



Original: English

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

**Sixth 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:

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

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), 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 of the Regulations of the Court (the ‘Regulations’), issues the following decision.

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 rendered in its ‘Fifth decision on matters related to the conduct of proceedings: presentation of evidence by LRVs and Defence’, in which it decided that the above-mentioned procedure in relation to in-court protective and special measures 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 19 September 2022, the Defence filed the ‘Defence application for in-court protective measures for Witnesses D-0006, D-0093, D-0231 and D-0246’ (the ‘Application’),³ seeking that the Chamber authorises pursuant to Rule 87 of the Rules in-court protective measures in the form of: use of a pseudonym, voice and facial distortion, and use of private and/or closed sessions where needed for the testimony of these witnesses.

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 ICC-01/12-01/18-2342-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on the same date).

4. On 23 September 2022, the Prosecution informed the Chamber that it did not oppose the Application.⁴

II. Submissions and analysis

5. From the outset, the Chamber agrees with the Defence⁵ that it is in the interest of justice to entertain the Application even if parts thereof are being filed after the time limit set by the Chamber.
6. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.⁶

⁴ Email from the Prosecution sent at 9:48.

⁵ Application, ICC-01/12-01/18-2342-Conf-Red, para. 3.

⁶ Fifth Decision on protective measures for witnesses called by the Defence, 15 September 2022, ICC-01/12-01/18-2340-Conf (a public redacted version was filed on the same date); Fourth Decision on Defence Applications, ICC-01/12-01/18-2297-Conf-Exp (confidential *ex parte*, available to the Defence and the Registry; confidential and public redacted versions thereof were filed on the same date); Third Decision on in-court protective measures for witnesses called by the Defence, 15 June 2022, ICC-01/12-01/18-2255-Conf-Exp (confidential *ex parte*, available to the Defence and the Registry; a public redacted version was filed on that same date); Second Decision on in-court protective measures for witnesses called by the Defence, 6 June 2022, ICC-01/12-01/18-2237-Conf-Exp (one public redacted version was filed on the same date); First Decision on in-court protective measures for witnesses called by the Defence, 25 May 2022, ICC-01/12-01/18-2232-Conf-Exp (confidential *ex parte*, available only to the Defence and the Registry; confidential *ex parte*, confidential and public redacted versions were filed on the same date); 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, ICC-01/12-01/18-1414-Conf-Exp (the 'Eighth Decision'); 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 the 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 the 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 the same date, and a public redacted version was filed on 5 January 2021).

7. The Chamber also recollects its assessment of the security situation in Mali,⁷ that was based on the latest Registry report on the security situation in Mali, provided in the lead-up to the start of the Defence case.⁸
8. The Defence informs that D-0006 is expected to testify about his relationship with Mr Al Hassan, the Islamic police and [REDACTED] the MNLA. The Defence submits that D-0006 was also [REDACTED].⁹ The Defence stresses the sensitive nature of the issues he will testify about and further reports his concern that there are groups in the region who may be interested in harming him, including [REDACTED].¹⁰
9. The Chamber is satisfied that the Defence has demonstrated there exist objective justifiable risks to D-0006's safety and security. Furthermore, the Chamber finds that these risks can only reasonably be mitigated by granting the requested in-court protective measures. Indeed, having had regard notably to his profile, the nature of his expected testimony, and the security situation in his place of residence, the Chamber is of the view that D-0006 would face significant and impermissible risks should his identity, and consequently his cooperation with the Court and the Defence, become known to the public. The Chamber also notes that granting this part of the Application will not cause prejudice to the Prosecution, who will be in a position to test D-0006's evidence in court. Further noting that the Application is unopposed, the Chamber orders 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 the identity of D-0006 from being disclosed to the public in the context of his upcoming testimony.

⁷ First Decision on in-court protective measures for witnesses called by the Defence, ICC-01/12-01/18-2232-Conf-Exp and its redacted versions.

⁸ 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-AnxI, and one confidential *ex parte* annex only available to the Registry, ICC-01/12-01/18-2215-Conf-Exp-AnxII).

⁹ Application, ICC-01/12-01/18-2342-Conf-Red, para. 8.

¹⁰ Application, ICC-01/12-01/18-2342-Conf-Red, para. 9. *See also* prior discussions of the security situation and related concerns of D-0006 during an *ex parte* status conference on 30 June 2022, ICC-01/12-01/18-T-187-CONF-EXP-ENG ET.

10. In the circumstances, notably because it is unclear if and when D-0093, D-0231, and D-0246 will appear to testify, the Chamber considers it appropriate to defer its ruling on the remainder of the Application.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

GRANTS the Application with respect to D-0006;

ORDERS in-court protective measures for D-0006 in the form of use of pseudonym, facial and voice distortion, as well as use of private sessions, as necessary, for his testimony; and

DEFERS its ruling on the remainder of the Application (with respect to D-0093, D-0231, and D-0246).

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 Friday, 30 September 2022
At The Hague, The Netherlands