

Pursuant to Trial Chamber X's instruction dated 12.06.2023, this document is reclassified as Public

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 30 May 2023

**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**

**Confidential**

***EX PARTE*, only available to the Defence and Registry**

**Registry's additional observations on "Urgent Request for Judicial Review of the Registry's Decisions on Funding During the Reduced Activity Phase" (ICC-01/12-01/18-2495-Conf-Exp)**

**Source:** The Registry

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

**Counsel for the Defence**

Ms Melinda Taylor

Ms Felicity Gerry KC

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**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**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. In compliance with Trial Chamber X's ("Chamber") instruction received by email dated 25 May 2023,<sup>1</sup> the Registry hereby submits its additional observations on the "Urgent Request for Judicial Review of the Registry's Decisions on Funding During the Reduced Activity Phase" ("Request") submitted by the Defence for Mr Al Hassan ("Defence") on 12 May 2023.<sup>2</sup>

## II. Procedural history

2. On 13 February 2023, the Defence submitted a request to the Registry for additional means during the phase of reduced activities ("13 February Request").<sup>3</sup>

3. On 24 March 2023, the Registry issued a decision on the 13 February Request ("24 March Decision").<sup>4</sup>

4. On 3 April 2023, the Defence requested a reconsideration of the 24 March Decision ("Reconsideration Request").<sup>5</sup>

5. On 26 April 2023, the Registry issued its decision on the Defence Request for Reconsideration ("Reconsideration Decision").<sup>6</sup>

6. On 12 May 2023, the Defence submitted its Request.

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<sup>1</sup> Email from Trial Chamber X to the Registry on 25 May 2023 at 16.21.

<sup>2</sup> Al Hassan Defence, "Urgent Request for Judicial Review of the Registry's Decisions on Funding During the Reduced Activity Phase", 12 May 2023, ICC-01/12-01/18-2495-Conf-Exp ("Request").

<sup>3</sup> Al Hassan Defence, "Urgent Request for Judicial Review of the Registry's Decisions on Funding During the Reduced Activity Phase", 12 May 2023, ICC-01/12-01/18-2495-Conf-Exp-AnxC ("13 February Request").

<sup>4</sup> Al Hassan Defence, "Urgent Request for Judicial Review of the Registry's Decisions on Funding During the Reduced Activity Phase", 12 May 2023, ICC-01/12-01/18-2495-Conf-Exp-AnxC ("24 March Decision").

<sup>5</sup> Al Hassan Defence, "Urgent Request for Judicial Review of the Registry's Decisions on Funding During the Reduced Activity Phase", 12 May 2023, ICC-01/12-01/18-2495-Conf-Exp-AnxD ("Reconsideration Request").

<sup>6</sup> Al Hassan Defence, "Urgent Request for Judicial Review of the Registry's Decisions on Funding During the Reduced Activity Phase", 12 May 2023, ICC-01/12-01/18-2495-Conf-Exp-AnxE, ("Reconsideration Decision").

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7. On 23 May 2023, the Registry submitted its observations on the Request.<sup>7</sup>
8. On 25 May 2023, the Chamber instructed the Registry to provide additional information on (1) whether it has been the practice of the Registry “to provide for ‘Counsel and 2 FTEs’ to all Defence teams once trials enter the ‘reduced activities’ phase following the closing statements”; and should this not be the case, to elaborate “on the practice in recent trial cases”; and on (2) the lump sum payment beyond 30-days following the closing statements.

### III. Classification

9. In accordance with regulation 23 *bis*(2) of the Regulations of the Court (“RoC”), the present submissions are classified as confidential *ex parte* only available to the Defence and Registry because they refer to submissions with the same level of classification.

### IV. Applicable Law

10. The following provisions are of particular relevance to the present submissions: article 67 of the Rome Statute (“Statute”), rule 21(5) of the Rules of Procedure and Evidence (“Rules”), regulations 83(4) to 85 of the RoC, regulations 130 and 132 of the Regulations of the Registry (“RoR”) and paragraphs 23, 39 to 44 and 66 to 75 of the Registry’s single policy document on the Court’s legal aid system (“Legal Aid Policy”).<sup>8</sup>

### V. Submissions

#### ***A. Registry’s practice to grant additional resources to Defence teams entering the ‘reduced activities’ phase following the closing statements***

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<sup>7</sup> Registry, “Registry’s observations on “Urgent Request for Judicial Review of the Registry’s Decisions on Funding During the Reduced Activity Phase” (ICC-01/12-01/18-2495-Conf-Exp)”, 23 May 2023, ICC-01/12-01/18-2497-Conf-Exp (“Registry’s Observations”).

<sup>8</sup> Registry’s single policy document on the Court’s legal aid system, [ICC-ASP/12/3](#), 4 June 2013 (“Legal Aid Policy” or “LAP”).

11. At the outset, the Registrar reiterates that each request submitted to him pursuant to regulation 83(3) of the RoC is assessed on the basis of concrete and specific information and the actual needs of the case.<sup>9</sup> Each case varies in terms of its scope and objective indicators requiring different level of resources during the said period. In the context of the present Request, the Registrar recalls a few recent cases that entered a phase of 'reduced activities' following the closing statements and required additional resources. In one case, the Defence received additional resources amounting to 2,6 FTEs in total and remunerated on activity basis for six months. The Article 74 Judgment in this case was rendered two months after the period of six months expired. In another case, the Defence received additional resources amounting to 2 FTEs in total remunerated on activity basis for the period of nine months. The Article 74 Judgment in this case was rendered one month after the period of nine months expired.

12. In the case at hand, 2 FTEs remunerated on activity basis are granted for the entire duration of the 'reduced activities' phase. Considering that Article 74 Judgments in those two other cases were rendered after the expiration of the periods for which the additional resources were allocated (one month in one case and two months in another), it is the Registrar's view that the resources granted to the Defence in the present case are comparable to these cases at the same stage of the proceedings. In any event, the Registrar submits that none of the Defence teams has ever received additional resources retaining the whole team composition during the phase of 'reduced activities'.

***B. Registry's practice to extend the lump sum payment beyond 30-days following the closing statements***

13. With regard to the lump sum payment and the start of the phase of 'reduced activities', the Registrar normally gives a notice of at least 30 days, to ensure continuity of the case allowing the teams to make the necessary arrangements in terms of their

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<sup>9</sup> See LAP, para. 69.

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composition and distribution of work. This practice extends not only to the period following the closing statements, but to all Registrar's decisions on the commencement of the 'reduced activities' phase.

14. In one case, which has been referenced in the Reconsideration Decision,<sup>10</sup> the commencement of the 'reduced activities' phase following the closing statements effectively took place after two months from the initial decision of the Registrar. This is due to the fact that the Registrar's initial decision on the request for additional resources was contested, resulting in the reconsideration procedure. After considering additional elements submitted by the team, the Registrar amended its initial decision. Nonetheless, in the reconsideration decision the Registrar informed the team that the phase of 'reduced activities' will commence 30 days from the date of the decision. Notwithstanding the foregoing, these two cases are not comparable in terms of anticipated workload, justifying the postponement of the commencement date of the 'reduced activities' phase.

15. While the Registrar strives to ensure that the 30-day notice is respected, there might be exceptions depending on specific circumstances. For example, only in one case the Registrar rendered its decision on the request for additional resources informing the team that the phase of 'reduced activities' will commence 22 days from the date of the decision, which was the first day of the following month. In the Registrar's view, this period was sufficient to allow the team to make the necessary arrangements in terms of team composition and distribution of anticipated workload.

16. In the present case, the 'reduced activities' phase commences on 30 June 2023,<sup>11</sup> which is 35 days following the closing statements that ended on 26 May 2023. Therefore, the Registrar submits that the assertions that the Defence received different treatment from other defence teams<sup>12</sup> are misconceived.

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<sup>10</sup> Reconsideration Decision, para. 18.

<sup>11</sup> Reconsideration Decision, para. 39.

<sup>12</sup> Request, para. 38

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17. The Registrar remains available to provide further information on the above should the Chamber so wish.



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Marc Dubuisson, Director, Division of Judicial Services  
on behalf of Osvaldo Zavala Giler, Registrar

Dated this 30 May 2023

At The Hague, The Netherlands