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**No. ICC-01/12-01/18
Date: 24 February 2021**

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 the

Sixth Decision on in-court protective measures for witnesses

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

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**Unrepresented Applicants for
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The Office of Public Counsel for Victims

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States Representatives

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REGISTRY

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**Victims Participation and Reparations
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Other

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Articles 64(2), 64(6)(e) and (f), 64(7), 64(8)(b), 67(1) and 68(1) and (2) of the Rome Statute, Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 20 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Sixth Decision on in-court protective measures for witnesses’.

I. Procedural history

1. On 6 May 2020, the Chamber issued its ‘Directions on the conduct of proceedings’, instructing the Office of the Prosecutor (the ‘Prosecution’) to ‘file a motivated application seeking relevant in-court protective measures pursuant to Rule 87 of the Rules for all Prosecution Witnesses for whom it is reasonably foreseeable that protective measures are required no later than 40 days before the start of the presentation of evidence’.¹
2. On 31 August 2020, the Prosecution filed a second application seeking in-court protective measures for Prosecution witnesses, including *inter alia*, P-0639, P-0636 and P-0641 (the ‘Second Application’).²
3. On 1 September 2020, the Prosecution filed a third application seeking in-court protective measures for Prosecution witnesses, including *inter alia*, P-0595 (the ‘Third Application’).³

¹ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA, paras 74-76. The deadline was subsequently extended on 22 July 2020. *See* 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, para. 31.

² Deuxième requête de l’Accusation sur le fondement de la règle 87 aux fins de mesures de protection des témoins du Bloc 2 et du Bloc 3, 31 August 2020, ICC-01/12-01/18-1020-Conf-Exp (confidential *ex parte*, available only to VWU and the Prosecution ; a confidential redacted version was filed on 4 September 2020, ICC-01/12-01/18-1020-Conf-Red) (hereinafter: the ‘Second Application’).

³ 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- P-0660, ICC-01/12-01/18-1022-Conf-Exp (a confidential redacted version was filed on 4 September 2020, ICC-01/12-01/18-1022-Conf-Red, and a public redacted version was filed on 2 October 2020, ICC-01/12-01/18-1022-Red2).

4. On 11 and 14 September 2020, the Legal Representatives of Victims (the ‘LRVs’) submitted their response to the Second and Third Applications, stating they do not object to the protective measures requested.⁴
5. On 18 September 2020, the Victims and Witnesses Unit (the ‘VWU’) filed its observations on the Second and Third Applications (the ‘VWU Second Observations’).⁵
6. On 4 February 2021, the Prosecution filed a request pursuant to Regulation 35 of the Regulations, seeking an extension of time limit to apply for in-court protective measures in respect of P-0646 (the ‘P-0646 Application’), who was originally scheduled to testify in February 2021.⁶
7. On 8 February 2021, the Prosecution informed the Chamber that, in consultation with the Defence, it will call, among other witnesses, P-0639, P-0595, P-0636 and P-0641 to testify in March.⁷
8. On 15 February 2021, the LRVs submitted their observations in support of the P-0646 Application.⁸

⁴ Email from the LRVs to TC X Communications, 11 September 2020, at 14:31; Email from the LRVs to TC X Communications, 14 September 2020, at 17:08.

⁵ Victims and Witnesses Unit’s Observations on the “Deuxième requête de l’Accusation sur le fondement de la règle 87 aux fins de mesures de protection des témoins du Bloc 2 et du Bloc 3”, on 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- P-0660” and on the “Prosecution’s application for in-court protective measures for MLI-OTP-P-0660”, 18 September 2020, ICC-01/12-01/18-1052-Conf-Exp (confidential *ex parte*, available only to the Registry and the Prosecution; a confidential redacted version was filed on the same date, ICC-01/12-01/18-1052-Conf-Red).

⁶ Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for MLI-OTP-P-0646, ICC-01/12-01/18-1283-Conf-Exp (with confidential *ex parte* Annex A, only available to the Prosecution and the VWU; a confidential redacted version was filed on 8 February 2021). See e-mail from Trial Chamber X Communications on 5 February at 10:32, instructing the Prosecution to file a confidential redacted version and instructing the Defence, the LRVs and the VWU to submit any observations to the P-0646 Application by 15 February 2021. See also e-mail from the Prosecution on 12 February 2021 at 15:22, indicating it will no longer call P-0646 to testify in February, but will call P-0554 instead.

⁷ Email from the Prosecution on 8 February 2021 at 16:25. See e-mail of the Prosecution on 23 February 2021 at 8:51, indicating it will no longer call P-0639 to testify in March but will call him at a later date.

⁸ Réponse à la soumission de l’Accusation en modification des délais fondée sur la norme 35 et requête pour l’adoption de mesures de protection à l’égard de MLI-OTP-P-0646 (ICC-01/12-01/18-1283-Conf-Red), ICC-01/12-01/18-1302-Conf.

9. On that same date the VWU submitted its observations on the P-0646 Application (the ‘VWU Observations to P-0646 Application’).⁹
10. The Defence did not respond to any of the aforementioned applications.

II. Submissions and analysis

11. This is the Chamber’s sixth decision on in-court protective measures for witnesses that have recently been scheduled to testify in March 2021. The Chamber will also determine the pending applications for P-0646 and P-0639, although it notes the witnesses’ testimonies have now been postponed.
12. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.¹⁰

P-0639

13. The Prosecution seeks in-court protective measures for P-0639 in the form of pseudonym, face and voice distortion and use of private/closed sessions. The Prosecution submits that P-0639 [REDACTED].¹¹ The Prosecution also states P-0639 is a vulnerable witness.¹²

⁹ Victims and Witnesses Unit’s Observations on the “Prosecution’s submission pursuant to regulation 35 to vary the time limit and request for in-court protective measures for MLI-OTP-P-0646”, ICC-01/12-01/18-1303-Conf.

¹⁰ Fifth Decision on in-court protective measures, 3 February 2021, ICC-01/12-01/18-1280-Conf-Exp (a confidential redacted version, ICC-01/12-01/18-1280-Conf-Red, and a public redacted version, ICC-01/12-01/18-1280-Red2, were filed on that same date); Corrigendum Fourth Decision on in-court protective measures for witnesses, 26 January 2021, ICC-01/12-01/18-1266-Conf-Exp-Corr (a confidential redacted version, ICC-01/12-01/18-1266-Conf-Red-Corr, and a public redacted version, ICC-01/12-01/18-1266-Red2-Corr, were filed on that same date); Third Decision on in-court protective measures for witnesses, 19 October 2020, ICC-01/12-01/18-1113-Conf-Exp (a confidential redacted version was filed that same date, ICC-01/12-01/18-1113-Conf-Red and a public redacted version was filed on 5 January 2021, ICC-01/12-01/18-1113-Red2); Second Decision on in-court protective measures for witnesses, 24 September 2020, ICC-01/12-01/18-1067-Conf-Exp (a confidential redacted version was filed on that same date, ICC-01/12-01/18-1067-Conf-Red, and a public redacted version was filed on 5 January 2021, ICC-01/12-01/18-1067-Red2); First decision on in-court protective measures, 31 August 2020, ICC-01/12-01/18-1019-Conf-Exp (a confidential redacted version was filed on that same date, ICC-01/12-01/18-1019-Conf-Red, and a public redacted version was filed on 5 January 2021, ICC-01/12-01/18-1019-Red2).

¹¹ Second Application, ICC-01/12-01/18-1020-Conf-Exp, paras 21, 25.

¹² Second Application, ICC-01/12-01/18-1020-Conf-Exp, para. 23.

14. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that the VWU [REDACTED].¹³ [REDACTED] It therefore agrees with the in-court protective measures sought by the Prosecution.¹⁴
15. The Chamber considers that an objectively justifiable risk with respect to P-0639 has been demonstrated.. In particular, the Chamber notes [REDACTED]. Having regard to the current security situation [REDACTED],¹⁵ the Chamber considers that P-0639 would face a significant and impermissible risk to his safety should his identity, and consequently his cooperation with the Court, become known to the public. Accordingly, the Chamber grants P-0639 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.

P-0595

16. The Prosecution seeks in-court protective measures for P-0595 in the form of pseudonym, face and voice distortion and use of private/closed sessions. It submits that P-0595 is a fact/overview witness [REDACTED].¹⁶ The Prosecution submits that [REDACTED], P-0595 is easy to identify and locate.¹⁷
17. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that the VWU [REDACTED].¹⁸ VWU observes that [REDACTED] the in-court protective measures sought will assist [REDACTED].¹⁹
18. The Chamber is satisfied that an objectively justifiable risk for P-0595 has been demonstrated. In particular, the Chamber notes that the witness [REDACTED]. Having regard to the current security situation [REDACTED],²⁰ the Chamber considers that P-0595 would face a significant and impermissible risk to his safety should his identity, and consequently his cooperation with the Court, become

¹³ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 9.

¹⁴ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 10.

¹⁵ Confidential redacted version of the “Second Registry Report on the Security Situation in Mali”, 3 July 2020, ICC-01/12-01/18-928-Conf-Red, para. 26.

¹⁶ Third Application, ICC-01/12-01/18-1022-Conf-Exp, paras 20-21,39.

¹⁷ Third Application, ICC-01/12-01/18-1022-Conf-Exp, para. 37.

¹⁸ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 18.

¹⁹ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 19.

²⁰ Confidential redacted version of the “Second Registry Report on the Security Situation in Mali”, 3 July 2020, ICC-01/12-01/18-928-Conf-Red, para. 26.

known to the public. Accordingly, the Chamber grants P-0595 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.

P-0636

19. The Prosecution seeks in-court protective measures for P-0636 in the form of pseudonym, face and voice distortion and use of private/closed sessions. It submits that the witness, who allegedly suffered crimes of sexual violence and [REDACTED] was rejected and stigmatised as a result. She [REDACTED] is vulnerable. The Prosecution submits that the measures sought are necessary to avoid psychological harm and risk of ostracism [REDACTED].²¹
20. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that the VWU has not yet met with the witness. However, the VWU notes that P-0636 shares a similar profile to other witnesses that have been assessed as being at high risk. Accordingly, and although it will submit an assessment closer to the time of testimony, the VWU already supports the protective measures sought.²²
21. The Chamber is satisfied that an objectively justifiable risk for P-0636 has been demonstrated. In particular, the Chamber notes that the witness [REDACTED]. Having regard to the crimes she allegedly suffered, the Chamber considers that P-0636 could face a significant and impermissible risk to her psychological well-being and safety should her identity, and consequently the crimes she allegedly suffered, become known to the public and in particular to [REDACTED]. Accordingly, the Chamber grants P-0636 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.

²¹ Second Application, ICC-01/12-01/18-1020-Conf-Exp, para. 34.

²² VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, para. 14.

P-0641

22. The Prosecution seeks in-court protective measures for P-0641 in the form of pseudonym, face and voice distortion and use of private/closed sessions. The Prosecution submits that P-0641 [REDACTED].²³ The Prosecution also states P-0641 is a vulnerable witness, [REDACTED].²⁴
23. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that the VWU [REDACTED]. Although the VWU will submit an assessment closer to the testimony, the VWU already agrees with the protective measures sought.²⁵
24. The Chamber is satisfied that an objectively justifiable risk for P-0641 has been demonstrated. In particular, the Chamber notes that the [REDACTED],²⁶ the Chamber considers that P-0641 would face a significant and impermissible risk to his safety should his identity, and consequently his cooperation with the Court, become known to the public. Accordingly, the Chamber grants P-0641 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.

P-0646

25. First, the Prosecution notes that due to an oversight, it did not make an application for in-court protective measures in respect of P-0646 before the established deadline. It therefore requests an extension of deadline pursuant to Regulation 35 of the Regulations. Second, the Prosecution seeks in-court protective measures for P-0646 in the form of pseudonym, face distortion and use of private/closed sessions.²⁷

²³ Second Application, ICC-01/12-01/18-1020-Conf-Exp, paras 21, 25.

²⁴ Second Application, ICC-01/12-01/18-1020-Conf-Exp, para. 23.

²⁵ VWU Second Observations, ICC-01/12-01/18-1052-Conf-Exp, paras 9-10.

²⁶ Confidential redacted version of the "Second Registry Report on the Security Situation in Mali", 3 July 2020, ICC-01/12-01/18-928-Conf-Red, para. 26.

²⁷ P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, paras 1-3, 17.

26. As regards the request under Regulation 35 of the Regulations, the Prosecution submits that the extension of deadline is warranted in the interests of justice and will assist in the determination of the truth.²⁸
27. The Prosecution submits that [REDACTED].²⁹ The Prosecution submits that although the witness [REDACTED].³⁰ It also states that due to [REDACTED], publicly stating his name in the ICC proceedings could put P-0646 at risk.³¹ The Prosecution refers to the current risks [REDACTED] as well as threats from radicalised individuals [REDACTED].³² The Prosecution further submits that granting in-court protective measures for P-0646 would allow him to testify freely without the risk of compromising his personal security [REDACTED].³³ The Prosecution also submits that a pseudonym alone would not suffice and that [REDACTED] P-0646 would increase the risk of identification.³⁴
28. The Chamber notes the Defence does not oppose the protective measures sought. It also notes that although the VWU [REDACTED].³⁵ [REDACTED] The VWU notes that it will meet with the witness immediately prior to his testimony and will be able to submit an assessment at that moment in time.³⁶ The VWU notes on the basis of the information before it, that the witness [REDACTED]. The VWU states that it therefore cannot make any recommendation until it meets with P-0646 before his testimony.³⁷
29. In respect of the first part of the Prosecution application in respect of P-0646, the Chamber considers that an extension of deadline pursuant to Regulation 35 of the Regulations is warranted on the basis of the concerns expressed [REDACTED]. The Chamber therefore authorises this late application for in-court protective measures. Turning to the merits of the Prosecution's application for in-court

²⁸ P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, paras 20-21, 23.

²⁹ P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, paras 5, 22,.

³⁰ P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, paras 22, 32, 35-36. *See also* ICC-01/12-01/18-1283-Conf-Exp-AnxA.

³¹ P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, paras 29-31.

³² P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, paras 33-34.

³³ P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, para. 6.

³⁴ P-0646 Request, ICC-01/12-01/18-1283-Conf-Exp, para. 40.

³⁵ VWU Observations to P-0646 Application, ICC-01/12-01/18-1303-Conf, para. 2.

³⁶ VWU Observations to P-0646 Application, ICC-01/12-01/18-1303-Conf, para. 3.

³⁷ VWU Observations to P-0646 Application, ICC-01/12-01/18-1303-Conf, paras 5-7.

protective measures, the Chamber does not consider that an objectively justifiable risk has been demonstrated at this stage. Accordingly, and unless the VWU's later assessment recommends otherwise, the Chamber rejects the request for in-court protective measures as regards P-0646. The Chamber notes that this determination is without prejudice to the right of the witness to bring his own application for protective measures once he meets with the VWU prior to his testimony. The Chamber further stresses that such an application must clearly identify and specifically describe the security concerns and risks faced by the witness. It emphasises that a speculative or remote risk for the witness's safety is not a valid ground for granting protective measures.

30. In relation to the aforesaid witnesses for whom protective measures have been authorised, the Chamber reminds the parties and participants to fully comply with the Chamber's recent directions on the use of private and/or closed sessions.³⁸

³⁸ Fourth decision on matters related to the conduct of proceedings, 26 January 2021, ICC-01/12-01/18-1265.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

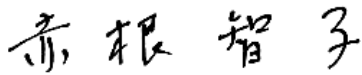
REJECTS the request for in-court protective measures with respect to P-0646; and

GRANTS the request for in-court protective measures with respect to P-0639, P-0595, P-0636 and P-0641.

Done in both English and French, the English version being authoritative.



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this 24 February 2021

At The Hague, The Netherlands