



**Original: English**

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

**Date: 15 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**

**Third 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**

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**

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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 Regulation 20 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Third 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 14 April 2021, the Chamber granted in-court protective measures for P-0111 upon the request of the Prosecution and the recommendation of the Victims and Witnesses Unit (the ‘VWU’).<sup>2</sup>
3. 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,

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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> 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), paras 74-76, referring to 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’, 31 August 2020, ICC-01/12-01/18-1022-Conf-Exp, paras 19-27, and ‘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”’, 17 September 2020, ICC-01/12-01/18-1052-Conf-Exp, paras 15-16.

*mutatis mutandis*, with the deadline for the Defence being 30 days prior to the start of the scheduled testimony of the relevant witness.<sup>3</sup>

4. On 6 May 2022, as instructed,<sup>4</sup> the Registrar filed its ‘Third Registry Report on the Security Situation in Mali’ (the ‘Third Security Report’).<sup>5</sup>
5. On 7 June 2022, the Defence filed an application seeking in-court protective measures for Defence witnesses D-0529 and P-0111 (the ‘Application’), which are scheduled to start testifying on 5 July 2022 and 12 July 2022 respectively.<sup>6</sup>
6. On 13 June 2022, the Prosecution and the LRVs informed the Chamber that they do not oppose the Application.<sup>7</sup>
7. The VWU is yet to make its (renewed) recommendation with respect to D-0529 and P-0111.

## II. Submissions and analysis

8. The Chamber recalls its findings in previous decisions that have dealt with in-court protective measures in the course of the trial.<sup>8</sup>

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<sup>3</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>4</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>5</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).

<sup>6</sup> Defence application for in-court protective measures for Witness D-0529 and P-0111, 7 June 2022, ICC-01/12-01/18-2238-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>7</sup> Email from the Prosecution, 13 June 2022, at 12:03; Email from the LRVs, 13 June 2022, at 12:02.

<sup>8</sup> 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 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-

9. The Chamber also recollects its latest assessment of the security situation in Mali,<sup>9</sup> that was based on the Third Security Report of the Registry.<sup>10</sup>
10. At the outset, and in light of the Chamber's obligations to ensure the protection of witnesses under Article 64(6)(e) and 68(1) of the Statute, the Chamber finds it appropriate to entertain the Application regarding D-0529 even if filed outside the standard time limit.
11. With its Application, the Defence seeks in-court protective measures for D-0529 and P-0111 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>11</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>12</sup>

1. D-0529

12. With regard to D-0529, the Defence informs that he [REDACTED].<sup>13</sup> The Defence further submits that D-0529 will testify about the discrimination by the Malian army and about his engagement with Ansar Dine.<sup>14</sup> He also has expressed fear for his safety.<sup>15</sup>
13. Having had regard to the above, the Chamber considers that an objectively justifiable risk with respect to D-0529's safety and security has been

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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>9</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>10</sup> Third Security Report, ICC-01/12-01/18-2215 and its three annexes.

<sup>11</sup> Application, ICC-01/12-01/18-2238-Conf-Red, para. 7.

<sup>12</sup> Application, ICC-01/12-01/18-2238-Conf-Red, para. 12.

<sup>13</sup> Application, ICC-01/12-01/18-2238-Conf-Exp, para. 9.

<sup>14</sup> Application, ICC-01/12-01/18-2238-Conf-Red, para. 8.

<sup>15</sup> Application, ICC-01/12-01/18-2238-Conf-Red, para. 8.

demonstrated. In particular, given the nature of his expected evidence and the [REDACTED], 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.

14. Further noting that the Application is unopposed, the Chamber grants D-0529 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. P-0111

15. Turning to P-0111, the Defence submits that he [REDACTED],<sup>16</sup> is related to [REDACTED],<sup>17</sup> and has expressed fear for his security and that of his family.<sup>18</sup>
16. The Chamber recalls its decision granting in-court protective measures for P-0111 when he was to testify for the Prosecution<sup>19</sup> and considers that an objectively justifiable risk with respect to P-0111's safety and security still exists. In particular, the Chamber notes that the relevant circumstances have not materially changed. Notably, P-0111 still [REDACTED] and the fact that he provided information to the Prosecution remains. Considering his profile, the Chamber remains of the view that he 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.
17. 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 P-0111's identity from being disclosed to the public in the context of his upcoming appearance as a Defence witness.

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<sup>16</sup> Application, ICC-01/12-01/18-2238-Conf-Exp, para. 11

<sup>17</sup> Application, ICC-01/12-01/18-2238-Conf-Red, para. 10.

<sup>18</sup> Application, ICC-01/12-01/18-2238-Conf-Red, para. 11.

<sup>19</sup> Eighth Decision on in-court protective measures for witnesses, ICC-01/12-01/18-1414-Conf-Exp.

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

**GRANTS** the Application; and

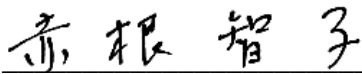
**ORDERS** in-court protective measures with respect to D-0529 and P-0111 in the form of use of a pseudonym, as well as facial and voice distortion and use of private session, as necessary, for their testimony.

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 Wednesday, 15 June 2022

At The Hague, The Netherlands