

Annex 15

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REDACTED**

From: Trial Chamber X Communications
Sent: 13 October 2020 11:53
To: Chamber Decisions Communication
Cc: Trial Chamber X Communications
Subject: FW: In-court protection measures for witness MLI-OTP-P-0653

From: Trial Chamber X Communications
Sent: 13 October 2020 11:49
To: [REDACTED] Trial Chamber X Communications
Cc: Dutertre, Gilles ; [REDACTED]
[REDACTED] Taylor, Melinda ; [REDACTED]
[REDACTED] Doumbia, Seydou ; Kassongo, Mayombo ; [REDACTED] Nsita Luvengika, Fidel ; [REDACTED]
[REDACTED] VWS Psychosocial Support Unit ; VWS
OPS Room ; VWS Case Development Team ; VWS Planning Team ; [REDACTED]
Subject: RE: In-court protection measures for witness MLI-OTP-P-0653

Dear Counsels,
Dear Colleagues,

The Chamber recalls that the Prosecution requested protective measures for P-0653 and that this application was not opposed by the LRVs and the Defence (ICC-01/12-01/18-976; Email from the LRVs to TCX Communications, 17 August 2020 at 12:09; and Email from the Defence to TCX Communications, 17 August 2020 at 13:07.)

Notwithstanding, the Chamber decided that the available information at that time was insufficient to justify the use of the protective measures sought. The Chamber however noted that this was without prejudice to the VWU raising specific concerns in its upcoming assessment or right of this witness to bring her own application for protective measures (Decision ICC-01/12-01/18-1067-Conf-Red, para. 29).

Having had regard to the VWU report dated 12 October 2020 recommending in-court protective measures for P-0653, the Chamber is satisfied that exposing the witness's identity to the public gives rise to an objectively justifiable risk. The Chamber notes in particular the additional information provided as regards the witnesses' concerns and the VWU's protection analysis.

In view of the impending testimony and noting the prior submissions of the parties in respect of the in court protective measures for P-0653, the Chamber considers it appropriate to exceptionally grant the sought protective measures via email, without receiving further observations from the parties.

For these reasons, the Chamber, pursuant to Rule 87 of the Rules of Procedure and Evidence, grants the following in court protective measures recommended by VWU with respect to P-0653, that is: face distortion; use of the pseudonym; use of private/closed sessions; and redaction of any identifying information from any record that may be disseminated to the public.

However, the Chamber reiterates that in order to ensure the publicity of proceedings, the parties and participants must conduct their relevant examination in a manner that limits as much as possible the use of private or closed sessions. The Chamber also emphasises that 'identifying information' related to P-0653 must be interpreted strictly, particularly since this witness is an expert and technical witness. In particular, while the name, date and place of birth and other singular and personal information of P-0653 shall remain confidential, general information related to the witness should be elicited in public session. Specifically, the fact that P-0653 is an expert witness in the field of face recognition cannot be considered in and of itself as identifying information. The parties are therefore instructed to structure their questioning such that the identifying information above is elicited together, in a short private session. The Chamber will not accept lengthy passages of non-confidential questions and answers in private session

solely because confidential information must be adduced at the beginning of that series of questions (see ICC-01/12-01/18-1067-Conf-Red, paras 36-37).

Kind regards,

[REDACTED]
(On behalf of Trial Chamber X)

From: [REDACTED]
Sent: 12 October 2020 14:39
To: Trial Chamber X Communications [REDACTED]
Cc: Dutertre, Gilles [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] Taylor, Melinda [REDACTED]
 [REDACTED]
 [REDACTED] Doumbia,
 Seydou [REDACTED] Kassongo, Mayombo [REDACTED]
 [REDACTED] Nsita Luvengika, Fidel [REDACTED]; [REDACTED]
 [REDACTED]
 [REDACTED] VWS Psychosocial Support Unit
 [REDACTED] VWS OPS Room [REDACTED] VWS Case Development
 Team [REDACTED]; VWS Planning Team [REDACTED]
 [REDACTED]
 [REDACTED]
Subject: In-court protection measures for witness MLI-OTP-P-0653

Dear colleagues,
 Dear counsels,

Please find below the in-court protection measures report in relation to MLI-OTP-0653.

Background

The witness is a [REDACTED]
 [REDACTED]

Witness's concern

The VWU spoke with the witness on 9 October 2020 for the purpose of an in-court protection measures assessment. The witness stated that her concern is that she may be identified as a result of her testimony because the Al-Hassan trial is available for public reach, [REDACTED]
 [REDACTED]. [REDACTED]
 [REDACTED]s. She explained that her public testimony might elevate the risk to her in the context of her duties.

The VWU explained to the witness the various procedural protective measures that the Court may implement to mitigate risks that may emanate from her testimony. The witness requested that the VWU request the Court to consider granting her in court protection measures to suppress her identity. However, the witness stated that she is aware of the Chamber "Second decision on in-court protective measures" issued on 24 September 2020 (ICC-01/12-01/18-1067-Conf-Exp and ICC-01/12-01/18-1067-Conf-Red).

Protection Analysis

The witness concerns appeared well founded. It was clear during the interview with VWU that the witness held significant concern about the impact of public testimony on ongoing and future investigations. [REDACTED]

[REDACTED]. As such, the VWU remains consistent with its prior assessments that given the current security situation in Mali, public disclosure of the witness's identity and testimony may increase levels of risk.

[REDACTED]. Out of an abundance of caution, the VWU assesses it safe not to test the seriousness of the threats that the witness may be exposed to in the event of public testimony in Al-Hassan trial.

[REDACTED]. However, it is of the view that all mitigation measures become significantly depleted in their effectiveness once the witness becomes involved in future investigation targeting groups affiliated with threats actors in Mali.

Any compromise of the witness will have a considerable impact on her family and professional life. Due to the profile of threat actors and use of violence, the type of mitigation measures needed would remove any semblance to her current way of life.

Recommendation

The VWU takes note of the above mentioned decision issued by Trial Chamber rejecting the Prosecution's request for in-court protective measures for the witness. However, in light of the additional information gleaned through its interview, the VWU considers that the application of in-court protection measures may prevent a future escalation in risk. Based on this, the VWU recommends the following in-court protection measures:

- image distortion
- use of pseudonym /allocation of a new pseudonym;
- use of closed and/or private session for identifying information, including portions of testimony which by nature could be identifying ;
- redaction of any identifying information from any record that may be disseminated to the public

Kind regards,

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