr Al Hassan joined the armed groups, Ansar Dine and AQMI, shortly after their arrival in Timbuktu in 2012 and that, at the

⁷⁰ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 30.

⁷¹ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 20.

⁷² Registry Security Report, ICC-01/12-01/18-571-Conf, para. 23.

⁷³ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 28.

⁷⁴ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 39.

⁷⁵ Annex II to the Registry's Observations on methods of work to minimise the impact of COVID-19 and related measures on the conduct of proceedings (ICC-01/12-01/18-776), ICC-01/12-01/18-824-Conf, 20 May 2020, ICC-01/12-01/18-824-Conf-AnxII, paras 1.3, 4.2, relating to the situation between 25 March and 30 April 2020.

⁷⁶ ICC-01/12-01/18-824-Conf-AnxII, paras 1.3, 4.4.

⁷⁷ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 64, *referring e.g. to* recent Report of the Secretary General on the Situation in Mali, 20 March 2020, S/2020/223 ('20 March 2020 UN Report') and Registry Security Report, ICC-01/12-01/18-571-Conf, paras 8-9, 16, 19-20, 31; ICC-01/12-01/18-571-Conf-AnxI, p. 2.

⁷⁸ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 17-18, referring *inter alia* to operations targeting a military camp and government officials allegedly launched by JNIM.

⁷⁹ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 64, *referring to* 20 March 2020 UN Report, paras 3, 15, 35-36, 47, 93, 96. *See also* Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 17.

time of his arrest, he was still working under instructions of Iyad Ag Ghaly, part of his group, and was still actively involved in the violent activities of the armed groups operating in the North of Mali.⁸⁰ In this regard, the Chamber notes that Iyad Ag Ghaly is, as previously found, the founder and leader of Ansar Dine and the main figure of the umbrella organisation called the JNIM, which brings together different armed groups from the North of Mali, including Ansar Dine.⁸¹ The Chamber already found that armed groups operating in the North of Mali, including JNIM as one of the main actors, are allegedly responsible for continuing violent attacks in Mali against civilian populations, national defence and security forces, the MINUSMA, and international forces.⁸²

31. The Chamber has also taken into consideration the Prosecution's submission that physical harm and/or intimidation to Prosecution witnesses would in turn prejudice these proceedings, as it would be extremely detrimental to the ability and willingness of other witnesses to cooperate with the Prosecution.⁸³
32. The Chamber recalls that, in its First Decision on restrictions,⁸⁴ it found that the restrictions ordered by the PTC I Single Judge should remain in place, pending completion of the Prosecution's witness management and related [REDACTED] arrangements. In this regard, the Chamber takes note of the Prosecution's submission that [REDACTED].⁸⁵ The Chamber particularly notes, in relation to

⁸⁰ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 60, *referring to* [REDACTED].

⁸¹ Decision on interim release, ICC-01/12-01/18-786-Conf, para. 61, *referring to* MLI-OTP-0041-0041, at 0043; Video, 'Announcement of the victory of Islam and Muslim groups/ Speech Sheikh Abou Fadl', March 2017, MLI-OTP-0042-0178; MLI-OTP-0061-1303 (English translation of aforementioned video), in particular at 1306; MLI-OTP-0043-0498. As noted in the Confirmation Decision, Iyad Ag Ghaly is also designated by the names Iyad or Abou Fadl (ICC-01/12-01/18-461-Conf-Corr-Red, footnote 104); JNIM also means 'Group to support Islam and Muslims', *see Déclaration à la presse faite par le Conseil de sécurité sur l'attaque ayant visé la MINUSMA, SC/12810-PKO/636*, 4 May 2017, MLI-OTP-0046-9012; *Déclaration à la presse faite par le Conseil de sécurité à l'occasion de l'attentat terroriste perpétré contre la MINUSMA, SC/12837-PKO/644*, 23 May 2017, MLI-OTP-0046-9011. *See also* Registry Security Report, ICC-01/12-01/18-571-Conf, paras 9, 11-13.

⁸² Decision on interim release, ICC-01/12-01/18-786-Conf, para. 62, *referring e.g. to* 20 March 2020 UN Report and Registry Security Report, ICC-01/12-01/18-571-Conf, paras 8-9, 16, 20, 31-32.

⁸³ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 10; [REDACTED], ICC-01/12-01/18-769-Conf-Exp-AnxA. *See also* Prosecution Request, ICC-01/12-01/18-505-Conf-Exp, paras 5-6, 42, 55.

⁸⁴ First Decision on Restrictions, ICC-01/12-01/18-557-Conf-Exp-Red/Red2, para. 12.

⁸⁵ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 9-13, 20, 25, 29; [REDACTED], ICC-01/12-01/18-769-Conf-Exp-AnxA.

certain witnesses, [REDACTED].⁸⁶ The Chamber also observes that, at this stage, the extraordinary situation arising from the COVID-19 pandemic and the resulting restrictions on travel may further impact [REDACTED].⁸⁷

33. The Chamber further recalls that it recently found that the security risks were of such an exceptional nature as to justify the delayed disclosure of the identities of six trial witnesses to the Defence beyond the start of trial.⁸⁸ It further notes that, in assessing whether the measures in place to safeguard the security of witnesses and others at risk from the activities of the Court sufficiently mitigated the specific risks linked to the disclosure of certain witnesses' identities to the Defence, it notably took into account the current restrictions on Mr Al Hassan's contacts.⁸⁹
34. The Chamber also notes that, while the Defence is now aware of the identity of most witnesses, the current stage of the case might imply an increased risk for witnesses as the date of the trial is approaching. Particularly, the Chamber takes note of the VWU's submission that [REDACTED].⁹⁰ The Chamber further takes note of the Registry's security report indicating that [REDACTED].⁹¹
35. On the basis of all of the above, the Chamber considers, in light of the security context of the present case, where witnesses face particular risks if their identity as witnesses becomes known to the armed groups [REDACTED], and taking particularly into account the uncertainty that the situation arising out of the

⁸⁶ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 25; [REDACTED], ICC-01/12-01/18-769-Conf-Exp-AnxA, paras 3, 7-8; Registry Report, ICC-01/12-01/18-732-Conf-Exp, para. 29.

⁸⁷ [REDACTED], ICC-01/12-01/18-769-Conf-Exp-AnxA, para. 11.

⁸⁸ See Decision on the Prosecution request for delayed disclosure of the identities of Witnesses P-0538, P-0542, P-0553, P-0570, P-0574, and P-0603, 15 April 2020, ICC-01/12-01/18-741-Conf-Exp (a confidential redacted version was filed on the same day, ICC-01/12-01/18-741-Conf-Red; a public redacted version was filed on 27 May 2020, ICC-01/12-01/18-741-Red2); Second Decision on the Prosecution request for delayed disclosure of the identities of Witnesses P-0542, P-0570, and P-0603, 8 May 2020, ICC-01/12-01/18-794-Conf-Exp (a confidential redacted version was filed on the same day, ICC-01/12-01/18-794-Conf-Red; a public redacted version was filed on 27 May 2020, ICC-01/12-01/18-794-Red2).

⁸⁹ See Decision on the Prosecution requests concerning the variation of protective measures for screened individuals P-0105, P-0120, P-0128, P-0129, P-0140 and P-0154, 27 March 2020, ICC-01/12-01/18-684-Conf-Exp, para. 36 (a confidential redacted version was filed on the same day, ICC-01/12-01/18-684-Conf-Red; a public redacted version was filed on 18 May 2020, ICC-01/12-01/18-684-Red2).

⁹⁰ Registry Report, ICC-01/12-01/18-732-Conf-Exp, para. 29.

⁹¹ Registry Security Report, ICC-01/12-01/18-571-Conf, para. 27.

COVID-19 pandemic entails as regards [REDACTED], that there are reasonable grounds to believe that any direct or indirect communication between Mr Al Hassan and persons affiliated with the armed groups could prejudice or otherwise affect the outcome of the proceedings against Mr Al Hassan and could be harmful to witnesses pursuant to Regulation 101(2) of the Regulations.

36. The Chamber notes that PTC I identified breaches of the monitoring regime by Mr. Al Hassan on three occasions all in relation to conversations with one individual on his contact list.⁹² Since the removal of that individual from the list, there have been no breaches of the monitoring regime as concerns Mr Al Hassan's communications with the individuals on his list of non-privileged contacts.⁹³ The Chamber also notes that Mr Al Hassan [REDACTED] at this time.⁹⁴ However, the Chamber finds that disclosure of names of Prosecution witnesses, even to a limited number of people, inevitably entails the risk that the information will be disseminated more widely, which could in turn harm witnesses and prejudice the integrity of the proceedings if this information was to come into the hand of individuals associated to the armed groups. Therefore, at this stage of the proceedings where there has been necessarily broader disclosure of witness identities than at the pre-trial phase, the Chamber has an obligation to ensure the measures in place provide sufficient protection for witnesses and victims. It considers in particular that, in light of the information provided above, notably the extremely violent working methods of the armed groups operating in Mali, the risks identified are such of such a nature and extent that [REDACTED]. In this regard, the fact that there have been no breaches involving the persons currently on Mr Al Hassan's list of contacts does not necessarily lead to the conclusion that the need to maintain the restrictions has diminished or disappeared, as these measures also fulfil a preventative function.

⁹² Décision suite au dépôt par le Greffier d'un rapport concernant un incident survenu lors de [REDACTED], 19 November 2018, ICC-01/12-01/18-186-Conf-Exp (confidential *ex parte*, only available to the Defence and the Registrar; a confidential redacted version was filed on 14 April 2020, ICC-01/12-01/18-186-Conf-Red); Fifth PTC Decision, ICC-01/12-01/18-367-Conf-Exp.

⁹³ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 4, 24; Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 20.

⁹⁴ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 24.

37. In this context, the Chamber notes the Prosecution submissions concerning the accused's conduct and that of his interlocutors, notably the fact that the accused has previously violated some of the Pre-Trial Restrictions during his communications with one family member.⁹⁵ The Chamber finds that whilst this family member was subsequently removed from Mr Al Hassan's list of contacts, these incidents demonstrate the potential risks that might arise for the safety of witnesses if further breaches are committed in the future. Particularly, it considers that the absence of new incidents since the ones referred to here may very well be due to the effectiveness of the measures. In this regard, the Chamber notes, as exemplified by the conversation mentioned by the VWU,⁹⁶ that Mr Al Hassan is very much aware of the monitoring of his communications. Even accepting the Defence explanation of the conversation,⁹⁷ his comments evidence that the measures do have an impact on Mr. Al Hassan's conduct.
38. In light of the above, the Chamber is of the view that there exists an objectively justifiable risk linked to Mr Al Hassan's communications that warrants maintaining restrictions to his non-privileged contacts while in detention.

3. Necessity and proportionality of the restrictions

39. In making the below assessment, and having had due regard to the relevant submissions from the parties and participants, the Chamber considers that it has struck the correct balance between the rights of a detained person to preserve his family life and have contact with the outside world, and the absolute necessity to protect witnesses, preserve evidence and ensure the integrity of the proceedings. The Chamber is of the view that each of the measures imposed is strictly required and finds that they are, together, the least restrictive system possible in the circumstances.
40. Particularly, in terms of assessing the continuing proportionality of the restrictions, taking due account of the passage of time and of Mr Al Hassan's

⁹⁵ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 20-21; *see also* Prosecution Request, ICC-01/12-01/18-505-Conf-Exp-Red, paras 49-57.

⁹⁶ Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 34.

⁹⁷ Defence Second Response, ICC-01/12-01/18-791-Conf-Exp, para. 33.

right to private and family life, the Chamber has had regard to: (i) the limited number of family visits received since Mr Al Hassan's arrival at the Detention Centre;⁹⁸ (ii) the potential impact that restrictions on contacts may have on detainees' family lives and on their well-being over time, particularly in view of the accused's reported health condition and vulnerability;⁹⁹ (iii) the fact that, under the restrictions regime, Mr Al Hassan will continue to have contact, at a minimum, with the family members [REDACTED], as well as (iv) the risks to witnesses and the integrity of the proceedings identified above by the Chamber, particularly in light of the situation arising out of the COVID-19 pandemic [REDACTED].

41. Accordingly, the Chamber finds it necessary to maintain the measures restricting Mr Al Hassan's contacts, as set forth below, until the end of the testimony of the last Prosecution witness. The Chamber finds that the risk of interference with Prosecution witnesses and, consequently, the risk to their safety, are likely to have significantly diminished at that stage, when the Prosecution will have mainly completed the presentation of its evidence. As such, it is not appropriate for the Chamber to presently decide on the continuation of the restrictions past that time and a review as to whether the circumstances that currently warrant restricting Mr Al Hassan's contacts continue to exist and to justify the monitoring regime will be conducted periodically, including by conducting an *ad hoc* review if compelling reasons arise. In this regard, the Chamber encourages the Prosecution to make its best efforts to present its case in a focused and efficient manner, particularly in regards to the testimony of witnesses who are subject to heightened risks for their safety, so as to ensure that this review is undertaken within a reasonable timeframe.

a. [REDACTED]

42. In view of the foregoing, the Chamber finds it necessary and proportionate to maintain [REDACTED], so as to ensure the safety of witnesses, the preservation

⁹⁸ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 35.

⁹⁹ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 14. *See also* Defence First Response, ICC-01/12-01/18-520-Conf-Exp-Red, para. 45.

of evidence and the integrity of the proceedings. The Chamber indeed considers that potential alternative measures [REDACTED].¹⁰⁰ This is particularly relevant in a situation where, as set out above, [REDACTED].¹⁰¹ For the same reasons, the Chamber finds that [REDACTED].

43. In this context, the Chamber notes that, according to the Defence, the need to pre-empt potential risks of disclosure violations through [REDACTED] is outweighed by the right to privacy, and the prejudice occasioned by [REDACTED].¹⁰² The Chamber agrees that it must have regard to any potential prejudice caused to the accused and his rights as part of its assessment of the proportionality of the restrictions. At the same time, the Chamber notes the [REDACTED]. [REDACTED]. Further, the Chamber finds that, in light of the circumstances that currently prevail, the nature of the risks identified above and the necessity to pre-empt such risks are such that they outweigh any prejudice the accused might suffer as a result, taking particular note of the fact that Mr Al Hassan's right to maintain meaningful family relations is preserved under the monitoring regime.
44. The Chamber further considers that the current modalities of [REDACTED], as noted above¹⁰³ – shall continue to apply. The Chamber however finds it appropriate to [REDACTED], as requested by the Defence,¹⁰⁴ subject to the capability of the Detention Centre.
45. Similarly, the Chamber finds that restricting Mr Al Hassan's non-privileged contacts to [REDACTED] remains justified, although the Chamber takes note of the Defence's submission that Mr Al Hassan does not intend to [REDACTED] at this time.¹⁰⁵
46. Finally, in view of the Prosecution submissions in relation to the Eighth Decision from the PTC I Single Judge on the measures restricting Mr Al Hassan's non-

¹⁰⁰ Registry Report, ICC-01/12-01/18-732-Conf-Red, paras 19-25.

¹⁰¹ *See above* at para. 36.

¹⁰² Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 11.

¹⁰³ *See above* at para. 18.

¹⁰⁴ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 57.

¹⁰⁵ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 24.

privileged contact,¹⁰⁶ the Chamber considers it appropriate to clarify that [REDACTED]. However, regarding Mr Al Hassan's ability to [REDACTED] to his family, the Chamber finds that the PTC I Single Judge ruled with sufficient clarity on the modalities applicable to [REDACTED],¹⁰⁷ but encourages the Registry to seize it if it encounters any issues in the implementation of such modalities.

b. [REDACTED]

47. The Chamber recalls that the PTC I Single Judge authorised [REDACTED].¹⁰⁸
48. In light of the foregoing, notably the Chamber's findings as to the continuing existence of an objectively justified risk, the Chamber finds that the same considerations continue to prevail and that [REDACTED] remains necessary, so as to allow for [REDACTED].
49. The Chamber acknowledges, as argued by the Defence,¹⁰⁹ that [REDACTED]. However, it considers that the impact of this measure on Mr Al Hassan's right to privacy and family life is limited and proportionate to the aim pursued. In this context, the Chamber recalls that the VWU is a neutral organ of the Court, which is not a party to the proceedings and is tasked with [REDACTED], with due consideration for their interests, in the utmost impartiality and in accordance with Article 43(6) of the Statute and Rule 18 of the Rules.
50. As such, contrary to the Defence allegations,¹¹⁰ the Chamber finds that this measure would not result in the VWU becoming a *de facto* investigative arm of the Prosecution and further refers to its findings below in relation to the disclosure to the Prosecution of any reports, excerpts or transcripts in relation to Detention Centre communications.¹¹¹ Particularly, in light of the VWU's mandate, the

¹⁰⁶ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 48.

¹⁰⁷ Eighth PTC Decision, ICC-01/12-01/18-481-Conf, paras 8-9.

¹⁰⁸ Third PTC Decision, ICC-01/12-01/18-95-Conf-Exp-Red-tENG, paras 38, 42.

¹⁰⁹ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 40.

¹¹⁰ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 43.

¹¹¹ See below at para. 61.

Chamber does not find it appropriate to provide further guidance on [REDACTED].

c. Family and private visits

51. The Chamber notes the Defence submissions that, should [REDACTED] be maintained, Mr Al Hassan shall *inter alia* be entitled to receive private visits, enjoy standard visiting hours during family visits, and enjoy such forms of communication that are necessary to maintain meaningful relations with his immediate family during the trial process.¹¹²
52. The Chamber emphasises again that contact with the outside world and visits are imperative for a detained person's well-being and consistent with international human rights standards.
53. In this regard, the Chamber recalls that Mr Al Hassan has received a first family visit in 2019¹¹³ and that the Registry informs that there will be a second one scheduled as soon as possible once travel restrictions are lifted.¹¹⁴
54. So as to ensure that Mr Al Hassan is able to maintain meaningful relations with his family and to preserve his right to family life, the Chamber considers that a visit from his family should be facilitated as soon as feasible. However, in light of the current circumstances, taking particularly note of the uncertainty as to when such a visit will be able to take place, the Chamber again strongly encourages the Registry to continue its efforts to make video-conferencing communications available to Mr Al Hassan.
55. Concerning the remainder of the Defence request, the Chamber finds that it would be premature to make any determinations on the modalities of a future family visit, notably in relation to the organisation of private visits, at a time where there remains much uncertainty as to the planning of such visit. The Chamber

¹¹² Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 57.

¹¹³ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 35.

¹¹⁴ Registry's Observations on the "Urgent Defence Request for Interim Release" (ICC-01/12-01/18-680-Conf-Exp), 30 March 2020, ICC-01/12-01/18-698-Conf-Exp, para. 13 (confidential *ex parte*, available only to the Registry; two confidential *ex parte* redacted versions were filed simultaneously; a public redacted version was filed on 12 May 2020).

nonetheless remains seized of the issue, and finds that its above findings in relation to [REDACTED] are without prejudice to any future determination as concerns future family visits.

d. Additional restrictions sought by the Prosecution

56. The Chamber considers that the current restrictions regime is sufficient to appropriately mitigate the risk identified above and to ensure the safety of witnesses, the preservation of evidence and the integrity of the proceedings. In this context, the Chamber notes in particular the Defence submission that Mr Al Hassan does not intend to [REDACTED] at this time.¹¹⁵ Moreover, the Prosecution has not demonstrated any lacunae in the protections which needs to be addressed by expanding the restrictions.
57. Consequently, the Chamber finds that imposing the Additional Restrictions sought by the Prosecution, namely to limit Mr Al Hassan's list of non-privileged contacts to only his immediate family members and to exclude from this list individuals who are members of, affiliated with, or in contact with any of the armed groups operating in Mali, would be unnecessary and, in any case, would not be proportionate to Mr Al Hassan's right to privacy and family life. The Chamber therefore rejects this part of the Prosecution Request.
58. For the same reasons, the Chamber finds that the Prosecution's request to [REDACTED],¹¹⁶ would not be proportionate to Mr Al Hassan's rights as a detained person. In this regard, the Chamber takes particular note of the information provided by the Registry that [REDACTED].¹¹⁷
59. Relatedly, the Chamber notes that the Prosecution, upon being granted access to the 7 June 2019 PTC I Decision,¹¹⁸ makes submissions on the type of information which should be provided for the VWU to be able to verify the list of Mr Al

¹¹⁵ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, para. 23.

¹¹⁶ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 57.

¹¹⁷ Registry Observations, ICC-01/12-01/18-550-Conf-Exp-Red/Red2, para. 30.

¹¹⁸ Décision relative à la demande du Greffe sollicitant des orientations sur la mise en œuvre du régime de surveillance en détention, 7 June 2019, ICC-01/12-01/18-369-Conf-Exp (confidential *ex parte*, available only to the Registry; a confidential redacted versions was filed on 31 March 2020, ICC-01/12-01/18-369-Conf-Red).

Hassan's non-privileged contacts. In the view of the Prosecution, in the absence of certain minimal information, an individual should not be added to the list.¹¹⁹ The Chamber agrees that a minimum amount of information attesting to the identity of each listed contact is warranted and expects the Registry to verify, to the best of its ability, the identity of any new contact on the basis of this information. The Chamber considers that this is a procedure within the Registry's realm and, accordingly, does not find it necessary to pronounce further on this matter in the present decision.

C. Reports on the implementation of the restrictions regime

60. The Chamber notes the Registry's proposal that, for the purpose of the trial proceedings, it reports incidents if and when they occur, or upon specific request from the Chamber, rather than through quarterly reports,¹²⁰ and has no objection to this procedure. Consequently, in order to allow the Chamber to take prompt action where necessary, the Registry is instructed to report any incidents or challenges in relation to the implementation of the restrictions as soon as they arise, in an *ex parte* filing available to the Chamber only, if warranted, or otherwise to the Chamber and the Defence. If the urgency of the matter so requires, the report can be provided directly *via* email. Quarterly reports will not be required albeit the Chamber retains the discretion to order a report at any juncture.

D. Other matters

61. The Chamber notes the Defence submissions that it was highly inappropriate for the Registry to transmit excerpts of one of Mr Al Hassan's private non-privileged conversations directly to the Prosecution, and that the content of private non-privileged communications should not be communicated to the Prosecution in the absence of prior judicial authorisation.¹²¹ In this context, the Chamber agrees with the PTC I Single Judge's findings that any transcripts of Mr Al Hassan's non-privileged conversations shall only be disclosed to the Prosecution in exceptional

¹¹⁹ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 50.

¹²⁰ Registry Report, ICC-01/12-01/18-732-Conf-Red, para. 26.

¹²¹ Defence Second Response, ICC-01/12-01/18-791-Conf-Red, paras 32, 45.

circumstances,¹²² and that, prior to any reports, excerpts or transcripts in relation to Detention Centre communications being disclosed to the Prosecution, the Defence shall in principle be notified and afforded a right to be heard, as well as to propose redactions.¹²³ In any case, even in limited circumstances where prior notification or consultation of the Defence would not be appropriate, such documents shall not be disclosed to the Prosecution without prior judicial authorisation.¹²⁴

62. However, concerning the non-privileged conversation at issue, the Chamber notes that the PTC I Single Judge previously found it appropriate to grant access to limited excerpts of this conversation to the Prosecution, as mentioned in a Registry report submitted before PTC I.¹²⁵ The Chamber nonetheless notes that the actual transcript of the conversation was never provided by the Registry to the Prosecution.¹²⁶
63. Relatedly, the Chamber takes note of the Prosecution's request to be provided with a lesser redacted version of the Registry Report, together with any underlying material relied upon in support of the assertions made in paragraphs 29 and 34 of the Report, in particular two transcripts of conversations between the accused and third parties.¹²⁷ The Chamber notes that the *ex parte* information provided by the Registry in its Report, which is not available to either the Defence or the Prosecution,¹²⁸ relates to [REDACTED] in the present case. As such, the Chamber finds it appropriate to order the reclassification of the *ex parte* version of the Registry Report, so as to make it available to the Prosecution, unless the Registry files a lesser redacted version thereof by 17 June 2020. However, the Chamber does not consider it appropriate to disclose the relevant transcripts to

¹²² Fifth PTC Decision, ICC-01/12-01/18-367-Conf-Exp-Red, para. 101 / ICC-01/12-01/18-367-Conf-Exp-Red2, para. 99.

¹²³ Fifth PTC Decision, ICC-01/12-01/18-367-Conf-Exp-Red, para. 113 / ICC-01/12-01/18-367-Conf-Exp-Red2, para. 111.

¹²⁴ Fifth PTC Decision, ICC-01/12-01/18-367-Conf-Exp-Red, para. 113 / ICC-01/12-01/18-367-Conf-Exp-Red2, para. 111.

¹²⁵ See Fifth PTC Decision, ICC-01/12-01/18-367-Conf-Exp-Red, paras 23, 113 / ICC-01/12-01/18-367-Conf-Exp-Red2, paras 23, 111. See also Registry's additional Report on the two incidents that occurred during the [REDACTED], 12 April 2019, ICC-01/12-01/18-307-Conf-Exp, para. 20.

¹²⁶ Email from the Registry to the Defence, 7 May 2020, at 11:29.

¹²⁷ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, para. 1(4).

¹²⁸ See Registry Report, ICC-01/12-01/18-732-Conf-Exp, paras 29, 31.

the Prosecution, as they concern the accused's private conversations, whose relevant excerpts the Prosecution has been sufficiently informed of through the Registry reports and the previous decisions from the Single Judge of PTC I which have been made available to it.

64. Finally, the Prosecution requests to be allowed to make additional submissions, if necessary, once it is provided with confidential redacted versions of certain filings.¹²⁹ The Chamber finds that it would not be assisted by further submissions in relation to the matters mentioned by the Prosecution, and rejects this request.

¹²⁹ Prosecution Response, ICC-01/12-01/18-769-Conf-Exp-Corr, paras 1(5), 43.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS that restrictions to Mr Al Hassan's non-privileged contacts, as set out in paragraphs 42-48 above, shall remain in place until the end of the testimony of the last Prosecution witness;

REJECTS the Prosecution Request to impose additional restrictions;

DISMISSES *in limine* the Defence request as concerns the modalities of a future family visit; and

ORDERS the reclassification of the *ex parte* version of Registry Report, so as to make it available to the Prosecution, unless the Registry files a lesser redacted version thereof by 17 June 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 Thursday, 11 June 2020

At The Hague, The Netherlands