

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/12-01/18
Date: 30 August 2023**

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 the variation of in-court protective measures granted to
Prosecution witnesses**

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

Karim A. A. Khan
 Nazhat Shameem Khan
 Mame Mandiaye Niang

Counsel for the Defence

Melinda Taylor

Legal Representatives of Victims

Seydou Doumbia
 Mayombo Kassongo
 Fidel Luvengika Nsita

Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants for
Participation/Reparations****The Office of Public Counsel for Victims****The Office of Public Counsel for the
Defence****States Representatives***Amicus Curiae***REGISTRY****Registrar**

Oswaldo Zavala Giler

Counsel Support Section**Victims and Witnesses Unit**

Nigel Verrill

Detention Section**Victims Participation and Reparations
Section****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) and 68 of the Rome Statute (the ‘Statute’), Rule 87 of the Rules of Procedure and Evidence (the ‘Rules’) and Regulation 42 of the Regulations of the Court (the ‘Regulations’), issues the following ‘First Decision on the variation of in-court protective measures granted to Prosecution witnesses’.

I. Procedural history

1. On 6 April 2023, the Chamber instructed the VWU to provide observations on the present situation of P-0565, P-0557, P-0554, P-0984, P-0636, P-0602, P-0520, P-0547, P-0642, P-0610, P-0622, P-0538, and P-0626, *inter alia*, concerning any possible change in circumstances surrounding the witnesses since the initial provision of protective measures.¹
2. On 15 June 2023, the VWU submitted its report (the ‘First Report’), detailing the circumstances, and any material changes, surrounding each of the aforementioned witnesses.²
3. On 21 June 2023, the office of the Prosecutor (the ‘Prosecution’) submitted its observations on the VWU Report, endorsing the VWU’s recommendations and requesting that the Chamber exercises caution when deciding on any variation of in-court protective measures.³

II. Analysis

4. Article 64(7) of the Statute mandates the Court to balance the need to protect confidential information against the principle of the publicity of the trial. As

¹ Order on in-court protective measures granted to Prosecution witnesses, ICC-01/12-01/18-2484-Conf (the ‘First Order’), para. 4.

² Registry’s Report pursuant to the ‘Order on in-court protective measures granted to Prosecution witnesses’ (ICC-01/12-01/18-2484-Conf), ICC-01/12-01/18-2533-Conf-Exp (confidential *ex parte*, only available to the Prosecution and the Registry; a confidential redacted version was filed on the same date).

³ Prosecution’s observations on the ‘Registry’s Report pursuant to the “Order on in-court protective measures granted to Prosecution witnesses” (ICC-01/12/01/18-2484-Conf)’, ICC-01/12-01/18-2539-Conf-Exp (confidential *ex parte*, only available to the Prosecution and the Registry; a confidential redacted version was filed on the same date).

previously indicated,⁴ the Chamber is mindful of the need to ensure publicity of the proceedings and intends to issue a public version of its Judgment pursuant to Article 74 of the Statute, containing only strictly necessary redactions. In this regard, the Chamber recalls its previous determination that, while the general security situation in Mali continued to remain grave, given that the evidentiary stage of the trial proceedings have concluded, any potential risks to witnesses, including those who were granted in-court protective measures, have significantly diminished.⁵

5. The Chamber has previously granted P-0565, P-0557, P-0554, P-0984, P-0636, P-0602, P-0520, P-0547, P-0642, P-0610, P-0622, P-0538, and P-0626 in court protective measures in the form of use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.⁶

A. P-0565 and P-0557

6. The Chamber notes the VWU Report, in which the VWU notes that the witnesses acknowledged that they were well known in Timbuktu as victims of a public flogging, that they were not concerned if the content of their testimony was made public, [REDACTED] they [REDACTED].⁷ Thus, the VWU considers that there was no need any longer for either in-court protective measures or for redacting information concerning the incident they testified about in the judgment.⁸ However, the VWU also notes that maintaining their anonymity, particularly for those without knowledge of the flogging, would ensure that their reintegration in their new location is not hampered in any way.⁹

⁴ First Order, ICC-01/12-01/18-2484-Conf, para. 2.

⁵ Decision reviewing the measures restricting Mr Al Hassan's contacts whilst in detention following the closure of the submission of evidence, ICC-01/12-01/18-2498-Conf-Exp, para. 25 (confidential *ex parte*, only available to the Prosecution and the Registry; a confidential redacted version was filed on the same date; a public redacted version was filed on 3 July 2023).

⁶ Third decision on in-court protective measures, ICC-01/12-01/18-1113-Conf-Exp, paras 18, 23; Fourth Decision on in-court protective measures for witnesses, ICC-01/12-01/18-1266-Conf-Exp-Corr, paras 17, 20, 25, 27; Sixth Decision on in-court protective measures for witnesses, ICC-01/12-01/18-1318-Conf-Exp, para. 21; Eighth Decision on in-court protective measures for witnesses, ICC-01/12-01/18-1414-Conf-Exp, paras 35, 40, 43, 49, 58, 61.

⁷ First Report, ICC-01/12-01/18-2533-Conf-Exp, paras 11-12.

⁸ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 12.

⁹ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 12.

7. The Chamber agrees with the VWU's assessment with respect to P-0565 and P-0557. Thus, it notes that there is no need to redact the portion of the decision dealing with the incident on which they testified. However, in line with the VWU's suggestion, the Chamber agrees that the retention of pseudonyms for both remain apposite.

B. P-0602

8. The Chamber notes the VWU Report, in which the VWU states that [REDACTED], the witness is [REDACTED].¹⁰ The VWU Report further notes that although the witness did not object to her testimony being made public, she also stated that [REDACTED].¹¹
9. Given the fact that the witness was not comfortable with [REDACTED], and owing to the need to protect her privacy and dignity given the nature of the events recounted in her testimony, the VWU suggested that redactions of explicit details concerning her testimony would be apposite.¹² Moreover, so as to [REDACTED], the VWU also suggested the retention of the pseudonym.¹³
10. The Chamber finds that in light of the sensitive nature of events covered in her testimony and the need to protect her privacy, while the need for in-court protective measures no longer remains, it would be apposite to redact portions of the decision that cover explicit details of her testimony. Moreover, the Chamber finds that the retention of the pseudonym also remains necessary and appropriate.

C. P-0547

11. The Chamber notes the VWU Report, where the VWU states that the witness and her family [REDACTED], that in conversations with P-0547, the witness did not object to her evidence being made public, but raised concerns about possible impacts on [REDACTED].¹⁴

¹⁰ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 13.

¹¹ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 13.

¹² First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 15.

¹³ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 15.

¹⁴ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 16.

12. However, the VWU considers that the public identification of the witness would pose low risk, given that the witness and her family are [REDACTED], and that the VWU has no information about any potential threats or retaliation [REDACTED].¹⁵ Even if the non-redaction of her testimony leads to her identification, the VWU notes that it remains well-placed to manage any such potential risk.¹⁶
13. The Chamber agrees with the VWU's assessment with respect to P-0547. Thus, the Chamber considers that in-line with the VWU Report, the redaction of her testimony or the use of pseudonym is no longer required.

D. P-0984 and P-0554

14. The Chamber notes the VWU Report, where the VWU states that [REDACTED].¹⁷ The VWU Report also noted that in consultations with the witnesses, they did not have any concerns with their testimonies being made publicly available or their identities being revealed in the process.¹⁸
15. The VWU Report further notes that the witnesses no longer [REDACTED].¹⁹ Additionally, it was likely that the victims were already known in Timbuktu because of the public nature of the incident on which they testified.²⁰ While unlikely, the VWU Report notes that any change in their circumstances leading to greater risk can be managed adequately.²¹
16. The Chamber agrees with the VWU's assessment with respect to P-0984 and P-0554. Thus, the Chamber considers that in line with the VWU's recommendations, the redaction of their testimonies or the use of pseudonyms is no longer required.

¹⁵ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 17.

¹⁶ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 18.

¹⁷ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 19.

¹⁸ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 20.

¹⁹ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 21.

²⁰ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 21.

²¹ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 21.

E. P-0642

17. The Chamber notes the VWU Report, where the VWU stated that in conversations with the witness, she did not express any concerns about her testimony becoming publicly available or her identity being revealed in the process.²²
18. Further, the VWU Report notes that the witness and her family as [REDACTED].²³ The witness also did not [REDACTED] and did not express any privacy or dignitary concerns.²⁴ As such, the VWU Report also notes that any change in the degree of risk through the publication of her testimony, while being unlikely, could be adequately managed.²⁵
19. The Chamber agrees with the VWU's assessment with respect to P-0642. Thus, in the circumstances, the Chamber considers that in line with the VWU's recommendations, the redaction of her testimony or the use of a pseudonym is no longer required.

F. Conclusion

20. For the aforementioned reasons, and pursuant to Regulation 42 of the Regulations, the Chamber varies the court protective measures previously granted to P-0547, P-0554, P-0557, P-0565, P-0602, P-0642 and P-0984. The Chamber notes that, in line with Regulation 42(3) of the Regulations, the relevant witnesses have been informed and consent to the variation of the protective measures.
21. With respect to the remaining witnesses, the Chamber considers that, in light of the information before it at present, the protective measures previously granted should remain in force. This is without prejudice to further review in the future, should there be a change of circumstances.

²² First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 23.

²³ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 22.

²⁴ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 24.

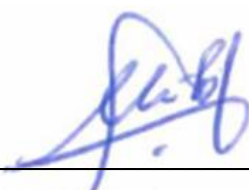
²⁵ First Report, ICC-01/12-01/18-2533-Conf-Exp, para. 24.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

VARIES the in-court protective measures granted to P-0547, P-0554, P-0557, P-0565, P-0602, P-0642 and P-0984 in accordance with the present decision; and

INSTRUCTS the Registry to reclassify ICC-01/12-01/18-2484-Conf to public.

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, 30 August 2023

At The Hague, The Netherlands