



Original: English

No. ICC-01/12-01/18

Date: 30 August 2022

Date of original: 22 August 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 on Defence request pursuant to Rule 75 of the Rules for D-0605

Decision 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

Peter Lewis

Counsel Support Section

Pieter Vanaverbeke

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Rule 74 Counsel for D-0605

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 and Rules 73(2) and 75 of the Rules of Procedure and Evidence (the ‘Rules’) issues the following decision.

1. On 1 August 2022, the Defence requested that the Chamber recognise the applicability of Rules 73(2) and 75 of the Rules to D-0605’s testimony.¹
2. On 3 August 2022, the Prosecution provided its response, arguing that Rule 73(2) does not apply to D-0605’s testimony and that the Defence’s submissions with respect to the applicability of Rule 75 are unsubstantiated and speculative.²
3. According to the Defence, D-0605 is [REDACTED].³ The Defence avers that, in addition to Rule 74, the Chamber should recognise the applicability of Rules 73(2) and 75 of the Rules to D-0605, as Rule 74 assurances only extend to information that incriminates the witness and does not bar the Prosecution from using information that incriminates family members.⁴ The Defence submits that although [REDACTED] is not the subject of existing ICC trial proceedings, he is clearly a person of interest for Prosecution investigations and [REDACTED], and D-0605 should be allowed to testify freely and fully in relation to the primary focus of this trial, without fear that he could be compelled to incriminate [REDACTED].⁵
4. For the Majority, the purpose of Rule 75 of the Rules is to prevent a person being prosecuted with the help of incriminating evidence provided by a spouse, child or parent and to avoid putting a witness, who is presumed to have a close personal relationship with an accused, under undue emotional and moral stress of being forced to provide incriminatory evidence.⁶ Accordingly, the Majority agrees with the Single Judge of Trial Chamber IX that the term ‘accused’ in this provision

¹ Email at 10:31.

² Email at 22:09.

³ Email dated 27 July 2022 at 12:10.

⁴ Email dated 1 August 2022 at 10:31.

⁵ Email dated 1 August 2022 at 10:31.

⁶ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Protective and Special Measures and Rule 75 Assurances, 5 July 2018, ICC-02/04-01/15-1301-Red (the *Ongwen* Rule 75 Decision), para. 52.

must be interpreted, in light of its purpose and in a manner that gives it full effect, to include incrimination against ‘suspects’.⁷

5. With respect to the case at hand, the Majority has had regard to the Prosecution’s description of the role played by [REDACTED], including his alleged involvement in arrests, detentions and floggings,⁸ together with the evidence on the case record, and finds, on a *prima facie* basis and for the limited purpose of its assessment under Rule 75 of the Rules, that there are grounds to believe that he has committed a crime within the jurisdiction of the Court. Accordingly, based on the information before it, it finds that Rule 75 of the Rules applies to the case at hand. The Chamber, by majority, therefore grants the Defence request and decides that the Chamber will inform D-0605 of his right as contained in Rule 75 of the Rules immediately before the beginning of his testimony.
6. In light of the above conclusion with respect to Rule 75, the Chamber finds it unnecessary to address the remainder of the Defence’s arguments based on Rule 73(2) of the Rules.

⁷ *Ongwen* Rule 75 Decision, ICC-02/04-01/15-1301-Red, para. 54.

⁸ [REDACTED]

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY, BY MAJORITY,

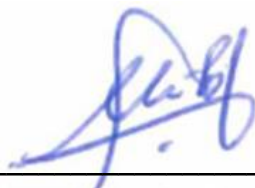
GRANTS the Defence request;

FINDS that, as described above, D-0605 falls under Rule 75 of the Rules; and

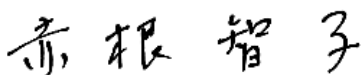
DECIDES to inform him of his right before the start of his testimony.

Judge Kimberly Prost appends a dissenting opinion.

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 Monday, 22 August 2022

At The Hague, The Netherlands