



Original: English

**No. ICC-01/12-01/18
Date: 6 October 2022**

TRIAL CHAMBER X

Before: Judge Kimberly Prost, Single Judge

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR v. *AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD***

Public

Decision on assurances pursuant to Rule 74 of the Rules for D-0006

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-0006

Judge Kimberly Prost, acting as Single Judge of 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(7), 68 and 93(2) of the Rome Statute (the ‘Statute’), Rule 74 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 20 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on assurances pursuant to Rule 74 of the Rules for D-0006’.

1. On 6 October 2022, the Defence requested assurances pursuant to Rule 74 of the Rules to be granted to D-0006 (the ‘Request’).¹
2. On the same date, the Office of the Prosecutor (the ‘Prosecution’) responded indicating that it agrees with the Request.²
3. The Single Judge recalls that pursuant to Rule 74(3)(a) of the Rules, the default rule is that witnesses may object to making any statement that might tend to incriminate him or her.³ Consequently, assurances under Rule 74 are in a way an exception to this rule that enables the Chamber to require a witness to answer self-incriminatory questions provided certain conditions are met.
4. In light of the factors listed under Rule 74(5) of the Rules, given the nature of D-0006’s expected testimony, particularly his role at the time and having had regard to the views expressed by the parties, the Single Judge considers it necessary to provide Rule 74(3)(c) assurances to D-0006. In line with the requirements of this provision, and to allow the witness to testify without fear of the consequences of possible self-incrimination, the Single Judge hereby assures D-0006 that the evidence provided in response to potentially self-incriminatory questions which could be asked during the course of his upcoming testimony: (i) will be kept confidential and will not be disclosed to the public or any State; and (ii) will not be used either directly or indirectly against him in any subsequent prosecution by the Court, except under Articles 70 and 71 of the Statute, which govern offences against the Court should he be untruthful while testifying.

¹ Email at 10:54.

² Email at 12:10.

³ Confidential redacted version of Decision on in-court protective measures and Rule 74 assurances for P-0150, 12 May 2021, ICC-01/12-01/18-1474-Conf-Red, para. 32.

5. Although the Chamber will address D-0006 directly when he appears in court, the Single Judge finds it appropriate for D-0006 to be duly informed in advance of the present assurances, as well as the exceptions provided for in Articles 70 and 71 of the Statute, and for him to receive any related necessary legal assistance in the context of the implementation of the present decision. Accordingly, the Single Judge instructs the Registry to appoint a counsel for D-0006 pursuant to Rule 74 of the Rules taking into account, to the extent possible, the conditions specified by the Defence.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request;

PROVIDES assurances to D-0006 pursuant to Rule 74(3)(c) of the Rules as specified in paragraph 4 of the present decision; and

DIRECTS the Registry to appoint a Rule 74 counsel for D-0006 and provide the counsel access to the present decision.

Done in both English and French, the English version being authoritative.



Judge Kimberly Prost
Single Judge

Dated this Thursday, 6 October 2022

At The Hague, The Netherlands