



**Original: English**

**No. ICC-01/12-01/18  
Date: 15 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**

**Fifth 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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**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Victims Participation and Reparations  
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**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.<sup>1</sup>
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.<sup>2</sup>
3. On 18 August 2022, in one of its prior decisions on applications for in-court protective measures for witnesses called by the Defence, the Chamber found insufficiently substantiated the request with respect to D-0551 and dismissed it without prejudice.<sup>3</sup>
4. On 25 August 2022, the Defence filed a ‘Renewed Defence application for in-court protective measures for Witness D-0551’ (the ‘Renewed Application’).<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> Fourth Decision on in-court protective measures for witnesses called by the Defence, ICC-01/12-01/18-2297-Conf-Red (the ‘Fourth Decision on Defence Applications’), para. 21.

<sup>4</sup> ICC-01/12-01/18-2302-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on the same date).

5. On 9 September 2022, the Defence filed an application seeking in-court protective measures for D-0147 (the ‘Second Application’).<sup>5</sup>
6. On that same day, the Prosecution informed the Chamber that it does not oppose the Second Application.<sup>6</sup>

## II. Submissions and analysis

7. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.<sup>7</sup>
8. The Chamber also recollects its assessment of the security situation in Mali,<sup>8</sup> 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.<sup>9</sup>

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<sup>5</sup> Defence application for in-court protective measures for Witness D-0147, ICC-01/12-01/18-2332-Conf.

<sup>6</sup> Email from the Prosecution, at 15:51.

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> 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).

D-0147

9. The Defence seeks in-court protective measures in the form of use of a pseudonym, voice and facial distortion, and use of private and closed sessions where needed for the testimony of D-0147. The Defence informs that D-0147 is [REDACTED] and who, in 2012, interacted both with the groups as well as closely with Mr Al Hassan.<sup>10</sup> The Defence further submits he has [REDACTED] and fears testifying publicly could pose a risk to his security.<sup>11</sup>
10. The Chamber recalls its prior decision granting in-court protective measures for D-0147, under the pseudonym ‘P-0147’, when he was to testify for the Prosecution<sup>12</sup> and considers that an objectively justifiable risk with respect to his safety and security still exists. In particular, the Chamber notes that the relevant circumstances have not materially changed. Notably, D-0147 still [REDACTED]. The Chamber also considers that specific security concerns previously raised,<sup>13</sup> as well as related VWS recommendations and observations,<sup>14</sup> should continue to inform the present assessment. Considering the above, the Chamber remains of the view that D-0147 would face a significant and impermissible risk should his identity, and consequently his cooperation with the Court and the parties, become known to the public.
11. 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 D-0147’s identity from being disclosed to the public in the context of his upcoming appearance as a Defence witness.

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<sup>10</sup> Second Application, ICC-01/12-01/18-2332-Conf, paras 7-8.

<sup>11</sup> Second Application, ICC-01/12-01/18-2332-Conf, para. 8.

<sup>12</sup> Eighth Decision, ICC-01/12-01/18-1414-Conf-Exp, paras 81-86.

<sup>13</sup> Eighth Decision, ICC-01/12-01/18-1414-Conf-Exp, para. 83.

<sup>14</sup> Victims and Witnesses Unit’s Observations on the “Deuxième requête de l’Accusation sur le fondement de la règle 87 aux fins de mesures de protection des témoins du Bloc 2 et du Bloc 3”, on the “Prosecution’s third application for in court protective measures for Block 2 and Block 3 witnesses and request for additional time to contact Witness MLI-OTP- P-0660” and on the “Prosecution’s application for in-court protective measures for MLI-OTP-P-0660”, 18 September 2020, ICC-01/12-01/18-1052-Conf-Exp, para. 19.

D-0551

12. In addition to the information already provided,<sup>15</sup> the Defence submits that D-0551 [REDACTED], that he has [REDACTED], and is therefore well known in the region.<sup>16</sup> The Defence further submits that he is [REDACTED].<sup>17</sup> The Defence therefore argues that D-0551's identity should not be revealed to the public and accordingly requests the Chamber to authorise in-court protective measures in the form of: use of a pseudonym, face and voice distortion, and use of private/closed sessions where required during his testimony.
13. The Chamber recalls that it considered the initial application for in-court protective measures for D-0551 insufficiently substantiated and dismissed it without prejudice. In light of the information supplemented, the Chamber is now satisfied that the Defence has demonstrated there exist objective justifiable risks to the safety and security of D-0551. 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 and the security situation in his place of residence, the Chamber is of the view that D-0551 would face significant and impermissible risks should his identity, and consequently his cooperation with the Court and the Defence, becomes known to the public. The Chamber accordingly grants the requested in-court protective measures for D-0551, which will cause no prejudice to the Prosecution – who will be in a position to test the evidence of this witness in court.

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<sup>15</sup> Defence application for in-court protective measures for Witness D-0551, D-0514, D-0516 and D-0213, 5 August 2022, ICC-01/12-01/18-2292-Conf-Exp, paras 7-8.

<sup>16</sup> Renewed Application, ICC-01/12-01/18-2302-Conf-Exp, para. 9.


<sup>17</sup> Renewed Application, ICC-01/12-01/18-2302-Conf-Red, para. 9.

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

**GRANTS** the Renewed and the Second Applications;

**ORDERS** in-court protective measures with respect to D-0551 and D-0147 in the form of use of pseudonym, facial and voice distortion, as well as use of private sessions, as necessary, for their 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 Thursday, 15 September 2022

At The Hague, The Netherlands