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**Cour
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**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 5 June 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

**Decision on the Defence's urgent request for judicial review of the Registrar's
decision on funding during the reduced activity phase**

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To be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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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) and 67(1) of the Rome Statute (the ‘Statute’), Regulations 83 and 85 of the Regulations of the Court (the ‘Regulations’) and Regulations 130, 133 and 135 of the Regulations of the Registry, issues the following ‘Decision on the Defence’s urgent request for judicial review of the Registrar’s decision on funding during the reduced activity phase’.

I. Background

1. On 17 May 2021, the Chamber issued its decision admitting into evidence the audio recordings and transcripts of Mr Al Hassan’s security assessments and interviews (hereinafter: ‘Mr Al Hassan’s Statements’).¹
2. On 8 February 2023, the Chamber declared the submission of evidence closed.²
3. On 13 February 2023, the Defence submitted a request to the Counsel Support Section (the ‘CSS’) regarding funding during the phase following the closing statements.³
4. On 24 March 2023, the CSS issued its decision on the Defence’s request of 13 February 2023, indicating, *inter alia*, that the Defence would be allocated with a team composed of Counsel and 2 Full-Time-Equivalents (hereinafter ‘FTEs’) after 1 July 2023 or 30 days following the closing statements.⁴
5. On 3 April 2023, the Single Judge issued directions on the preparation of public redacted versions of evidentiary material (the ‘Directions on Redactions’), in which she decided, *inter alia*, that: (i) all proposals concerning redactions to Mr Al Hassan’s Statements should be transmitted to the Chamber by 16 August 2023 at the latest; and (ii) the Defence should file a progress report on the

¹ Decision on requests related to the submission into evidence of Mr Al Hassan’s statements, ICC-01/12-01/18-1475-Conf (public redacted version issued on 20 May 2021, ICC-01/12-01/18-1475-Red).

² Declaration of the closure of the submission of evidence, ICC-01/12-01/18-2468.

³ ICC-01/12-01/18-2495-Conf-Exp-AnxA and addendum ICC-01/12-01/18-2495-Conf-Exp-AnxB.

⁴ ICC-01/12-01/18-2495-Conf-Exp-AnxC.

preparation of public redacted versions of its Rule 68 material by 13 July 2023, at which point the Defence should have substantially completed the preparation of its proposals for public redacted versions.⁵

6. On the same date, the Defence sought reconsideration of the CSS' decision of 24 March 2023 (the 'Reconsideration Request').⁶
7. On 26 April 2023 the Registrar issued his decision confirming the CSS' decision of 24 March 2023 (the 'Impugned Decision').⁷
8. On 12 May 2023, the Defence filed before the Chamber an urgent request for judicial review of the Impugned Decision (the 'Request').⁸ The Defence challenges discrete parts of the Impugned Decision and requests that the Chamber order the Registry to: (i) grant an additional 1.5 FTEs (3.5 FTEs in total) until at least 31 July 2023 or until completion of the redactions of Mr Al Hassan's Statements as well as the Rule 68 material; (ii) grant an additional FTE (3 FTEs in total) after 1 August 2023 for the purpose of retaining or recruiting a language assistant to provide dedicated linguistic support to Mr Al Hassan; and (iii) end the reduced activity phase 30 days before the Chamber intends to issue its Article 74 judgment.
9. On 23 May 2023, in accordance with the time limit set by the Single Judge,⁹ the Registry filed its observations on the Request (the 'Registry Observations').¹⁰

⁵ Email from the Chamber, 3 April 2023, at 14:56.

⁶ ICC-01/12-01/18-2495-Conf-Exp-AnxD.

⁷ ICC-01/12-01/18-2495-Conf-Exp-AnxE.

⁸ 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-Corr (confidential *ex parte* available only to the Registry and the Defence; with confidential *ex parte* annexes A to E available only to the Registry and the Defence; a corrigendum was filed on 22 May 2023).

⁹ Email from the Chamber, 15 May 2023, at 10:40.

¹⁰ 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), ICC-01/12-01/18-2497-Conf-Exp (confidential *ex parte* available only to the Registry and the Defence).

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10. On 25 May 2023, the Chamber instructed the Defence and the Registry, pursuant to Regulation 28 of the Regulations, to provide additional submissions on certain discrete issues related to the Request.¹¹
11. On 30 May 2023, the Registry filed its additional observations.¹²
12. On 31 May 2023, the Defence filed its additional submissions (the 'Defence Additional Submissions').¹³
13. The submissions received are discussed below to the extent necessary. The Chamber has not considered any submissions relating exclusively to those aspects of the Impugned Decision that are not challenged by virtue of the Request.

II. Analysis

14. Regulation 83 of the Regulations provides for the Chamber's capacity to review the Registrar's decision on the scope of legal aid paid by the Court and stipulates as follows:

Regulation 83

General scope of legal assistance paid by the Court

1. Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances. Upon request, associate counsel may also be covered by legal assistance paid by the Court after the first appearance pursuant to rule 121 of a person subject to a warrant of arrest or a summons to appear under article 58.
2. The scope of legal assistance paid by the Court regarding victims shall be determined by the Registrar in consultation with the Chamber, where appropriate.
3. A person receiving legal assistance paid by the Court may apply to the Registrar for additional means which may be granted depending on the nature of the case.
4. Decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance.

¹¹ Email from the Chamber, 25 May 2023, at 16:21.

¹² 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), ICC-01/12-01/18-2514-Conf-Exp (confidential *ex parte* available only to the Registry and the Defence).

¹³ Defence submissions in relation to Request (ICC-01/12-01/18-2495-Conf-Exp), ICC-01/12-01/18-2515-Conf-Exp (confidential *ex parte* available only to the Registry and the Defence; with two confidential *ex parte* annexes; a courtesy copy was provided via email on 30 May 2023 at 17:37). The Chamber recalls that, on 30 May 2023, the Single Judge extended the deadline for these additional submissions to the same day at 17:30 (email at 13:00). While the Additional Defence Submissions was filed after this deadline, the Chamber considers it appropriate to accept the Additional Defence Submissions pursuant to Regulation 29 of the Regulations.

15. The Chamber is satisfied that the Impugned Decision constitutes a decision on the scope of legal assistance paid by the Court. Further, the Request has been filed in conformity with the 15-day deadline under Regulation 135(2) of the Regulations of the Registry. Accordingly, the Chamber considers that the Impugned Decision is reviewable pursuant to Regulation 83(4) of the Regulations and Regulation 135(2) of the Regulations of the Registry.
16. The payment of legal assistance to the Defence is governed by the Registry's single policy document on the Court's legal aid system (the 'LAP').¹⁴ In reviewing decisions of the Registrar on legal aid, the Chamber must not consider whether it would have made the same decision as the Registrar; the Registrar enjoys a relatively wide margin of discretion as it is he who is vested with the primary responsibility of managing the legal aid scheme.¹⁵ The Chamber also recalls its previous finding that it is not its role to adjust the general policy concerning legal aid; nor is judicial review pursuant to Regulation 83(4) of the Regulations an appropriate vehicle for advocating for such a policy change.¹⁶
17. In line with the established standard for judicial review under Regulation 83(4) of the Regulations, the Chamber must assess, *inter alia*, whether: (i) the Registrar abused his discretion; (ii) the Registrar's decision is affected by a material error of law or fact; or (iii) the Registrar's decision is manifestly unreasonable.¹⁷
18. Having considered the Request, the Chamber understands that the Defence's submissions as being that it requires: (i) an additional FTE (three FTEs in total)

¹⁴ ICC-ASP/12/3.

¹⁵ Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on the Defence applications for judicial review of the decision of the Registrar on the allocation of resources during the trial phase, 21 May 2015, ICC-01/05-01/13-955, para. 32; Pre-Trial Chamber I, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on "Request for Review of Registrar's Decision" by the Defence of Saif Al-Islam Gaddafi, 30 July 2013, ICC-01/11-01/11-390, para. 30.

¹⁶ Decision on the Defence's urgent request for judicial review, 15 December 2022, ICC-01/12-01/18-2443, para. 4.

¹⁷ Decision on the request from the Legal Representatives of Victims for additional resources, 7 October 2020, ICC-01/12-01/18-1095, para. 14; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Bemba Defence Request for Provisional Legal Assistance, 30 August 2016, ICC-01/05-01/13-1977 (the '*Bemba et al.* Legal Assistance Decision'), para. 8. See also LAP, ICC-ASP/12/3, para. 67 (n. 49); Presidency, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the 'Request for Review of the Registrar's Decision of 25 August 2008 on the Application for Legal Assistance Paid by the Court', 25 February 2009, ICC-RoC85-01/08-4-Anx, para. 10.

for the entire duration of the reduced activity phase in light of Mr Al Hassan's linguistic needs, combined with its other workload during the reduced activity phase; and (ii) an additional 0.5 FTE for a discrete period during the reduced activity phase for the purpose of applying redactions to Mr Al Hassan's Statements and its Rule 68 material.¹⁸ The Defence further requested that the end date of the reduced activity phase be varied such that it falls 30 days before the issuance of the Article 74 judgment.¹⁹ The Chamber will address these requests in turn.

1. Request for an additional FTE during the reduced activity phase to cover Mr Al Hassan's linguistic needs

19. The Defence submits that the Impugned Decision was vitiated by errors of law and fact as the Registrar failed to address or give reasons for no longer providing Arabic language assistance to Mr Al Hassan.²⁰ It submits that an additional FTE is required as the work that needs to be carried out by a linguistic assistant is distinct from that of a case manager or a legal assistant.²¹ The Defence further avers that the Impugned Decision 'failed to address the appreciable impact on Mr Al Hassan that would arise from being able to communicate with his team only on a "part-time" basis'.²² By way of the Additional Defence Submissions, the Defence provides a further detailed explanation as to why it requires an additional FTE for the purpose of providing linguistic assistance to Mr Al Hassan during the reduced activity phase.²³

20. The Registrar submits that Request fails to specify how the allocated resources (*i.e.* two FTEs) are insufficient to ensure Mr Al Hassan's rights, in particular under Article 67(1)(f) of the Statute, and that the Defence merely makes general

¹⁸ This is because, while the Defence submits that it requires one FTE from 1 August 2023 for linguistic needs and 1.5 FTEs during July 2023 for applying redactions, nothing in the submissions received indicate that Mr Al Hassan's linguistic needs are, in the Defence's view, diminished during the month of July 2023. The Chamber accordingly infers that the 1.5 FTEs requested for July 2023 comprises 1 FTE for Mr Al Hassan's linguistic needs and 0.5 FTE for applying redactions.

¹⁹ Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, para. 49.

²⁰ Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, p. 7.

²¹ Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, para. 17.

²² Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, para. 18.

²³ Additional Defence Submissions, ICC-01/12-01/18-2515-Conf-Exp, paras 2-18.

references to Mr Al Hassan's 'statutorily-guaranteed rights to interpretation in a language he fully understands'.²⁴ In this regard, the Registrar argues, citing the Judgment of the Appeals Chamber in the *Abd-Al-Rahman* case, that Article 67(1)(f) of the Statute does not cover 'private and privileged communications between the defendant and his or her Defence team'.²⁵ The Registrar further confirms that the Registry stands ready to provide language services to Mr Al Hassan within the scope of Article 67(1)(f) of the Statute.²⁶ He also notes that while the Request in its most part refers to the need for linguistic assistance in the context of Mr Al Hassan's upcoming family visit, this will take place while the Defence team still retains its full team composition.²⁷

21. The Chamber considers that, with due regard to Articles 67(1)(b) and (d) of the Statute, any decision on the scope of legal aid must give full consideration to the language abilities of the accused and the need to ensure effective communication between counsel and the client. Indeed, the meaningful exercise of the accused's rights under Article 67 of the Statute would be rendered extremely arduous should the accused be unable to effectively communicate with the counsel of his or her choosing in order to provide instructions at every stage of the trial.²⁸
22. The Chamber observes that in the relevant part of the Appeal Judgment cited by the Registrar, the Appeals Chamber indeed found that 'the right to the free assistance of an interpreter under article 67(1)(f) of the Statute does not cover client/counsel communications'.²⁹ However, the Appeals Chamber continued that '[i]n the case of persons who do not have sufficient means to pay for their legal assistance, any interpretation costs for the purpose of client/counsel

²⁴ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 23.

²⁵ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 23.

²⁶ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 25.

²⁷ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 22.

²⁸ See, in the context of fitness to stand trial, Decision on Mr Al Hassan's ongoing fitness to stand trial, 10 May 2021, ICC-01/12-01/18-1467, para. 71 ('[w]hether the accused is represented by a lawyer whom he can freely consult during the trial and provide with the necessary information is an important factor in determining whether the accused can exercise his fair trial rights').

²⁹ Appeals Chamber, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Pre-Trial Chamber II of 10 July 2020 entitled 'Decision on Defence request under article 67(1)(f) of the Rome Statute', 5 November 2020, ICC-02/05-01/20-199 (OA) (the '*Abd-Al-Rahman* OA Judgment'), paras 29-31.

communications must be considered within the scope of the legal assistance scheme’ and that ‘the fact that a suspect and his counsel do not speak the same language and cannot communicate without assistance clearly has the potential to impact on the rights enshrined in article 67(1)(b) and (d) of the Statute. Therefore, a solution must be found that allows communication to take place’.³⁰ While the exact position of the Registrar on this point is unclear,³¹ the Chamber cautions against taking an overly formalistic approach in assessing Mr Al Hassan’s linguistic needs for the purpose of effectively participating in his own defence. Indeed, the Registrar’s discretion in managing legal aid through the application of the LAP is bound to respect the statutory framework, most notably the rights of the accused under Article 67 of the Statute.³²

23. The Chamber is well aware that the period during the deliberation phase, *i.e.* between the end of the closing statements and the date of the Article 74 judgment, understandably entails less workload for Defence teams. However, that is not to say that the defence’s work stops all together. Ongoing work during this phase may entail for instance reviewing filings, transcripts and the evidence, addressing other procedural issues arising during this period, as well as preparing for any potential sentencing submissions, in the event of a conviction, or appeals following the upcoming judgment.³³
24. In the Reconsideration Request, the Defence highlighted several of its anticipated concrete activities during the reduced activity phase. In relation to preparations for potential sentencing submissions, it noted the ‘very short amount of time that will be provided to the team to deal with [sentencing] issues when the Article 74 Decision is issued’, in the event of a conviction, and that it accordingly needs to prepare for submissions on potential sentencing during the reduced activity

³⁰ *Abd-Al-Rahman* OA Judgment, ICC-02/05-01/20-199, paras 31-32 (emphasis added).

³¹ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, paras 23-24.

³² Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, Decision on the ‘Defence Request for the Review of the Scope of Legal Assistance’, 11 May 2011, ICC-01/04-01/10-142, para. 11

³³ See *Bemba et al.* Legal Assistance Decision, ICC-01/05-01/13-1977, para. 9; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision reviewing the Registry’s decision on legal assistance for Mr Thomas Lubanga Dyilo pursuant to Regulation 135 of the Regulations of the Registry, 30 August 2011, ICC-01/04-01/06-2800, para. 59. See also Additional Defence Submissions, ICC-01/12-01/18-2515-Conf-Exp, para. 10.

phase.³⁴ The Defence explained that '[a]lthough Mr Al Hassan could be acquitted, the Defence team cannot wait for the judgment to be issued before starting to prepare for the sentencing hearing and related [b]rief and [it] owe[s] Mr Al Hassan a duty to ensure that all necessary preparations are in place for this part of the proceedings to provide adequate defence submissions on the question of sentence should it apply'.³⁵ It then set out further details on what this preparation entails, including a preliminary assessment on the number of potential sentencing witnesses who would need to be interviewed, the preparatory work required for each witness, anticipated missions and the time required for each task.³⁶ In addition, the Defence also lists thirteen other tasks that it envisages for the reduced activity phase.³⁷

25. On the specific issue of language assistance, the Reconsideration Request submitted that a 'language assistant will be required to interpret and translate documents for Mr Al-Hassan on an ongoing basis, to accurately receive his instructions on redactions to his statements and to the closing brief, as well as obtaining his input on evidence that we collect for sentencing', and refers to the previous agreement with the Registry that the Defence will receive an additional FTE for linguistic assistance.³⁸ The Defence averred that the specific linguistic needs of Mr Al Hassan can only be addressed by funding a position of language assistant in addition to the two FTEs allocated by the Registrar.³⁹
26. On the basis of the submissions received, the Chamber cannot conclude that the Registrar duly considered the Defence's submissions concerning Mr Al Hassan's linguistic needs, which were to be assessed in light of the Defence's workload during the reduced activity phase. In the Registry Observations, the Registrar submits that '[t]he fact that Mr Al Hassan does not speak the same language as his counsel and cannot communicate without assistance has been duly considered while considering the request for additional resources submitted by the

³⁴ ICC-01/12-01/18-2495-Conf-Exp-AnxD, p. 7.

³⁵ ICC-01/12-01/18-2495-Conf-Exp-AnxD, p. 7.

³⁶ ICC-01/12-01/18-2495-Conf-Exp-AnxD, pp. 7-8.

³⁷ ICC-01/12-01/18-2495-Conf-Exp-AnxD, pp. 8-9.

³⁸ ICC-01/12-01/18-2495-Conf-Exp-AnxD, p. 6.

³⁹ ICC-01/12-01/18-2495-Conf-Exp-AnxD, p. 6.

Defence'.⁴⁰ However, in the relevant part, reference is made only to the Impugned Decision where the Registrar merely stressed that the flexibility principle allows counsel to employ several members on a part time basis.⁴¹

27. While it is not *per se* incorrect that the lead counsel may, under the principle of flexibility,⁴² employ several members on a part-time basis, neither the Impugned Decision nor the Registry Observations demonstrate to the requisite standard that the Registrar conducted an *in concreto* assessment of the individual circumstances of Mr Al Hassan's linguistic needs and the Defence's workload. Rather, in dismissing the Reconsideration Request, the Impugned Decision states that 'the [Reconsideration Request] in its most part refers to the need for such linguistic assistance in the context of the family visit that takes place [...] with the full team composition still in place'.⁴³ The Chamber considers this to be an erroneous analysis of the relevant submissions. While it is true that the Defence refers to Mr Al Hassan's family visit, it also explained in detail, as set out above, its concrete language needs and other concurrent tasks to demonstrate that it requires an additional FTE to cover Mr Al Hassan's linguistic needs.
28. The Chamber also notes that, at the commencement of the present trial proceedings, the Registry granted the Defence's request for additional resources and decided to provide, *inter alia*, an additional FTE 'for the sole purpose of linguistic assistance'.⁴⁴ While the said decision concerned the period until the end of the closing statements, the Chamber observes that the Registrar's decision to provide two FTEs in addition to counsel during the reduced activity phase, in lieu of the full team the Defence had during the trial, would result in a significant downsizing of the Defence team.⁴⁵ Under the Registrar's plan, the number of team members who can be dedicated to tasks other than linguistic assistance would be considerably decreased during the reduced activity phase; thus, it would appear to the Chamber that the need to retain one additional FTE for the sole

⁴⁰ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 24.

⁴¹ ICC-01/12-01/18-2495-Conf-Exp-AnxE, p. 9.

⁴² LAP, ICC-ASP/12/3, paras 71-72.

⁴³ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 22.

⁴⁴ ICC-01/12-01/18-2515-Conf-Exp-AnxA. *See also* ICC-01/12-01/18-T-008-ENG, p. 52 lines 15-17.

⁴⁵ *See* ICC-01/12-01/18-2515-Conf-Exp-AnxC, p. 1 (indicating the total remuneration during the trial phase) and p. 2 (indicating the total monthly sum to be given to the 2 FTEs).

purpose of linguistic assistance would apply with equal, if not even greater, force. In these circumstances, it was incumbent on the Registrar to provide further reasons for the non-provision of an additional FTE for the purpose of linguistic assistance during the reduced activity phase.

29. In circumstances where the legal framework allows for the Defence to request judicial review, the Registrar is required to provide clear and sufficient reasoning for the Defence to assess whether it must seize the Chamber and for the Chamber to subsequently review the Registrar's exercise of discretion. The need to provide adequate reasons was of particular importance in the case at hand since, when reviewing crucial decisions affecting the composition of Defence teams at a given procedural stage, it is fitting for a Chamber to review the merits of the Registrar's decision more thoroughly to preserve the fairness and integrity of the proceedings and ensure that the accused has adequate legal representation.⁴⁶
30. In light of the foregoing considerations, the Chamber finds that the Registrar erred by failing to take into account relevant factors, namely Mr Al Hassan's linguistic needs, or at the minimum by failing to provide adequate reasons in support of his decision, thereby failing to act with procedural fairness. This error materially affected the Registrar's assessment in the Impugned Decision on the adequacy of the resources needed by the Defence during the reduced activity phase to accommodate Mr Al Hassan's linguistic needs.
31. Given that this part of the Request concerns the Defence's composition as of 1 July 2023 and that the Defence team requires foreseeability in terms of its composition during the reduced activity phase, the Chamber is of the view that it is not practicable to remand the matter to the Registrar for a *de novo* assessment. Accordingly, and having considered the submissions received, the Chamber finds that the aforementioned procedural error warrants the remedy sought by the

⁴⁶ *Bemba et al.* Legal Assistance Decision, ICC-01/05-01/13-1977, para. 8; Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Urgent Requests by the Legal Representative of Victims for Review of Registrar's Decision of 3 April 2012 regarding Legal Aid, 23 April 2012, ICC-01/04-01/07-3277, para. 9; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Reasons for Review of Registrar's Decision on Defence resources, 29 October 2014, ICC-01/04-02/06-389, para. 27.

Defence, namely the provision of one additional FTE during the entirety of the reduced activity phase.

2. Request for an additional 0.5 FTE from 1 July 2023 until the completion of the application of redactions

32. Referring to the deadlines set by the Directions on Redactions, the Defence argues that additional resources are required to meet ‘numerous and significant deadlines currently set by the Chamber for July and August 2023’ concerning redactions.⁴⁷ It submits that with ‘only sufficient resources to maintain two support staff full-time [...] it is already evident that the Defence will struggle to meet these deadlines while fielding the intense workload associated with the family visit’ and that additional resources would ‘allow the Defence to meet at least the most urgent of deadlines imposed by [the] Chamber’.⁴⁸
33. The Registrar observes that the 13 July 2023 deadline set by the Directions on Redactions concern the submission of a Defence progress report, and that it ‘is clear that the Defence is not required to complete the redacted versions of all Defence Rule 68 Material and its witness transcripts by that time’.⁴⁹ The Registrar further recalls the flexibility principle under the LAP and that counsel may consider using 2 allocated FTEs ‘for the part-time employment of four different positions at the part-time rate of one legal assistant’.⁵⁰ Noting that the Defence will retain its full composition during Mr Al Hassan’s family visit, the Registrar concludes that the Defence has sufficient resources during this time to manage the associated workload.⁵¹
34. The Chamber is of the view that it would have been preferable for the Registrar to have provided a more detailed reasoning explaining his assessment underpinning the Impugned Decision. Nonetheless, the Chamber considers that the Impugned Decision and the Registry Observations demonstrate, to the minimum necessary standard, that the Registrar considered the nature of the

⁴⁷ Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, para. 26.

⁴⁸ Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, paras 36-37.

⁴⁹ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 14.

⁵⁰ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, paras 15-16.

⁵¹ Registry Observations, ICC-01/12-01/18-2497-Conf-Exp, para. 17.

deadlines of July and August 2023 concerning the application of redactions and the workload that the application of redactions entails. The Chamber also notes the Registrar's determination that the Impugned Decision is without prejudice to the possibility for the Defence to submit a new request for additional means, should the circumstances of the case so require.⁵²

35. As the Chamber cannot discern any material error or an abuse of discretion, in light of the applicable legal framework, it may not interfere with the Registrar's discretion in this regard.
36. Accordingly, the Defence's request for the provision of an additional 0.5 FTE for the purpose of the work linked to the application of redactions is rejected.

3. Request for variation of the date of the conclusion of the reduced activity phase

37. The Defence submits that it takes significant time to properly reconstitute a team once dissolved, which can often take longer than the 30-day time limit for lodging an appeal against a conviction and/or sentence.⁵³ The Defence therefore requests the Chamber to order that the reduced activity phase end one month before the issuance of the Article 74 judgment.⁵⁴
38. The Registrar does not raise specific arguments on this aspect of the Request.
39. The Chamber understands that this part of the Request constitutes a request for additional means, within the meaning of Regulation 83(3) of the Regulations, for the 30-day period leading up to the issuance of the Article 74 judgment.
40. The Chamber observes that the request to vary the end date of the reduced activity phase was not raised before the Registrar in proceedings leading up to the filing of the Request.⁵⁵ While the Defence is not *per se* precluded from raising new

⁵² ICC-01/12-01/18-2495-Conf-Exp-AnxE, p. 16 (para. 39 (iii)).

⁵³ Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, para. 39.

⁵⁴ Request, ICC-01/12-01/18-2495-Conf-Exp-Corr, para. 39.

⁵⁵ See ICC-01/12-01/18-2495-Conf-Exp-AnxD. The Chamber observes that in the initial email addressed to the CSS on 13 February 2023, the Defence requested, *inter alia* that '[t]he composition and resources of the Defence team for Mr Al Hassan be maintained during the reduced activity phase that follows the

arguments supporting its request during review proceedings, it may not raise new requests for the first time before the Chamber, as this would require the Chamber to rule on a request on which the Registrar did not have the opportunity to consider and make any findings. Consequently the Chamber would exceed the scope of its review function under Regulation 83(4) of the Regulations, should it deal with this part of the Request.

41. Accordingly, this part of the Request is inadmissible and dismissed *in limine*.

III. Classification

42. While the relevant submissions were provided on an *ex parte* basis, the Chamber considers that nothing in the present decision warrants an *ex parte* classification.
43. The Chamber will also issue a public redacted version of the present decision in due course. To this end, the Defence and the Registry are instructed to file public redacted versions of the Request and Registry Observations within two weeks of notification of the present decision.

conclusion of the parties' presentation of evidence'. (ICC-01/12-01/18-2495-Conf-Exp-AnxA, p. 3) The Chamber considers that the said request differs substantially from the request for variation of the end date of the reduced activity phase. Further, it is noted that the Defence did not raise this request for a blanket extension of the lump sum payment in subsequent proceedings before the Registrar.

Pursuant to TCX's email instruction dated 08.06.2023, this document is reclassified as Public

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

PARTIALLY GRANTS the Request;

REVERSES the Impugned Decision in part, to the extent that it relates to the Defence's request for an additional FTE in light of Mr Al Hassan's linguistic needs;

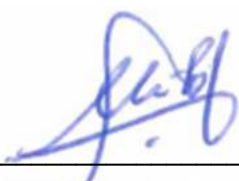
ORDERS the Registrar to provide one additional FTE to the Defence during the reduced activity phase for the purpose of linguistic assistance to Mr Al Hassan;

REJECTS the Defence's request for an additional 0.5 FTE for the purpose of completing the application of redactions;

DISMISSES *in limine* the Defence's request for variation of the end date of the reduced activity phase; and

INSTRUCTS the Defence and the Registry to file public redacted versions of the Request and the Registry Observations within two weeks of notification of the present decision.

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, 5 June 2023

At The Hague, The Netherlands