



**Original: English**

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

Date: **3 July 2023**

Date of original: **31 January 2022**

**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 reviewing the measures restricting Mr Al Hassan's contacts 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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**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 the following decision.

## I. Background

1. Pre-Trial Chamber I imposed a series of restrictions on Mr Al Hassan’s contacts and accesses in detention during the pre-trial phase of the case.<sup>1</sup> On 11 June 2020, this Chamber issued a decision (the ‘Restrictions Decision’)<sup>2</sup> ordering that the restrictions, with some slight adjustments,<sup>3</sup> would remain in place until the end

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<sup>1</sup> 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); 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); 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); 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); Decision following the Registry’s Filing of Reports concerning Two Alleged Incidents that Occurred during Active Monitoring of Mr Al Hassan’s Telephone Communications, 7 June 2019, ICC-01/12-01/18-367-Conf-Exp-tENG (confidential *ex parte*, only available to the Chamber; confidential *ex parte* redacted versions were filed on that same date, ICC-01/12-01/18-367-Conf-Exp-Red-tENG); Decision Following Filing by the Defence of an Urgent Request to be Granted Conjugal Visits and for the Variation of Arrangements for Mr Al Hassan’s Family Visit, 7 June 2019, ICC-01/12-01/18-368-Conf-Exp-tENG (confidential *ex parte*, only available to the Registrar and the Detention Section; confidential *ex parte* redacted versions were filed on that same date, ICC-01/12-01/18-368-Conf-Exp-Red2-tENG, ICC-01/12-01/18-368-Conf-Exp-Red3-tENG, ICC-01/12-01/18-368-Conf-Exp-Red4-tENG); Decision Following an Urgent Request filed by the Defence for the Single Judge to Vary his Decision to Prohibit Conjugal Visits, 18 June 2019, ICC-01/12-01/18-378-Conf-Exp-tENG (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). *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).

<sup>2</sup> ICC-01/12-01/18-871-Conf-Exp (confidential *ex parte*, available only to the Registry; two confidential redacted *ex parte* versions were filed simultaneously, one available only to the Defence and Registry, ICC-01/12-01/18-871-Conf-Exp-Red and one available only to the Prosecution and Registry, ICC-01/12-01/18-871-Conf-Exp-Red2; a confidential redacted version was filed on 2 November 2021, ICC-01/12-01/18-871-Conf-Red3; a public redacted version was filed on 4 November 2021, ICC-01/12-01/18-871-Red4). *See also* Decision on Mr Al Hassan’s restrictions and accesses while in detention, 21 January 2020, ICC-01/12-01/18-557-Conf-Exp (confidential *ex parte*, available only to the Registry, confidential *ex parte* redacted versions were issued simultaneously; a public redacted version was filed on 14 February 2020).

<sup>3</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Red3, para. 44. *See also* Decision on interim release, 5 May 2020, ICC-01/12-01/18-786-Conf, para. 39(d).

of the testimony of the last witness of the Office of the Prosecutor (the ‘Prosecution’).<sup>4</sup> The restrictions to remain in place were as follows (the ‘Restrictions’):<sup>5</sup>

- restrictions to persons Mr Al Hassan may receive as visitors or call on the phone (limited list of individuals whose identity and contact details have been duly checked in advance by the Victims and Witnesses Unit (the ‘VWU’), with the exception of privileged communications);
- active monitoring of telephone calls, all correspondence and visits (with the exception of privileged communications);
- limited non-privileged contacts to three hours per week;
- VWU to carry out *post-facto* analysis of the recordings of Mr Al Hassan’s monitored conversations for the purpose of identifying any risk or threat to potential witnesses;
- prohibition to have telephone calls or correspondence in obscure or coded language or in a language other than French, Arabic or Tamasheq;
- prohibition to discuss the present case in any communication other than a privileged one; and
- prohibition to receive private visits (other aspects of family visits to be decided upon by the Registry).

Mr Al Hassan is also authorised to receive pre-recorded videos of his family members, as well as to send pre-recorded videos of himself to his family.<sup>6</sup>

2. Subsequently, the Chamber exceptionally varied the Restrictions so as to facilitate additional communication on a temporary basis between Mr Al Hassan and his family following the death of his daughter,<sup>7</sup> and during Eid,<sup>8</sup> as well as when ongoing telephone network problems were observed in Mali as of August

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<sup>4</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Red3, para. 41, p. 31.

<sup>5</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Red3, paras 18, 44.

<sup>6</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Red3, para. 19.

<sup>7</sup> Emails from the Chamber, 15 December 2020, at 13:20 and 16 December 2020 at 15:12, authorising a combination of active and passive monitoring for two weeks.

<sup>8</sup> Email from the Chamber, 11 May 2021 15:38, authorising a one-off passively monitored phone call.

2021.<sup>9</sup> The Chamber also exceptionally varied the Restrictions so as to permit private visits between Mr Al Hassan and his wife during a family visit in November 2021,<sup>10</sup> as well as longer family visiting hours during the visit.<sup>11</sup>

3. On 20 October 2021, in light of the forthcoming end of the Prosecution case, the Chamber set a timetable for submissions to assist it in deciding on the continuation, if any, of the Restrictions past the end of the testimony of the last Prosecution witness.<sup>12</sup>
4. On 10 December 2021, the Prosecution filed submissions, requesting to maintain the Restrictions until the end of the case (the ‘Prosecution Submissions’).<sup>13</sup> The Prosecution submits that there continues to be an objectively justifiable risk of physical harm and killing of witnesses, even after the end of the Prosecution’s case, including retaliatory attacks against witnesses who have already testified, and risks to witnesses yet to testify.<sup>14</sup> Specifically in this regard, the Prosecution refers to: (i) the continued ability of armed groups with which the accused is associated to target and harm persons perceived as cooperating with international entities – a factor heightened in light of significant deterioration of the security situation in northern Mali in 2021 and the likely further worsening of the security situation following the complete withdrawal of French forces;<sup>15</sup> and (ii) the accused’s prior violations of the Restrictions and the profile of the his interlocutors. In this regard, the Prosecution submits that [REDACTED], and that the accused’s prior violations of the Restrictions indicate a risk he would use the opportunity of a lifting of Restrictions to reveal confidential information

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<sup>9</sup> Emails from the Chamber, 10 August 2021, at 17:57 and 22 October 2021, at 09:09, authorising a flexible approach to actively monitored calls.

<sup>10</sup> Decision on Defence request for exceptional variation of detention conditions, 26 July 2021, ICC-01/12-01/18-1611-Conf (the ‘Private Visits Decision’).

<sup>11</sup> Email from the Chamber, 12 November 2021, at 15:21, authorising a combination of active and passive monitoring for family visits so as to facilitate longer visiting hours to the extent possible.

<sup>12</sup> Order setting timetable in relation to the restrictions on Mr Al Hassan’s contacts in detention, ICC-01/12-01/18-1827.

<sup>13</sup> Prosecution’s request to maintain restrictions on Mr Al Hassan’s contacts and access to others whilst in detention until the end of the case, ICC-01/12-01/18-2066-Conf-Exp (confidential *ex parte*, only available only to the Prosecution, Defence and the VWU and Detention Section; with confidential *ex parte* Annex A, only available only to the Prosecution, Defence and the VWU and Detention Section).

<sup>14</sup> Prosecution Submissions, ICC-01/12-01/18-2066-Conf-Exp, paras 2-8, 12-39.

<sup>15</sup> Prosecution Submissions, ICC-01/12-01/18-2066-Conf-Exp, paras 7, 18 and generally 17-22; ICC-01/12-01/18-2066-Conf-Exp-AnxA.

concerning witnesses to non-privileged third parties.<sup>16</sup> Finally, the Prosecution submits that maintaining the Restrictions is the least restrictive possible means of ensuring the protection of witnesses and the integrity of the proceedings.<sup>17</sup>

5. Also on 10 December 2021, the Legal Representatives of Victims (the ‘LRVs’) filed their submissions (the ‘LRVs Submissions’), supporting the continuation of the Restrictions until the end of the proceedings, or, at least until the end of the LRVs’ case.<sup>18</sup>
6. Also on 10 December 2021, the Registry filed its observations (the ‘Registry Observations’).<sup>19</sup> The Registry notably reports that: (i) the current orders and monitoring regime applicable to Mr Al Hassan are clear and it has no challenges to regularly report on the implementation of the current restrictions;<sup>20</sup> (ii) it has no incident to report since its last report on the implementation of the restrictions in November 2019;<sup>21</sup> and (iii) the VWU considers that the monitoring regime currently in place and the *post-facto* analysis plays a preventive role in detecting or discouraging potential threat to Prosecution witnesses.<sup>22</sup>
7. On 17 January 2022, the Defence filed its submissions, noting that it does not object to the continuation of the Restrictions to the end of the LRVs’ witness testimony in February 2022, but requests the Chamber thereafter to lift or significantly ease the Restrictions so as to allow unmonitored communication between Mr Al Hassan and his approved list of contacts (or, at a minimum, to permit unmonitored communication between Mr Al Hassan and his wives and

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<sup>16</sup> Prosecution Submissions, ICC-01/12-01/18-2066-Conf-Exp, paras 6, 23-30 and generally 31-39; ICC-01/12-01/18-2066-Conf-Exp-AnxA.

<sup>17</sup> Prosecution Submissions, ICC-01/12-01/18-2066-Conf-Exp, paras 40-52.

<sup>18</sup> Observations déposées en application de l’ordonnance « Order setting timetable in relation to the restrictions on Mr Al Hassan’s contacts in detention » (ICC-01/12-01/18-1827), ICC-01/12-01/18-2065-Conf-Exp (confidential *ex parte*, only available only to the LRVs and the Registry; a confidential redacted version was filed simultaneously, ICC-01/12-01/18-2065-Conf-Red; a public redacted version was filed on 26 January 2022, ICC-01/12-01/18-2065-Red2).

<sup>19</sup> Registry’s Observations pursuant to the “Order setting timetable in relation to the restrictions on Mr Al Hassan’s contacts in detention”, 20 October 2021, ICC-01/12-01/18-1827, ICC-01/12-01/18-2064-Conf (a public redacted version was filed simultaneously, ICC-01/12-01/18-2064-Red).

<sup>20</sup> Registry Observations, ICC-01/12-01/18-2064-Conf, para. 6.

<sup>21</sup> Registry Observations, ICC-01/12-01/18-2064-Conf, para. 7.

<sup>22</sup> Registry Observations, ICC-01/12-01/18-2064-Conf, para. 11.

children) (the ‘Defence Submissions’).<sup>23</sup> The Defence submits that it cannot fairly be argued that there is any reasonable risk of Mr Al Hassan engaging in witness interference, and that the Prosecution arguments in this regard are merely speculative and do not meet the requisite standards of concreteness and specificity.<sup>24</sup> It further submits that the Restrictions are no longer necessary or proportionate, and are outweighed by the prejudice caused to the accused. The Defence refers in this respect, *inter alia*, to the accused’s profile as a vulnerable detainee, the long passage of time since the imposition of the Restrictions, the significant and additional strain of the COVID-19 pandemic on the accused, the current stage of the proceedings, and the lack of incentive to engage in any activity that would create any risk to witnesses or interfere with the integrity of the proceedings.<sup>25</sup>

## II. Applicable law

8. The Chamber incorporates by reference the applicable legal framework previously set out by it.<sup>26</sup>
9. The Chamber also recalls some key principles as previously stated in relation to the present assessment. The Chamber recalls its obligation to protect the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses, as well as to preserve evidence and the integrity of the proceedings.<sup>27</sup> Detainees’ rights to communicate with others outside the Detention Centre are not absolute, however, any restrictions imposed must be the least restrictive possible to the rights of the detained person.<sup>28</sup> Contact with the outside world and visits are imperative for a detained person’s well-being and any restrictions imposed on the contact of the accused person must be justified and proportionate, in accordance with internationally recognised human rights, as provided in

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<sup>23</sup> Defence Response to ‘Prosecution’s request to maintain restrictions on Mr Al Hassan’s contacts and access to others whilst in detention until the end of the case’, ICC-01/12-01/18-2087-Conf.

<sup>24</sup> Defence Submissions, ICC-01/12-01/18-2087-Conf, paras 1-3, 12-31.

<sup>25</sup> Defence Submissions, ICC-01/12-01/18-2087-Conf, paras 1-3, 32-45.

<sup>26</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, paras 12-17. *See also* Private Visits Decision, ICC-01/12-01/18-1611-Conf, para. 7.

<sup>27</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, paras 14-15, 17.

<sup>28</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, para. 15; Private Visits Decision, ICC-01/12-01/18-1611-Conf, para. 9.

Article 21(3) of the Statute.<sup>29</sup> 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.<sup>30</sup>

### III. Analysis

10. At the outset the Chamber notes that there was a delay in the testimony of the last Prosecution witness scheduled to testify 24-25 January 2022, and that the Prosecution subsequently submitted a Rule 68(2)(b) application for that witness.<sup>31</sup> The Chamber further notes that it is not contested between the parties and the LRVs that the Restrictions remain in place until the end of the testimony of the last LRVs witness,<sup>32</sup> expected in February 2022.<sup>33</sup> Noting this agreement, the Chamber accordingly orders that the Restrictions as set out in paragraph 1 above, remain in place until the end of the testimony of the last LRVs witness.
11. In line with its previous approach, in reviewing the current restrictions regime the Chamber will assess whether: (i) there exists an objectively justifiable risk that warrants continuation of the Restrictions past the end of the testimony of the last LRVs witness; and (ii) the measures are necessary and proportionate to the legitimate aim pursued.<sup>34</sup>
12. In conducting this assessment, the Chamber shall have particular regard to developments occurring since the Restrictions Decision was issued in June 2020.<sup>35</sup>

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<sup>29</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, para. 15; Private Visits Decision, ICC-01/12-01/18-1611-Conf, para. 9.

<sup>30</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, para. 15; Private Visits Decision, ICC-01/12-01/18-1611-Conf, para. 9.

<sup>31</sup> See Email from the Single Judge, 21 January 2022, at 13:36.

<sup>32</sup> Prosecution Submissions, ICC-01/12-01/18-2066-Conf-Exp, para. 4; LRVs Submissions, ICC-01/12-01/18-2065-Red2, para. 19; Defence Submissions, ICC-01/12-01/18-2087-Conf, paras 3, 46.

<sup>33</sup> The LRVs confirmed that their two witnesses will testify between 8 and 11 February 2022: Liste des témoins des Représentants légaux des victimes, 11 January 2022, ICC-01/12-01/18-2084-Conf-AnxA.

<sup>34</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, para. 25. See also Private Visits Decision, ICC-01/12-01/18-1611-Conf, para. 7.

<sup>35</sup> See similarly, Restrictions Decision, ICC-01/12-01/18-871-Red4, para. 25.



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

13. The Chamber recalls its detailed findings in the Restrictions Decision on the existence of an objectively justifiable risk linked to Mr Al Hassan's communications that warranted maintaining restrictions to his non-privileged contacts until the end of the last Prosecution witness testimony.<sup>36</sup> These findings were notably based on consideration of: (i) the general security situation in Mali, including the exceptional and extreme risks to persons perceived as cooperating with international entities posed from the relevant armed groups;<sup>37</sup> (ii) the accused own association with those groups;<sup>38</sup> (iii) the accused's conduct and that of his interlocutors, notably the fact that the accused had previously violated some of the Restrictions at the pre-trial stage of proceedings during his communications with one family member;<sup>39</sup> (iv) the then stage of the proceedings (just before the start of the trial); and (v) the situation arising out of the COVID-19 pandemic and the resulting restrictions on the Court's ability to act in terms of witness protection.
14. The Chamber notes that, as submitted by the Prosecution,<sup>40</sup> the extreme risks to witnesses should their identities be made known to the armed groups operating in Mali, and the grave general security situation in Mali still persist. In relation to the Defence submission that the original application for restrictions was premised upon extremely weak evidence and conjecture,<sup>41</sup> the Chamber recalls its recent dismissal of the same submission in the Private Visits Decision, where it found that nothing in the submissions of the Defence disturbed the Chamber's detailed findings on the existence of an objective risk.<sup>42</sup>
15. However, at this juncture the Chamber gives particular regard to the current stage of the trial, where the Prosecution has in effect completed the live testimony of its witnesses for its case in chief. While cognisant that there remains a risk of

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<sup>36</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Exp, paras 27-38.

<sup>37</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Exp, paras 27-29.

<sup>38</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Exp, para. 30.

<sup>39</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, para. 37.

<sup>40</sup> Prosecution Submissions, ICC-01/12-01/18-2066-Conf-Exp, paras 2-8, 12-39.

<sup>41</sup> Defence Submissions, ICC-01/12-01/18-2087-Conf, para. 13.

<sup>42</sup> Defence Request for Exceptional Variation of Detention Conditions, 8 July 2021, ICC-01/12-01/18-1569-Conf, para. 19; Private Visits Decision, ICC-01/12-01/18-1611-Conf, para. 8.

retaliatory attacks against witnesses who have already testified, and risks to future witnesses, the Chamber considers that, as previously foreshadowed, the risk of interference with Prosecution witnesses and, consequently, the risk to their safety, has significantly diminished at this current stage of the proceedings.

16. In relation to Mr Al Hassan's own conduct, the Chamber has placed weight on the fact that his current approved list of non-privileged contacts is restricted to identified members of his family, and that he has no intention to expand the list at this point in time.<sup>43</sup> In this regard the Chamber notes that there is no evidence suggesting that the people currently appearing on this list have any links to the armed groups in the North of Mali, and recalls that, as confirmed by the Registry, none of the family members on Mr Al Hassan's current list of non-privileged contacts have been involved in any incidents of breaching the restrictions on contact.<sup>44</sup> Although, as previously noted,<sup>45</sup> the fact that there have been no breaches involving the persons currently on this list does not mean *per se* that the need to maintain the Restrictions has diminished or disappeared, the Chamber places weight in the present assessment on the passage of time since the Restrictions Decision was issued in June 2020, and the fact that Registry has reported no further incident with regard to Mr Al Hassan's conduct since November 2019.<sup>46</sup> The Chamber also takes into account that no incidents have been reported following the exceptional relaxation of the Restrictions on previous occasions in 2020 and 2021.<sup>47</sup> In addition, the Chamber takes note of the Registry's report that Mr Al Hassan is clear in his speech, including when mentioning any third parties, his conversations are generally on personal matters and he talks to a limited number of individuals, and he also appears to have a solid understanding and respect for the restrictions measures and does not hesitate to inform his interlocutors of the restrictions, if necessary.<sup>48</sup>

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<sup>43</sup> Defence Submissions, ICC-01/12-01/18-2087-Conf, para. 25.

<sup>44</sup> Confidential Redacted Version of the 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, 8 April 2020, ICC-01/12-01/18-732-Conf-Red (the 'Registry April 2020 Report'), para. 20.

<sup>45</sup> Restrictions Decision, ICC-01/12-01/18-871-Conf-Red3, para. 36.

<sup>46</sup> Registry Observations, ICC-01/12-01/18-2064-Conf, para. 7.

<sup>47</sup> See paragraph 2 above.

<sup>48</sup> Registry Observations, ICC-01/12-01/18-2064-Conf, para. 8.

17. In the Chamber's view, while still existing, the objectively justifiable risks associated with the accused's contacts have diminished since the Chamber's last review of the monitoring regime, especially when considering the current approved list of non-privileged contacts.

**B. Necessity and proportionality of the restrictions**

18. In this context, and in assessing the continuing necessity and proportionality of maintaining the Restrictions at this stage of the trial, the Chamber gives particular regard to the now significant passage of time since the restrictions on contact were first imposed, noting that the Restrictions have been in place for close to four years. The Chamber has also placed weight on the limited number of family visits received since Mr Al Hassan's arrival at the Detention Centre almost four years ago, and the potential impact that restrictions on contacts may have on the accused's family life and well-being over time. The Chamber has also taken into account that since March 2020, Mr Al Hassan, as all other detainees at the Detention Centre, has been subjected to additional and significant limitations on contact as a result of COVID-19 measures imposed at the Detention Centre.
19. In view of all of the foregoing, having had due regard to the relevant submissions from the parties and participants, and in balancing the absolute necessity to protect witnesses, preserve evidence and ensure the integrity of these proceedings with the rights of Mr Al Hassan to preserve his family life, the Chamber finds that the complete maintenance of the Restrictions is no longer proportional and considers that alternative and less restrictive measures are warranted.

*a. Monitoring of non-privileged telephone calls, correspondence and visits*

20. In view of the foregoing findings, the Chamber finds that restricting Mr Al Hassan's non-privileged contacts to a limited list of individuals whose identity and contact details have been duly checked in advance by the VWU remains justified.
21. However, as regards the individuals currently on Mr Al Hassan's approved list of non-privileged contacts, the Chamber considers it no longer necessary or

proportionate to maintain the active monitoring of Mr Al Hassan's non-privileged telephone calls and visits in relation to those individuals. Instead, the Chamber considers it sufficient and appropriate for telephone calls and visits with these individuals to be passively monitored pursuant to Regulations 174 and 184 of the Regulations of the Registry.

22. In particular in relation to Mr Al Hassan's telephone calls, the Chamber notes that pursuant to this option, the calls would not be actively monitored in a systematic manner but would be recorded and archived until the end of the proceedings.<sup>49</sup> In accordance with Regulation 174(2) of the Regulations of the Registry, the recorded conversations may still be listened to at random and in specific cases listed under Regulation 175(1) of the Regulations of the Registry. As previously noted by the Registry, the [REDACTED].<sup>50</sup> Nevertheless, in light of its findings above, the Chamber considers that reverting back to this standard procedure is warranted in the circumstances. In particular, the Chamber recalls that the active monitoring of all non-privileged contacts results in the accused's weekly phone conversations being limited to three hours. The Chamber observes that moving from active to passive monitoring would allow increased and flexible communication between Mr Al Hassan and family members on his current list of contacts, which the Chamber considers to be appropriate at this stage of the proceedings and in light of the lesser objective risks identified above related to the individuals on this list.
23. The Chamber emphasises that its findings supporting a relaxation of the previous active monitoring regime are limited specifically to the individuals currently on Mr Al Hassan's approved list of non-privileged contacts. If and when the accused wishes to add individuals to this list, the VWU should continue to verify the identity and contact details of any such individuals, and seize the Chamber if necessary. The Chamber notes the possibility of ordering that contacts with only certain individuals be actively monitored, if considered necessary.

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<sup>49</sup> See Registry April 2020 Report, ICC-01/12-01/18-732-Conf-Red, para. 25.

<sup>50</sup> Registry April 2020 Report, ICC-01/12-01/18-732-Conf-Red, para. 25.

24. The Chamber considers that active monitoring of the accused's correspondence can be maintained, considering 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, notably since it does not limit the time available for Mr Al Hassan to communicate with family members.
25. The Chamber further notes that the ability for Mr Al Hassan to receive pre-recorded videos of his family members, as well as to send pre-recorded videos of himself to his family shall remain in place.
26. With a view to continuing to mitigate the existing risks identified above, the Chamber further considers that the current modalities of Mr Al Hassan's contacts – notably the prohibition to have telephone calls or correspondence in obscure or coded language or to use a language other than French, Arabic or Tamasheq, as well as the prohibition to discuss the present case, shall continue to apply.

*b. Post-facto analysis by VWU of recordings*

27. The Chamber notes the VWU's opinion that its *post-facto* analysis of the recordings of Mr Al Hassan's conversations plays a preventive role in detecting or discouraging potential threat to Prosecution witnesses.<sup>51</sup> The Chamber also notes the VWU's advice that the analysis also allows it to identify: [REDACTED].<sup>52</sup>
28. Nonetheless, the Chamber observes that the current *post-facto* analysis exercise is somewhat dependent on a weekly time limit being set for Mr Al Hassan's recorded conversations. Specifically, the Chamber recalls the Registry's previous observation that a weekly time limit for calls should be maintained in order to enable [REDACTED].<sup>53</sup> Recalling its foregoing observations on the remaining risks at the current stage of the proceedings, the Chamber considers that proportionality favours a lesser restrictive measure which would allow for

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<sup>51</sup> Registry Observations, ICC-01/12-01/18-2064-Conf, para. 11.

<sup>52</sup> Registry Observations, ICC-01/12-01/18-2064-Conf, para. 11.

<sup>53</sup> Registry April 2020 Report, ICC-01/12-01/18-732-Conf-Red, para. 22.

increased and flexible communication between Mr Al Hassan and his family members.

29. Accordingly, the Chamber orders that the VWU maintains access to recordings of Mr Al Hassan's monitored conversations and continues to carry out a *post-facto* analysis but only on a sporadic basis. The Chamber considers that this measure is proportionate with monitoring Mr Al Hassan's compliance with the new restrictions regime, while allowing for increased and flexible communication with approved family members by removing the need for a strict weekly time limit on communication.

*c. Family and private visits*

30. The Chamber's findings in this decision apply, *mutatis mutandis*, to future family visits. As concerns private visits, for the reasons stated above and in particular recalling its findings in the Private Visits Decision,<sup>54</sup> the Chamber does not consider it necessary or proportionate to maintain the prohibition on Mr Al Hassan receiving private visits.

*d. Conclusion*

31. The Chamber considers that the restrictions regime, as modified above, is sufficient to appropriately mitigate the identified risks and to ensure the safety of witnesses, the preservation of evidence and the integrity of the proceedings. The Chamber considers the measures identified above to be the least restrictive available to mitigate the identified risks at this stage of the proceedings.
32. Nevertheless, the Chamber emphasises that, should any incident be reported with respect to Mr Al Hassan's communications, the Chamber will immediately order any measures it considers necessary to address the matter. As per the Chamber's previous directions,<sup>55</sup> in order to allow the Chamber to take prompt action if and 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.

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<sup>54</sup> ICC-01/12-01/18-1611-Conf.

<sup>55</sup> Restrictions Decision, ICC-01/12-01/18-871-Red4, para. 60.

33. The Chamber considers it proportionate to impose the abovementioned amended restrictions regime in place until the end of the evidentiary phase of the case. This timeframe will be reviewed upon application, or *proprio motu* if considered necessary.

#### **IV. Confidentiality**

34. The present decision has been filed on a confidential basis. The Chamber considers that maintaining the confidentiality of this decision serves an additional safeguard against potential exploitation of the relaxation of the restrictions regime by third parties. The Chamber will revisit the classification of this decision at the end of the evidentiary phase of this case, or earlier where warranted.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**ORDERS** that the restrictions to Mr Al Hassan's non-privileged contacts, as listed in paragraph 1 above, shall be lifted immediately after the testimony of the last LRVs witness;

**ORDERS** that, thereafter, the amended restrictions to Mr Al Hassan's non-privileged contacts, as set out in paragraphs 20-30 above, shall remain in place until the end of the evidentiary phase of the case;

**ORDERS** the Registry to report to the Chamber in accordance with paragraph 32 above; and

**ORDERS** the Prosecution to file a confidential redacted version of the Prosecution Submissions ICC-01/12-01/18-2066-Conf-Exp within seven days of this decision.

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 31 January 2022

At The Hague, The Netherlands