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No. ICC-01/12-01/18

Date: 25 May 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

**First Decision on in-court protective measures for witnesses called by the
Defence**

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

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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)(e) and 68(1) and (2) of the Rome Statute, Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 20 and 35(2) of the Regulations of the Court (the ‘Regulations’), issues the following ‘First Decision on in-court protective measures for witnesses called by the Defence’.

I. Procedural history

1. On 6 May 2020, the Chamber issued its ‘Directions on the conduct of proceedings’, setting out the procedure for the filing by the Office of the Prosecutor (the ‘Prosecution’) of applications seeking in-court protective measures pursuant to Rule 87 of the Rules.¹
2. On 22 September 2021, the Chamber decided in its ‘Fifth decision on matters related to the conduct of proceedings: presentation of evidence by LRVs and Defence’ that the procedure in relation to in-court protective and special measures set out in its Directions on the conduct of proceedings will remain applicable, *mutatis mutandis*, with the deadline for the Defence being 30 days prior to the start of the scheduled testimony of the relevant witness.²
3. On 6 May 2022, the Defence filed an application seeking in-court protective measures for Defence witness D-0512 (the ‘First Application’),³ who is scheduled to appear before the Chamber on 7 June 2022.

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 Fifth decision on matters related to the conduct of proceedings: presentation of evidence by the LRVs and Defence, 22 September 2021, ICC-01/12-01/18-1756, para. 17.

³ Defence application for in-court protective measures for Witness D-0512, 6 May 2022, ICC-01/12-01/18-2213-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on that same date, ICC-01/12-01/18-2213-Conf-Red).

4. On that same day, as instructed,⁴ the Registrar filed its ‘Third Registry Report on the Security Situation in Mali’ (the ‘Third Security Report’).⁵
5. On 9 May 2022, the Prosecution and the LRVs informed the Chamber that they do not oppose the First Application.⁶
6. On 10 May 2022, the Chamber directed the Defence to review its witness schedule for June 2022 in order to accommodate the changes in standard procedures made by the Registry for witnesses testifying remotely.⁷
7. On 13 May 2022, the Defence filed an application seeking in-court protective measures for Defence witness D-0211 (the ‘Second Application’),⁸ who is scheduled to appear before the Chamber from 14 to 16 June 2022.
8. On 16 May 2022, the Defence filed an application seeking in-court protective measures for Defence witness D-0272 (the ‘Third Application’),⁹ who is scheduled to appear before the Chamber from 8 to 9 June 2022.¹⁰
9. On 18 May 2022, the Prosecution and LRVs informed the Chamber that neither opposes the Second Application nor the Third Application.¹¹
10. The Victims and Witnesses Unit (the ‘VWU’) is yet to make its recommendation with respect to D-0512, D-0211, and D-0272.

⁴ Order instructing the Registry to file an updated report on the security situation in Mali, 13 April 2022, ICC-01/12-01/18-2201.

⁵ Third Registry Report on the Security Situation in Mali, 6 May 2022, ICC-01/12-01/18-2215 (with one confidential annex, ICC-01/12-01/18-2215-Conf-AnxI, one confidential *ex parte* annex only available to the Defence and the Registry, ICC-01/12-01/18-2215-Conf-Exp-AnxII, and one confidential *ex parte* annex only available to the Registry, ICC-01/12-01/18-2215-Conf-Exp-AnxIII).

⁶ Email from the Prosecution, 9 May 2022, at 11:44; Email from the LRVs, 9 May 2022, at 16:10.

⁷ Email from the Chamber, 10 May 2022, at 13:58.

⁸ Defence application for in-court protective measures for Witnesses D-0211, 13 May 2022, ICC-01/12-01/18-2221-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on that same date, ICC-01/12-01/18-2221-Conf-Red).

⁹ Defence application for in-court protective measures for Witness D-0272, 16 May 2022, ICC-01/12-01/18-2224-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on that same date, ICC-01/12-01/18-2224-Conf-Red).

¹⁰ See Email from the Defence, 17 May 2022, at 15:10.

¹¹ Two Emails from the Prosecution, 18 May 2022, at 15:51, and at 15:52; two Emails from the LRVs, 18 May 2022, both at 17:04.

II. Submissions and analysis

11. This is the Chamber's first decision on in-court protective measures for witnesses called by the Defence.
12. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.¹²
13. Before turning to the situation of specific witnesses, the Chamber refers to the information provided recently by the Registry concerning the general situation in Mali. The Chamber notes that in its Third Security Report the Registry informs that 'there has been no significant improvement in the overall security situation since the submission of the Second Registry Report' dated July 2020.¹³ Notably, the Registry reports that: (i) the withdrawal of French forces, following a shift in Mali's relations with key regional and international stakeholders, [REDACTED];¹⁴ (ii) [REDACTED]¹⁵ [REDACTED];¹⁶ (iii) [REDACTED]¹⁷ [REDACTED];¹⁸ (iv) [REDACTED];¹⁹ (v) [REDACTED];²⁰

¹² Decision on in-court protective measures for witnesses called by the LRVs, 28 January 2022, ICC-01/12-01/18-2094-Conf-Exp (confidential and public redacted versions filed on the same date); Eighth Decision on in-court protective measures for witnesses, 14 April 2021, ICC-01/12-01/18-1414-Conf-Exp (confidential redacted and public redacted versions filed on the same date); Seventh Decision on in-court protective measures, 8 March 2021, ICC-01/12-01/18-1344-Conf-Exp (confidential and public redacted versions filed on the same date); Sixth Decision on in-court protective measures for witnesses, 24 February 2021, ICC-01/12-01/18-1318-Conf-Exp (confidential and public redacted versions filed on the same date); Fifth Decision on in-court protective measures for witnesses, 3 February 2021, ICC-01/12-01/18-1280-Conf-Exp (confidential and public redacted versions filed on the same date); Corrigendum Fourth Decision on in-court protective measures for witnesses, 26 January 2021, ICC-01/12-01/18-1266-Conf-Exp-Corr (confidential and public redacted versions filed on the same date); Third Decision on in-court protective measures, 19 October 2020, ICC-01/12-01/18-1113-Conf-Exp (a confidential redacted version was filed that same date, and a public redacted version was filed on 5 January 2021); Second Decision on in-court protective measures, 24 September 2020, ICC-01/12-01/18-1067-Conf-Exp (a confidential redacted version was filed on that same date, and a public redacted version was filed on 5 January 2021); 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, and a public redacted version was filed on 5 January 2021).

¹³ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 13, referring to the 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.

¹⁴ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, pp. 4-7.

¹⁵ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 7.

¹⁶ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 8.

¹⁷ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, pp. 10-11.

¹⁸ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 11.

¹⁹ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 9.

²⁰ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 12.

(vi) [REDACTED],²¹ [REDACTED];²² (vii) [REDACTED];²³ and (viii) [REDACTED].²⁴ The Chamber also notes the Registry's *ex parte* submission that [REDACTED].²⁵

1. D-0512

14. Turning to the First Application, the Defence seeks in-court protective measures for D-0512 in the form of pseudonym, face and voice distortion and use of private/closed sessions notably for when D-0512 testifies on any information which could lead to her identification.²⁶ The Defence informs that D-0512 [REDACTED]²⁷ and argues that [REDACTED].²⁸ The Defence further submits that D-0512 is a woman and [REDACTED], and therefore a vulnerable witness, and that she expressed specific and grounded fears for her safety and that of her family.²⁹ Accordingly, the Defence argues that D-0512's cooperation with the Court, and more specifically with the Defence, could put her at risk in her community.³⁰ The Defence is further of the view that no prejudice to the Prosecution would arise from granting the First Application.³¹
15. Having had regard to the above, the Chamber considers that an objectively justifiable risk with respect to D-0512's safety and security has been demonstrated. In particular, the Chamber notes that the witness [REDACTED] and that, in the circumstances as well as considering the nature of her expected evidence and her profile, she would face a significant and impermissible risks should her identity, and consequently her cooperation with the Court and the Defence, become known to the public.
16. Further noting that the First Application is unopposed, the Chamber grants D-0512 in-court protective measures in the form of the use of a pseudonym, facial

²¹ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 12.

²² Third Security Report, ICC-01/12-01/18-2215-Conf-Exp-AnxII, p. 2.

²³ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, p. 12.

²⁴ Third Security Report, ICC-01/12-01/18-2215-Conf-AnxI, pp. 6-7, 9, 13.

²⁵ Third Security Report, ICC-01/12-01/18-2215-Conf-Exp-AnxIII, p. 2.

²⁶ First Application, ICC-01/12-01/18-2213-Conf-Red, para. 9.

²⁷ First Application, ICC-01/12-01/18-2213-Conf-Exp, para. 10.

²⁸ First Application, ICC-01/12-01/18-2213-Conf-Red, para. 14.

²⁹ First Application, ICC-01/12-01/18-2213-Conf-Red, para. 12.

³⁰ First Application, ICC-01/12-01/18-2213-Conf-Red, para. 14.

³¹ First Application, ICC-01/12-01/18-2213-Conf-Red, para. 15.

and voice distortion, as well as use of private sessions as necessary to protect her identity from being disclosed to the public. With respect to other confidential information proposed to be elicited in private session, the Chamber will await a detailed proposal before deciding on the way forward.³² The Chamber however already indicates that attempts should be made to elicit in open session D-0512's narrative about relevant events and incidents, while ensuring that details revealing [REDACTED] remain confidential.

2. D-0211

17. With regard to the Second Application, the Defence seeks in-court protective measures for D-0211 in the form of pseudonym, face and voice distortion and use of private/closed sessions notably for when D-0211 testifies on any information which could lead to his identification.³³ The Defence informs that D-0211 [REDACTED]³⁴ and argues that [REDACTED].³⁵ He is married, [REDACTED].³⁶ The Defence further submits that D-0211 is a former member of the MNLA,³⁷ [REDACTED]³⁸ and that he expressed specific and grounded fears for his safety and that of his family.³⁹
18. The Chamber considers that an objectively justifiable risk with respect to D-0211's safety and security has been demonstrated. In particular, the Chamber notes that the witness [REDACTED] and that he could be easily identified because, [REDACTED], he is well known in his community. Further, and especially as a former member of the MNLA, the Chamber notes the potential threats from various sources which exist should his cooperation with the Court and the Defence become known.
19. Noting that the Second Application is unopposed, the Chamber grants D-0211 in-court protective measures in the form of the use of a pseudonym, facial and

³² See Email from the Chamber, 29 March 2022, at 10:21.

³³ Second Application, ICC-01/12-01/18-2221-Conf-Red, para. 9.

³⁴ Second Application, ICC-01/12-01/18-2221-Conf-Exp, para. 10.

³⁵ Second Application, ICC-01/12-01/18-2221-Conf-Red, para. 10.

³⁶ Second Application, ICC-01/12-01/18-2221-Conf-Exp, para. 13.

³⁷ Second Application, ICC-01/12-01/18-2221-Conf-Red, para. 11.

³⁸ Second Application, ICC-01/12-01/18-2221-Conf-Exp, para. 14.

³⁹ Second Application, ICC-01/12-01/18-2221-Conf-Red, para. 13.

voice distortion, as well as use of private sessions as necessary to protect his identity from being disclosed to the public. With respect to other confidential information proposed to be elicited in private session, the Chamber will await a detailed proposal from the Defence before deciding on the way forward.⁴⁰

3. D-0272

20. With regard to the Third Application, the Defence seeks in-court protective measures for D-0272 in the form of pseudonym, face and voice distortion and use of private/closed sessions notably for when D-0272 testifies on any information which could lead to his identification.⁴¹ The Defence informs that D-0272 [REDACTED]⁴² and argues that [REDACTED].⁴³ The Defence further submits that D-0272 is [REDACTED],⁴⁴ and that he expressed specific and grounded fears for his safety.⁴⁵ Accordingly, the Defence argues that D-0272's cooperation with the Court could put him at risk in his community.⁴⁶
21. The Chamber first notes that the Third Application was filed on 16 May 2022 and that, with D-0272 being scheduled to testify as of 8 June 2022, this request was not submitted within the standard time limit set by the Chamber, which is 30 days before the start date of the relevant testimony.⁴⁷ But the Chamber points out that D-0272 was only recently added to the schedule following a specific order from the Chamber.⁴⁸ Having had regard to Regulation 35(2) of the Regulations, the Chamber finds that the relevant circumstances were outside the Defence's control, and accordingly considers it appropriate to entertain the Third Application even if filed outside the standard time limit.
22. Bearing in mind the security situation in Mali, the Chamber considers that an objectively justifiable risk with respect to D-0272's safety and security has been demonstrated. In particular, the Chamber notes that the witness [REDACTED]

⁴⁰ See Email from the Chamber, 29 March 2022, at 10:21.

⁴¹ Third Application, ICC-01/12-01/18-2224-Conf-Red, para. 10.

⁴² Third Application, ICC-01/12-01/18-2224-Conf-Exp, para. 11.

⁴³ Third Application, ICC-01/12-01/18-2224-Conf-Red, para. 11.

⁴⁴ Third Application, ICC-01/12-01/18-2224-Conf-Red, para. 12.

⁴⁵ Third Application, ICC-01/12-01/18-2224-Conf-Red, para. 13.

⁴⁶ Third Application, ICC-01/12-01/18-2224-Conf-Red, para. 11.

⁴⁷ Fifth decision on matters related to the conduct of proceedings, ICC-01/12-01/18-1756, para. 17.

⁴⁸ Email from the Chamber, 10 May 2022, at 13:58.

where there are multiple possible threat actors. The Chamber also considers, on the basis of the details provided in the Third Application, that D-0272 will notably be exposed to elevated risks due to his current work. Thus, D-0272 would face a significant and impermissible risk should his identity, and consequently his cooperation with the Court and the Defence, become known to the public.

23. Further noting that the Third Application is unopposed, the Chamber grants D-0272 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions as necessary to protect his identity from being disclosed to the public. With respect to other confidential information proposed to be elicited in private session, the Chamber will await a detailed proposal before deciding on the way forward.⁴⁹

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

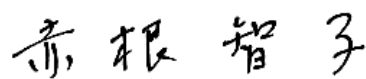
GRANTS the Applications; and

ORDERS in-court protective measures with respect to D-0512, D-0211 and D-0272 in the form of use of a pseudonym, as well as facial and voice distortion and use of private session, as necessary, for their testimony.


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 Wednesday, 25 May 2022

At The Hague, The Netherlands

⁴⁹ See Email from the Chamber, 29 March 2022, at 10:21.