



**Original: English**

**No. ICC-01/12-01/18**

**Date: 14 October 2021**

**Date of original: 31 August 2021**

**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 request for Rule 74 assurances for P-0626**

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  
James Stewart

**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*

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**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Rule 74 Counsel for P-0626

**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’), Rules 74, 87 and 88 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulations 20 of the Regulations of the Court (the ‘Regulations’), issues the following decision.

## **I. Procedural history and submissions**

1. On 26 January 2021, the Chamber issued a decision relevantly granting a request from the Office of the Prosecutor (the ‘Prosecution’) to provide in-court protective measures for P-0626.<sup>1</sup>
2. On 12 March 2021, the Registry informed the Chamber of the appointment of counsel for P-0626 pursuant to Rule 74 of the Rules (‘Counsel for P-0626’).<sup>2</sup>
3. On 14 July 2021, Counsel for P-0626 filed a request seeking Rule 74 assurances for P-0626 (the ‘Request’).<sup>3</sup> Counsel for P-0626 submits that Rule 74 assurances are necessary since the content of P-0626’s anticipated testimony raises questions of self-incrimination, and that such guarantees will allow P-0626’s testimony to be spontaneous and complete.<sup>4</sup> Counsel for P-0626 also requests that P-0626’s testimony be taken in closed session.<sup>5</sup>
4. On 26 July 2021, the Prosecution filed its response to the Request (the ‘Prosecution Response’).<sup>6</sup> The Prosecution supports the request for Rule 74 assurances with regards to the parts of P-0626’s testimony that are potentially self-incriminating.<sup>7</sup> The Prosecution advises that [REDACTED],<sup>8</sup> but notes that

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<sup>1</sup> *Corrigendum* Fourth Decision on in-court protective measures for witnesses, ICC-01/12-01/18-1266-Conf-Exp-Corr, paras 25-27.

<sup>2</sup> Notification of the Appointment of Mr Hassen Dhib as Legal Adviser to Witness OTP-P-0626, ICC-01/12-01/18-1355 (with two confidential annexes).

<sup>3</sup> Requête aux fins d’obtention de garanties de non-incrimination au profit de MLI-OTP- P-0626, ICC-01/12-01/18-1591-Conf-Exp (confidential *ex parte* available only to the Prosecution and the Defence).

<sup>4</sup> Request, ICC-01/12-01/18-1591-Conf-Exp, para. 6.

<sup>5</sup> Request, ICC-01/12-01/18-1591-Conf-Exp, para. 7.

<sup>6</sup> Prosecution observations on rule 74 assurances for MLI-OTP-P-0626, ICC-01/12-01/18-1612-Conf-Exp (confidential *ex parte* available only to the Prosecution, the VWU and Counsel for 0626; a confidential redacted version was filed the next day, ICC-01/12-01/18-1612-Conf-Red).

<sup>7</sup> Prosecution Response, ICC-01/12-01/18-1612-Conf-Red, para. 1.

<sup>8</sup> Prosecution Response, ICC-01/12-01/18-1612-Conf-Red, para. 12.

this does not preclude prosecution of P-0626 by other states.<sup>9</sup> In relation to the request to hold the testimony entirely in closed session, the Prosecution submits that there are no reasons that would justify this exceptional measure, and that the use of private/closed session should be limited to the portions dealing with issues that may genuinely incriminate P-0626, and/or reveal his identity to the public.<sup>10</sup>

## II. Analysis

5. The Chamber 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.<sup>11</sup> 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.
6. In light of the factors listed under Rule 74(5) of the Rules, given the nature and scope of P-0626's expected testimony,<sup>12</sup> and having had regard to the views expressed by the Prosecution as well as P-0626 himself through his Counsel, the Chamber considers it necessary to provide Rule 74(3)(c) assurances to P-0626. In line with the requirements of this provision, and to allow P-0626 to testify without fear of the consequences of possible self-incrimination, the Chamber hereby assures P-0626 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 P-0626 be untruthful in testifying.

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<sup>9</sup> Prosecution Response, ICC-01/12-01/18-1612-Conf-Red, para. 13.

<sup>10</sup> Prosecution Response, ICC-01/12-01/18-1612-Conf-Red, para. 15.

<sup>11</sup> 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. *See also* Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Request for Rule 74 Assurances for P-40, 6 December 2017, ICC-02/04-01/15-1096, para. 6.

<sup>12</sup> Annex B to the Dépôt de la Liste des témoins de l'Accusation, des résumés desdits témoins et de la Liste provisoire des éléments de preuve à charge, 14 April 2020, ICC-01/12-01/18-740-Conf-AnxB, pp. 1069-1072.

7. The Chamber recalls that it previously granted P-0626 in-court protective measures in the form of the use of a pseudonym, facial and voice distortion, as well as use of private sessions and/or closed sessions.<sup>13</sup> The Chamber considers that with these measures, it is unnecessary to have P-0626 testify entirely in closed session. Rather, closed or private sessions may be used only on a case-by-case basis where it is envisaged that P-0626 will be providing answers that may incriminate himself or allow for his identification.
8. Although the Chamber will address P-0626 directly when he appears in court, the Chamber instructs the Counsel for P-0626 to discuss with his client the assurances hereby provided, as well as the exceptions provided for in Articles 70 and 71 of the Statute.

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<sup>13</sup> ICC-01/12-01/18-1266-Conf-Exp-Corr, paras 25, 27.

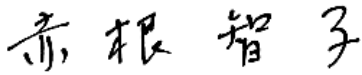
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**GRANTS** assurances pursuant to Rule 74(3)(c) of the Rules as specified in paragraph 6 of the present decision.

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 31 August 2021

At The Hague, The Netherlands