



Original: English

No. ICC-01/12-01/18

Date: 25 October 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

**Seventh 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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**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
5. On 30 September 2022, the Chamber granted the Application in parts and, having noted that it was unclear if and when they would testify, deferred its ruling on *inter alia* the Defence request with respect to Witnesses D-0093 and D-0246 (the 'Request').⁵

II. Submissions

6. The Defence submits that the identity of D-0093 and D-0246 should remain confidential due to the risk of harm to themselves or their family, should it be revealed that they will testify for the Defence in the present proceedings.⁶
7. With respect to D-0093, the Defence submits that he [REDACTED] in Timbuktu in 2012 and will testify about the situation in the hospital, the Islamic police and receiving help from Mr Al Hassan for a case concerning his nieces and when he got himself in trouble.⁷ The Defence argues that D-0093 is still [REDACTED] and that, given the security situation, his cooperation with the Court and the Defence could pose a risk to his security.⁸
8. Concerning D-0246, the Defence notes that he will testify about his relationship and interactions with Mr Al Hassan, as well as political negotiations and the movements involved in the peace processes after 2012.⁹ The Defence submits that D-0246 is now [REDACTED], has [REDACTED], and can therefore easily be identified and located.¹⁰ Having had regard to the above, as well as [REDACTED], the Defence argues that D-0246 would face a significant and impermissible risk to his safety and that of his family should his cooperation with the Defence become known to the public.

⁴ Email from the Prosecution sent at 9:48.

⁵ Sixth decision on in-court protective measures for witnesses called by the Defence, ICC-01/12-01/18-2364-Conf (the 'Sixth Decision')(a public redacted version was filed on the same date).

⁶ Request, ICC-01/12-01/18-2342-Conf-Red, para. 4.

⁷ Request, ICC-01/12-01/18-2342-Conf-Red, para. 10.

⁸ Request, ICC-01/12-01/18-2342-Conf-Red, para. 11.

⁹ Request, ICC-01/12-01/18-2342-Conf-Red, para. 15.

¹⁰ Request, ICC-01/12-01/18-2342-Conf-Red, para. 16.

III. Analysis and determination

9. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.¹¹
10. The Chamber also recollects its assessment of the security situation in Mali,¹² 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.¹³
11. With respect to the two abovementioned witnesses, the Chamber is satisfied that the Defence has demonstrated there exist objective justifiable risks to their 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 their profile, the nature of their respective expected testimony, and the security situation in their places of residence as well as

¹¹ Sixth Decision, ICC-01/12-01/18-2364-Conf; 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 (the 'First Decision') (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; 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).

¹² First Decision, ICC-01/12-01/18-2232-Conf-Exp and its redacted versions.

¹³ 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).

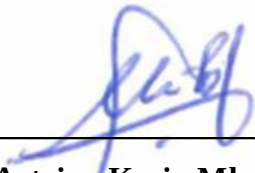
[REDACTED], the Chamber is of the view that D-0093 and D-0246 would face significant and impermissible risks should their identity, and consequently their cooperation with the Court and the Defence, become known to the public. Further noting that the Request is unopposed, the Chamber orders in-court 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-0093 and D-0246 from being disclosed to the public in the context of their upcoming testimony.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

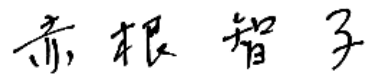
GRANTS the Request; and

ORDERS in-court protective measures for D-0093 and D-0246 in the form of use of pseudonym, facial and voice distortion, as well as use of private sessions, as necessary, for his 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 Tuesday, 25 October 2022
 At The Hague, The Netherlands