

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 January 2024**

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua, Presiding
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 with Confidential Ex Parte (Defence, Registry only) Annex A

Defence Request for Leave to Reply to ‘Registry Observations on “Defence Application for Review of the Registry’s Decision on Legal Aid (ICC-01/12-01/18-2577)’

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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

The Office of the Prosecutor

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Seydou Doumbia
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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented
(Participation/Reparation)**

Applicants

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ozvaldo Zavala Giler

Counsel Support Section

Pieter Vanaverbeke

Victims and Witnesses Unit

Detention Section

**Victims Participation and Other
Reparations Section**

I. Introduction

1. On 29 December 2023, the Defence filed ‘Defence Application for Review of the Registry’s Decision on Legal Aid’.¹
2. On 11 January 2024, the Registry filed ‘Registry Observations on “Defence Application for Review of the Registry’s Decision on Legal Aid”’ (Registry Observations),² pursuant to an order by the Single Judge of the Trial Chamber.³
3. The Defence for Mr Al Hassan respectfully seeks leave to reply to two discrete factual issues arising from the Registrar’s Registry’s Observations.

II. Submissions

4. Throughout the Registry Observations, the Registry has averred that the resources currently allocated ensure that the Defence is able to retain existing members, both before and after the judgment is issued.⁴
5. The Defence seeks leave to address this assertion, in particular, to demonstrate how the proposed allocation of resources:
 - a. Results in a lower envelope of resources for the pre-judgement period than was available for the reduced activity period during 2023;⁵
 - b. Requires certain team members to accept a lower position, which is at odds with the Registry’s directive that Defence Counsel should not underpay support staff and would, moreover, impact on the effective functioning of the team;⁶ and

¹ [ICC-01/12-01/18-2577](#).

² [ICC-01/12-01/18-2580](#)

³ Email from Single Judge to Defence and Registry dated 29 December 2023 at 13:06.

⁴ [ICC-01/12-01/18-2580](#) paras 5, 16, 18.

⁵ In 2023, due to a maternity leave replacement position, the Defence had the benefit of 1 counsel position, 2 legal assistant positions (2 full time equivalents (‘FTEs’), 1 legal assistant maternity leave replacement position (1 FTE), and 1 full time language assistant (1 FTE) = 1 Counsel plus 4 FTEs. Given that Ms Sethi’s maternity leave ended on 3 January 2024, the Defence has lost 1 FTE position. This means that at a crucial point in the lead up to the judgment (where the team should be expanding), the team will in fact be reduced.

⁶ As an example, the Registry has proposed that Ms Yuqing Liu be appointed as a part-time case manager, even though she was assigned as a legal assistant, and has almost 10 years of experience in ICL. Similarly, a rigid application of positions such that there could be only 1 assistant to counsel position would mean that Ms Beaulieu Lussier would be forced to occupy an entry level legal position (which the Registry job description classifies as persons with 2-4 years’ experience), even though she has over 8 years experience as a practicing attorney. Similarly, the Registry has proposed that Ms Abid be appointed as a case manager rather than legal assistant (which she is eligible for). Her appointment in this position will have significant consequences as concerns the ability of the Defence to have privileged communications with Mr Al Hassan.

- c. Would produce a result that is incompatible with Mr Al Hassan's right to effective representation at a critical juncture of his trial.⁷
6. The Registry Observations further provide that the Defence failed to submit a work plan with relevant parameters for the Registry to assess the complexity 'at this stage' and therefore failed to justify the basis for extra resourcing prior to judgment being handed down (namely to reconstitute the team prior to the day of judgment). The Defence seeks leave to respond to this point to address the manner in which the Registry erred in its interpretation and application of the LAP, in particular, by failing to take into account the specific requirements and workload associated with constituting a full team, 30 days before the issuance of a trial judgment.
7. The Defence has endeavoured to compose a team that satisfies Mr Al Hassan's right to effective representation, considering the linguistic requirements of this case; the need to retain knowledge and experience; and the limitations of the legal aid travel policy. The latest version of this composition, which was transmitted on Friday 5 January 2024,⁸ has yet to be approved. In the case of Ms Marchesi, this means that a starting date has yet to be determined, which has consequences as concerns the establishment of email and network accesses. In light of the implications of any further delays in resolving these issues, the Defence would be willing to file its reply (if leave is granted) by tomorrow noon (12 January 2024).

III. Relief Sought

8. For the reasons set out above, the Defence for Mr Al Hassan respectfully requests the Trial Chamber to grant the Defence leave to reply to discrete aspects of the Registry's Observations as outlined herein.

⁷ As things stand, even though Ms Pradhan has been granted funding to travel to The Hague from 16-20 January 2024, the Registry has proposed to fund Ms Pradhan and Dr Gerry from 19 January 2024. The Defence has arranged to have crucial team discussions during the period 17-19 January and requires all existing and prospective team members to be fully funded for this period, irrespective of the outcome of the judgment.

⁸ Confidential Ex Parte Annex A.



Melinda Taylor
Counsel for Mr. Al Hassan

Dated this 11th day of January 2024
At The Hague, The Netherlands