



**Original: English**

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

**Date: 6 June 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**

**Second 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**

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**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**

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**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 Regulations 20 and 35(2) of the Regulations of the Court (the ‘Regulations’), issues the following ‘Second Decision on in-court protective measures for witnesses called by the Defence’.

## **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 decided in its ‘Fifth decision on matters related to the conduct of proceedings: presentation of evidence by LRVs and Defence’ that the procedure in relation to in-court protective and special measures set out in its Directions on the conduct of proceedings 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 6 May 2022, as instructed,<sup>3</sup> the Registrar filed its ‘Third Registry Report on the Security Situation in Mali’ (the ‘Third Security Report’).<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> Order instructing the Registry to file an updated report on the security situation in Mali, 13 April 2022, ICC-01/12-01/18-2201.

<sup>4</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).

4. On 10 May 2022, the Chamber directed the Defence to review its witness schedule for June 2022 in order to accommodate the changes in standard procedures made by the Registry for witnesses testifying remotely.<sup>5</sup>
5. On 18 May 2022 and on 26 May 2022, the Chamber confirmed changes to the witness schedule for June 2022 proposed by the Defence, scheduling D-0540, D-0315, D-0324 and D-0243 to start of testifying before the Chamber on 14, 20, 22 and 24 June 2022 respectively.<sup>6</sup>
6. On 31 May 2022, the Defence filed an application seeking in-court protective measures for Defence witnesses D-0540, D-0315, D-0324 and D-0243 (the ‘Application’).<sup>7</sup>
7. On 1 June 2022, the Prosecution and, respectively on 2 June 2022, the LRVs informed the Chamber that they do not oppose the Application.<sup>8</sup>
8. The Victims and Witnesses Unit (the ‘VWU’) is yet to make its recommendation with respect to D-0540, D-0315, D-0324 and D-0243.

## II. Submissions and analysis

9. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.<sup>9</sup>

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<sup>5</sup> Email from the Chamber, 10 May 2022, at 13:58.

<sup>6</sup> Emails from the Chamber, 26 May, at 8:14; 18 May 2022, at 10:12.

<sup>7</sup> Defence application for in-court protective measures for Witnesses D-0540, D-0315, D-0324 and D-0243, 31 May 2022, ICC-01/12-01/18-2234-Conf-Exp (confidential *ex parte*, available only to VWU and the Defence; a confidential redacted version was filed on that same date, ICC-01/12-01/18-2234-Conf-Red).

<sup>8</sup> Email from the Prosecution, 1 June 2022, at 8:47; Email from the LRVs, 2 June 2022, at 14:47.

<sup>9</sup> 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 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, 14 April 2021, ICC-01/12-01/18-1414-Conf-Exp (confidential redacted and public redacted versions filed on the same date); 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-

10. The Chamber also recollects its latest assessment of the security situation in Mali,<sup>10</sup> that was based on the Third Security Report of the Registry.<sup>11</sup>
11. At the outset, and having had regard to Regulation 35(2) of the Regulations, the Chamber finds it appropriate to entertain the Application even if filed outside the standard time limit, as the relevant circumstances were outside the Defence's control.
12. With its Application, the Defence seeks in-court protective measures for D-0540, D-0315, D-0324 and D-0243 in the form of pseudonym, face and voice distortion and use of private/closed sessions notably for when the witnesses testify on any information which could lead to their identification.<sup>12</sup> The Defence submits that no prejudice arises to the Prosecution because it is still able to test the evidence of these witnesses in Court.<sup>13</sup>

1. D-0540

13. With regard to D-0540, the Defence informs that he [REDACTED].<sup>14</sup> The Defence further submits that D-0540 will testify about the discrimination by the Malian army, about his engagement with Ansar Dine in 2012, as well as about the Islamic police.<sup>15</sup> He is a shepherd of the [REDACTED],<sup>16</sup> [REDACTED],<sup>17</sup> and expressed fear for his safety.<sup>18</sup>

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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>10</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>11</sup> Third Security Report, ICC-01/12-01/18-2215 and its three annexes.

<sup>12</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 7.

<sup>13</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 17.

<sup>14</sup> Application, ICC-01/12-01/18-2234-Conf-Exp, para. 16.

<sup>15</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 8.

<sup>16</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 8.

<sup>17</sup> Application, ICC-01/12-01/18-2234-Conf-Exp, para. 9.

<sup>18</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 9.

14. Having had regard to the above, the Chamber considers that an objectively justifiable risk with respect to D-0540's safety and security has been demonstrated. In particular, the Chamber notes that the witness [REDACTED] and that he will be exposed to elevated risks [REDACTED]. Considering the nature of his expected evidence and his profile, he would face a significant and impermissible risk should his identity, and consequently his cooperation with the Court and the Defence, become known to the public.
15. Further noting that the Application is unopposed, the Chamber grants D-0540 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 his identity from being disclosed to the public.

2. D-0315

16. Turning to D-0315, the Defence submits that she [REDACTED].<sup>19</sup> The Defence informs that D-0315 will testify *inter alia* about the abandonment of Timbuktu by the Malian army, the arrival of the armed groups in 2012 and the women's march to the *Banque Malienne de Solidarité*.<sup>20</sup> The Defence further submits that D-0315 was a member of [REDACTED] and interacted with [REDACTED];<sup>21</sup> that in the past, [REDACTED] and that she expressed fear of reprisal by the population or the authorities if she were to be publicly associated with the Defence.<sup>22</sup>
17. The Chamber considers that an objectively justifiable risk with respect to D-0315's safety and security has been demonstrated. In particular, the Chamber notes that the witness [REDACTED] and that in the circumstances as well as considering the nature of her expected evidence and her profile, she would face a significant and impermissible risk should her identity, and consequently her cooperation with the Court and the Defence, become known to the public.

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<sup>19</sup> Application, ICC-01/12-01/18-2234-Conf-Exp, para. 16.

<sup>20</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 10.

<sup>21</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 10.

<sup>22</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 11.

18. Noting that the Application is unopposed, the Chamber grants D-0315 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 her identity from being disclosed to the public.

3. D-0324

19. With regard to D-0324, the Defence submits that he [REDACTED].<sup>23</sup> The Defence informs that D-0324 will testify about an incident involving the Prosecution witness P-0580.<sup>24</sup> He has expressed fear for the security of him and his family.<sup>25</sup>
20. The Chamber considers that an objectively justifiable risk with respect to D-0324's safety and security has been demonstrated. In particular, the Chamber notes that the witness [REDACTED] and that considering the nature of his expected evidence and his profile, he would face a significant and impermissible risk should his identity, and consequently his cooperation with the Court and the Defence, become known to the public.
21. Further noting that the Application is unopposed, the Chamber grants D-0324 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 his identity from being disclosed to the public. With respect to other confidential information proposed to be elicited in private session, the Chamber will await a detailed proposal before deciding on the way forward.<sup>26</sup> The Chamber however already indicates that attempts should be made to elicit in open session D-0324's narrative about relevant events and incidents, while ensuring that details revealing other individuals' cooperation with the Court remain confidential.

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<sup>23</sup> Application, ICC-01/12-01/18-2234-Conf-Exp, para. 16.

<sup>24</sup> Application, ICC-01/12-01/18-2234-Conf-Red, paras 12-13.

<sup>25</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 13.

<sup>26</sup> See Email from the Chamber, 29 March 2022, at 10:21.

4. D-0243

22. With regard to D-0243, the Defence submits that he [REDACTED].<sup>27</sup> The Defence refers to D-0243's prior employment and informs that he will testify about discrimination of Tamasheq soldiers within the army.<sup>28</sup> The Defence further submits that D-0243 is well known in his community<sup>29</sup> and [REDACTED].<sup>30</sup> He also has expressed fear for his security and a credible possibility of reprisal.<sup>31</sup>
23. The Chamber considers that an objectively justifiable risk with respect to D-0243's safety and security has been demonstrated. In particular, the Chamber notes that the witness [REDACTED] and that, having had regard to his prior employment, he would face a significant and impermissible risk should his identity and subsequently his cooperation with the Court and the Defence become known to the public.
24. Noting that the Application is unopposed, the Chamber grants D-0243 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 his identity from being disclosed to the public.

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<sup>27</sup> Application, ICC-01/12-01/18-2234-Conf-Exp, para. 16.

<sup>28</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 14.

<sup>29</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 15.

<sup>30</sup> Application, ICC-01/12-01/18-2234-Conf-Exp, para. 15.

<sup>31</sup> Application, ICC-01/12-01/18-2234-Conf-Red, para. 14.



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

**GRANTS** the Application; and

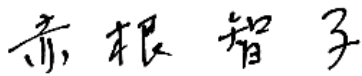
**ORDERS** in-court protective measures with respect to D-0540, D-0315, D-0324 and D-0243 in the form of use of a pseudonym, as well as facial and voice distortion and use of private session, as necessary, for their testimony.

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 Monday, 6 June 2022

At The Hague, The Netherlands