



Original: English

No. ICC-01/12-01/18

Date: 15 August 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

Decision on assurances pursuant to Rules 74 of the Rules for D-0605

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
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

Registrar

Peter Lewis

Counsel Support Section

Pieter Vanaverbeke

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Rule 74 Counsel for D-0605

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’), Rule 74 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 20 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on assurances pursuant to Rules 74 of the Rules for D-0605’.

I. Procedural history and submissions

1. On 27 July 2022, the Office of the Prosecutor (the ‘Prosecution’) advised the Chamber that the testimony of D-0605 may raise issues of self-incrimination.¹
2. On 1 August 2022, within the time limit set by the Single Judge,² the Defence submitted its response, requesting that the Chamber give assurances under Rule 74 (the ‘Request’) as well as recognise the applicability of Rules 73(2) and 75 of the Rules to D-0605’s testimony (the ‘Related Request’).³
3. On 3 August 2022, the Prosecution provided its submissions in reply, indicating that: (i) it did not oppose the Request; but (ii) with respect to the Related Request, Rule 73(2) did not apply to D-0605’s testimony and the Defence’s submissions with respect to the applicability of Rule 75 are unsubstantiated and speculative.⁴

II. Analysis

4. 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.⁵ 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.
5. In light of the factors listed under Rule 74(5) of the Rules, given the nature of D-0605’s expected testimony, particularly his role at the time and having had

¹ Email at 12:10.

² Email at 15:23.

³ Email at 10:31.

⁴ Email at 22:09.

⁵ 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.

regard to the views expressed by the parties, the Chamber considers it necessary to provide Rule 74(3)(c) assurances to D-0605. In line with the requirements of this provision, and to allow the witness to testify without fear of the consequences of possible self-incrimination, the Chamber hereby assures D-0605 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;⁶ 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 he be untruthful while testifying.

6. Although the Chamber will address D-0605 directly when he appears in court, the Chamber finds it appropriate for D-0605 to be duly informed in advance of the present assurances, as well as the exceptions provided for in Articles 70 and 71 of the Statute, and for him to receive any related necessary legal assistance in the context of the implementation of the present decision. Accordingly, the Chamber instructs the Registry to appoint a counsel for D-0605 pursuant to Rule 74 of the Rules.⁷
7. The Chamber will rule separately and in due course on the Related Request.

⁶ The Chamber notes that a pending request under Rule 87 of the Rules for in-court protective measures with respect to D-0605 will be adjudicated separately in due course (ICC-01/12-01/18-2290-Conf-Red).

⁷ The Chamber notes the Defence's submission that the witness prefers to obtain legal advice from an Arabic speaker and that this request has been communicated to the Registry (email dated 1 August 2022 at 10:31).

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY


GRANTS the Request;

PROVIDES assurances to D-0605 pursuant to Rule 74(3)(c) of the Rules as specified in paragraph 5 of the present decision;

DIRECTS the Registry to appoint a Rule 74 counsel for D-0605 and provide the counsel access to the present decision; and

DEFERS its ruling on the Related Request.

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, 15 August 2022

At The Hague, The Netherlands