

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **29 December 2023**

**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) Annexes A, B**

**Defence Application for Review of the Registry's Decision on Legal Aid**

**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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**Unrepresented  
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**Applicants**

**The Office of Public Counsel for  
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**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Other  
Reparations Section**

## I. Introduction

1. The new Legal Aid Policy ('LAP') adopted by the Assembly of State Parties, which is to enter in to force on 1 January 2024, establishes a system of remuneration which is based on the phase of the proceedings and the complexity of that phase.<sup>1</sup>
2. The phases are defined as pre-trial, trial, appeal, reparations, and 'reduced activity'.<sup>2</sup> The LAP is silent as concerns the sentencing phase (the words 'sentence' and 'sentencing' do not feature in any parts of the LAP). The reduced activity phase is described as periods involving 'reduced activity': while the LAP refers, as an example, to the period between closing trial arguments and the decision of the accused whether to appeal the trial judgment,<sup>3</sup> the LAP fails to address the scenario where a judgment triggers both a sentencing phase and a notice of appeal (and grounds of appeal) – that is, a period of heightened rather than reduced activity. The LAP explains that the reparations stage starts from the issuance of the judgment on conviction and is divided into an active litigation phase and an implementation phase.<sup>4</sup> Under this definition, the active litigation phase for reparations runs concurrently with a potential appeals phase. The LAP does not explain how the LAP operates in situations of concurrent phases.
3. In terms of complexity, the LAP specifies that the level of complexity should be determined before the commencement of the phase in question.<sup>5</sup> Since this determination may depend on information that is unknown to the Defence, "the Registry may consult the Chamber to receive any additional information required to assess the complexity level of the case."<sup>6</sup> The LAP further requires the Registry to issue a reasoned opinion concerning its assessment of complexity, taking into account the factors set out in paragraph 50 of the LAP.
4. When applying the above framework to the current case, the Registry made a series of linked errors:
  - First, due to the lacuna in the LAP, the Registry erroneously characterized the period following the trial judgment as a period of 'reduced activity'. It further

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<sup>1</sup> [ICC-ASP/22/9](#)

<sup>2</sup> [ICC-ASP/22/9](#) para. 29.

<sup>3</sup> [ICC-ASP/22/9](#) para. 35.

<sup>4</sup> [ICC-ASP/22/9](#) para. 34.

<sup>5</sup> [ICC-ASP/22/9](#) para. 43: "The complexity level of the work to be performed by a defence or victims' team is assessed prior to the beginning of each stage of the proceedings".

<sup>6</sup> [ICC-ASP/22/9](#) para. 43

classified the following phase as the ‘appeals’ phase, while ignoring the need to allocate resources for concurrent sentencing and reparations phases;

- Second, the Registry failed to issue a reasoned opinion concerning the manner in which it applied the factors set out in paragraphs 50 and 51 of the LAP to the particular matrix of this case. There is also no indication that the Registry consulted with the Trial Chamber on order to assess the likely workload and complexity of issues arising from the judgment that will be issued on 18 January 2024; and
  - Third, whereas the LAP requires the Registry to assess and determine the level of resources required for a phase before it commences, the Registry has deferred its substantive assessment of the complexity of the appeal and the need for reparations-related resources until the Defence’s submission of a notice of appeal and future workplan. As a result, the Registry assigned an arbitrary complexity level based on existing reduced activity resources, rather than the factors set out in paragraphs 50 and 51.
5. Pursuant to Regulation 83(4) of the Regulations of the Court, the Defence for Mr Al Hassan therefore respectfully requests the Trial Chamber to review and reverse the Registrar’s determinations that:
- The case will be classified as ‘level 2’ rather than ‘level 3’ for the purposes of allocating resources before and after the issuance of the judgment;
  - The subsequent phase/s must be calculated solely by reference to the funds available for an appeal, and not resources allocated to the trial or reparations phases, in the event of a conviction leading to a sentencing phase and future reparations; and
  - The language assistant position must be remunerated at 50% for a future concurrent sentencing/appellate/reparations phase.

## **II. Procedural History**

6. On 28 November 2023, the Defence requested CSS to assign Ms Diletta Marchesi as a legal assistant to replace Mr Mohamed Youssef.
7. On 5 December 2023, CSS responded, indicating that they were unable to process Ms Marchesi’s appointment until the complexity level of any future appeal was assessed in accordance with the new legal aid policy.

8. Following notification of the date of the judgment, on 7 and 8 December 2023, the Defence submitted a detailed request to CSS for resources for the judgment and the subsequent 30 day period (pending the assessment of the complexity level for the following stages).<sup>7</sup> Relevantly, the Defence drew the attention of CSS to ICC case law, confirming that the sentencing phase is part of the trial phase, and as such, requires funding which takes in to account the more intense activity which arises in trial proceedings, such as undertaking investigations, the submission of evidence (including potential witness statements), and evidential hearings ([ICC-01/05-01/13-2063](#), paras 11, 13-14). Defence workload is further heightened as, unlike the Prosecution, the Defence does not benefit from a separate appellate section. The Defence is thus required to meet sentencing deadlines while simultaneously preparing its grounds of appeal (due 30 days following the issuance of a judgment). The existence of potential sentencing proceedings is thus a relevant factor that impacts directly on the level of resources required for the time-period immediately following the issuance of the judgment.
9. The Defence further argued that the complexity level and quantity of resources must take in to account the number of charges (including the operation of Regulation 55), linked materials from the Al Mahdi case, and the difficulties in conducting secure investigations in Mali due to the severe degradation in security, following the withdrawal of international forces and the United Nations from the north of Mali and the fact that witnesses are dispersed over a wide geographic area. These factors have already proven to be highly challenging during the trial phase, as demonstrated by the range of issues that arose during the Defence case and Rule 68 certifications.
10. On 15 December 2023, the Registry informed the Defence that it had assessed this case as a “level 2” complexity, and as such, the Defence would be allocated level 2 reduced activity funds and then level 2 appeal funds, pending the final assessment of the complexity of the appeal. The Registry indicated that it had based this assessment on:

*“(a) the de facto team composition, i.e. the resources allocated as part of the core-team composition per stage of the proceedings (per diagrams 1 or 2 of ICC-ASP-12-3) and the Full-Time Equivalent (“FTE”) allocated to a team per the additional means system (paras 66-76).*

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<sup>7</sup> Annex A

- (b) The time-period for which FTE have been approved by the Registry based on a justified request, particularly whether FTE had been allocated for a specific purpose; and*
- (c) the working arrangements of team members (i.e. whether team members work full-time or part-time).”*

11. On 18 December 2023, the Defence seized the Chamber with a request for review of the 15 December 2023 determination. On the same day, the Defence also submitted a proposal to the Registry concerning the allocation of team resources, with a view to determining whether the level allocated by the Registry would secure Mr Al Hassan’s right to effective representation in the following phases.<sup>8</sup>
12. On 19 December 2023, the Registry transmitted a varied proposal, in which the Registry agreed to allocate additional temporary resources for Associate Counsel (to be shared between Dr Gerry KC and Ms Pradhan) and further indicated that other programmes could be used for contemporaneous phases (such as reparations).<sup>9</sup> The Registry also provided further reasoning concerning the manner in which they interpret the provisions governing a potential sentencing phase, namely, the Registry explained that they treat the sentencing phase as an additional factor that relates to the complexity of the appeal phase, rather than as part of the trial phase.
13. Given this new proposal and provision of additional argumentation, the Defence withdrew its request for review of the 15 December 2023 decision. The Defence then sought clarification from the Registry as to the manner in which the policy would operate in the event of a future sentencing and reparations phase, and the extent to which savings and other programmes could be used to secure an essential position throughout subsequent sentencing, appeal and reparations phases.<sup>10</sup>
14. On 21 December 2023, the Registry informed the Defence that: the other programmes in the legal aid policy could not be used to remunerate team members; accrued savings from one position could not be deployed to another position, and it was premature to request additional resources related to future phases.<sup>11</sup>
15. As things stand, the points of disagreement relate to:

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<sup>8</sup> Annex B.

<sup>9</sup> Annex B.

<sup>10</sup> Email of 20 December 2023, Annex B.

<sup>11</sup> Email of 21 December 2023, Annex B.

- The overall level of resources that will be allocated in the event of a conviction and the commencement of concurrent phases;
- The timing of resource and complexity assessments and access to resources related to active litigation concerning reparations;
- The extent to which prior judicial determinations concerning the need for language assistance should inform the Registry's assessment of the need for language assistance in connection with future proceedings before the Trial Chamber.

### **III. Submissions**

*The Registry's erroneous characterisation of the period following the issuance of the trial judgment*

16. The Registry erred in law by applying the reduced activity and 'appeal' module of the LAP to the immediate phase following the trial judgment. This error further produced a manifestly unreasonable result, which fails to secure Mr Al Hassan's right to effective representation in connection with concurrent proceedings before the Appeals Chamber and the Trial Chamber.
17. The Registry's approach to this phase contravenes the Statute and Rules and related ICC case law.
18. Rule 20(1) of the Rules of Procedure and Evidence requires the Registry to ensure that Defence teams funded by legal aid have sufficient resources to discharge their responsibilities under the Statute and Rules in an effective and efficient manner. The Statute, Rules and Regulations thus provide a primary reference point for assessing the necessary and reasonable resources required by Defence teams to discharge their functions during defined periods of judicial activity. In accordance with this legal framework, in the event of a conviction, the issuance of a trial judgment triggers three potential phases of activity:
  - The Trial Chamber remains seised of the case, for the purpose of determining an appropriate sentence. In accordance with Article 76(2) and Rule 143, the Trial Chamber may convene an additional hearing on sentence and invite further evidence and submissions from the parties. Article 76 falls within Part 6 of the Statute, which governs 'The Trial'. Article 64 also clarifies that the Trial Chamber

exercises jurisdiction over trial-related proceedings. The ‘sentencing’ phase thus forms part of the trial.<sup>12</sup> Sentencing deadlines can commence immediately: in *Ntaganda*, the same day the trial judgment was issued, the Trial Chamber issued an order inviting the parties to specify whether they wished to lead additional evidence for the purpose of sentencing.<sup>13</sup> There is no procedural link between such litigation and the act of filing a notice of appeal.

- The Trial Chamber is also empowered to establish procedures for reparations. These proceedings are not suspended during appeal proceedings. In *Ntaganda*, the Single Judge started issuing orders concerning this phase approximately two weeks after the trial judgment was issued.<sup>14</sup> The Defence were also invited to file reparations related observations by a date falling just after two months of the issuance of the Trial Judgment.<sup>15</sup> There is no procedural link between such litigation and the act of filing a notice of appeal.
- While sentence proceedings are ongoing, the Defence must also formulate the notice of appeal and grounds of appeal: both are due 30 days after the judgment is issued. The grounds of appeal must specify “the alleged errors and how they affect the appealed decision”. This is time consuming process which requires close consultation with the client and the team that will be entrusted with drafting such grounds. Typically, in the immediate period after the issuance of the judgment, there is also litigation before the Appeals Chamber concerning the impact of translation issues on the deadline for filing the notice and grounds of appeal.

19. It follows from the above that: first, active trial proceedings continue to run following the issuance of the trial judgment (pending the issuance of the judgment on sentence); second, in the case of sentencing and reparations, the existence of such litigation and the volume of workload has no direct link to the act of filing a notice of appeal; and third, appellate litigation commences as soon as the judgment is issued, and not when the notice of appeal is filed. Resourcing which takes in to account, and reflects these

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<sup>12</sup> [ICC-01/05-01/13-2063](#), paras 11, 13-14. See also [ICC-01/04-01/06-2800](#), para 47: “In the judgment of the Chamber, as reflected in the Rome Statute framework, the "Trial", the "Trial Procedure" or the "Trial Proceedings" only comes to an end when the Article 74, 75 and 76 Decisions have been delivered, as appropriate.”

<sup>13</sup> ICC-01/04-02/06-2360.

<sup>14</sup> ICC-01/04-02/06-2366.

<sup>15</sup> ICC-01/04-02/06-2366.



realities, must be made available to the Defence to ensure continuous and effective legal representation.

20. Rather than basing its determination on the resources required to secure effective representation within this legal framework, the Registry adopted a flawed workaround – that is, the Registry argued that the existence of concurrent proceedings is a factor that is related to the complexity level of the appeal phase or which provide a basis for additional resources.<sup>16</sup> This ‘solution’ finds no support in the text of the LAP itself and fails to secure the right to effective representation.
21. Paragraph 34 of the LAP specifies that “the litigation phase of the reparations phase starts with the final decision on conviction”. The LAP provides no exception to the allocation of such resources during the period leading to the reparations judgment. As such, the Defence should be entitled to avail themselves of the pool of reparations resources as soon as the judgment is issued. It would also be arbitrary and unhelpful to suspend these resources until after the appellate proceedings have closed. The LAP emphasizes the importance of continuity in Defence representation. It is logical and efficient to compose a reparations wing of the Defence team from the outset, so that the Defence can effectively participate in this phase without diverting crucial resources from concurrent proceedings. Since the Registrar has determined a base line of resources required to engage in such proceedings, the Defence should be entitled to access and employ these resources from the outset.
22. The recommencement of trial proceedings immediately following the issuance of the judgment should also trigger the allocation of trial resources rather than reduced activity or the allocations designed for appeal proceedings. As found by the Single Judge in *Bemba et al.*,<sup>17</sup>

The Single Judge considers it unduly formalistic to delay the reformation of the core defence team on grounds that there is only an ‘appeals phase’ - and no ‘sentencing phase’ – stated in the Legal Aid Policy. This interpretation does not reflect the fact that sentencing is an integral part of the trial, as evidenced by Part 6 of the Statute itself.

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<sup>16</sup> Annex B, Email of 19 December 2023: “Accordingly, where a team starts to prepare the notice of appeal, irrespective of other activities ongoing during this phase of the proceedings, resources provided under the Court’s legal aid system are those corresponding to the determined complexity level at the appeals stage as indicated in table 1 of the Policy. Activities ongoing at this stage besides the preparation of the notice of and/or grounds for appeal, such as the preparation of the sentencing may be factors taken into account for the determination of the complexity level or may be honoured by a request for additional means (under the conditions of paras 74 to 76 of the Policy).”

<sup>17</sup> ICC-01/05-01/13-2063, para. 14.

[..]

The Single Judge notes that a sentencing determination is a more limited inquiry than the determination on the innocence or guilt of the accused, and for this reason does not consider that the defence teams require for sentencing the further resources allocated between the definite decision relating to the confirmation of charges and the conclusion of the closing statements. But there is clearly a difference in the defence's workload between the deliberations phase and the immediate aftermath of the Judgment, and the Registry's decision entirely fails to account for this difference.

23. In line with this finding, given the lacuna in the LAP concerning the sentencing phase, the Registry should have been guided by ICC case law and practice concerning the requirements of effective representation in connection with concurrent phases.<sup>18</sup> While the Prosecution trial team may be reduced at this point, it still benefits from a separate, specialized appellate section and can call on the expertise of experienced team members who participated in the trial. Since the activities of the Defence and the Prosecution are identical at this point (and the Defence bears the burden of persuasion in connection with any grounds raised on appeal), the right to a fair trial dictates that the Defence must be sufficiently resourced, so as to ensure that the Defence can discharge its responsibilities before both the Trial Chamber and the Appeals Chamber in relation to overlapping deadlines. This is best achieved through the allocation of discrete trial (i.e. sentencing) related resources for the duration of the sentencing phase and reparations resources for the duration of the active reparations phase.

*The Registry's flawed application of the complexity criteria*

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<sup>18</sup> ICC-01/04-01/06-2800, para. 52: "Reviewing the outline of the ICC Legal Aid System provided by the Registrar, there is no explicit reference to the possibility of any additional sentencing and reparations hearings following the Article 74 Decision. The Registry's Decision of 22 July refers to paragraph 29 of the Report ICC-ASP/6/4 dated 31 May 2007, which is part of a document describing the existing system of legal aid and certain proposed amendments thereto. Although a reparations phase is addressed in the context of legal aid for the legal representatives of victims, the position of the defence is not touched on. Furthermore, here also there is no reference to a possible sentencing stage of the case. Annex IV (as referred to by the Registrar) similarly does not provide for a sentencing and reparations phase of the trial. Therefore, given that these documents relied on by the Registrar in seeking to justify her decision to reduce legal assistance to the accused do not include any consideration or analysis of these potentially critical parts of the trial, it necessarily limits the extent to which the Chamber is prepared to rely on them."

24. In its request of 7 and 8 December 2023, the Defence argued that in line with the criteria established by paragraphs 50 and 51 of the LAP, the complexity level of this case should be gauged as level 3, taking into account, *inter alia*, the number of counts, the complexity of legal issues, and the security situation in Mali. The Defence further referenced a judicial determination concerning the specific language requirements of this case, resulting in the allocation of a full-time language assistant post. In its decision, the Registry made no reference to these factors, basing its determination instead on the level of existing resources during the reduced activity phase, which corresponded to 'level 2'. There is also no indication that the Registry consulted with the Trial Chamber or took account of the factors that had led the Trial Chamber to determine that it was appropriate to appoint a full-time language assistant. The Registry's failure to base its determination on either the factors set out in paragraphs 50 and 51 of the LAP, existing judicial decisions, or the position of the Trial Chamber, constitutes a clear and reversible error, which led to arbitrary and unreasonable results.
25. While existing resources of the team is a relevant criterion concerning continuity, the workload associated with the reduced activity phase is not a reliable indicator as to the requirements of the phase following the issuance of the trial judgment, particularly in case of a conviction. As set out above, this phase is an extremely intense period, marked by concurrent proceedings before both the Appeals Chamber and the Trial Chamber. There is thus a clear need to augment Defence resources and to base this increase on the particular features of these successive phases (and the related trial judgment), rather than the characteristics of the reduced activity phase. It is also illogical that having used the reduced activity period as a reference point, the Registry decided to cut the language assistant position into a half-time position. If a full-time position was required to assist the Defence in connection with the reduced activity period, it follows that at the very least, a full-time position is required to assist the Defence in relation to active sentencing, reparation and appellate proceedings. In case the trial judgment is not translated into Arabic, team resources will need to be deployed to the task of explaining critical findings to the accused, while waiting for translations from the Registry. This task must be conducted for the purpose of sentencing and is not contingent on the filing of a notice of appeal. The language assistant is also required to assist with the translation of evidence and interpretation with potential witnesses sought to be relied upon for sentencing, and to facilitate investigation logistics, while ensuring the defendant's separate right to participate in this case in a language he fully understands.

*The Registry's refusal to issue a reasoned determination as to the resources required for the next phases, before these phases commence*

26. The Defence work plan submitted on 7 and 8 December 2023 provided substantive justifications as concerns the appointment of an Assistant to Counsel, who would primarily address sentencing issues and reparations. While the Defence work plan scheduled Ms Beaulieu Lussier's position to commence at the beginning of March, this proposed date was linked to the need to ensure a smooth transition as concerns her transfer from a full-time maternity-leave replacement position on the Ngaissona team to 75% on Al Hassan and 25% on Ngaissona, thus allowing her to complete residual duties on the latter case. The need for her assistance and appointment is, however, already apparent. A timely decision on such matters best serves the goals of certainty and efficiency, by allowing both teams to make the necessary arrangements to accommodate her modified role in both teams.
27. The Registry thus erred in law and exercised its discretion unreasonably by deferring its substantive assessment as concerns reparations-related resources and the complexity of the post-judgment phases until after the judgment has been issued. This approach is directly contrary to the clear terms of the LAP, which requires the Registry to calculate the appropriate complexity level and allocation of resources for a particular phase before the phase in question commences.<sup>19</sup> A timely decision on resources ensures that the Defence can recruit and appoint team members in advance of the judgment, liaise with relevant Registry sections to arrange for access to networks and databases, and resolve any disputes concerning resource-related determinations, before entering periods of high activity. Indeed, if the Registry makes an assessment that X amount of resources are required for a particular phase, it follows that the Defence must be placed in a position to avail itself of X amount of resources as soon as the phase commences. In contrast, if such determinations are issued after the phase commences, the Defence would be compelled to start the phase with resources that are less than X and thus less than the amount deemed necessary to secure effective representation.

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<sup>19</sup> ICC-ASP/22/9, para. 43: "The complexity level of the work to be performed by a defence or victims' team is assessed **prior to the beginning of each stage of the proceedings**, when Counsel shall submit a work plan to the Registry, which, alongside further litigation with Counsel where required, shall form the basis of the Registry's assessment on the complexity level of the work to be performed. In this context, the Registry may consult the Chamber to receive any additional information required to assess the complexity level of the case" (emphasis added).

28. Although some aspects of the next phases in this case might be unknown to the Defence and the Registry at this juncture, the LAP requires the Registry to consult with the Trial Chamber, with a view to obtaining relevant information concerning the likely workload and complexity of issues generated by the Trial Judgment. While the Registry has proposed that following the issuance of the judgment, the Defence can submit an additional work plan seeking a modification of the complexity level for the appeal,<sup>20</sup> this suggestion fails to acknowledge the distinction between the workload related to appeal proceedings and that concerning sentencing and reparations proceedings. The complexity criteria for appeals, as set out in paragraph 51 of the LAP, are not tailored to the requirements of sentencing proceedings, which are more akin to those required in trial. The Registry's proposal also requires the Defence to divert limited time and resources to drafting work plans and litigating resource disputes, rather than focusing on core representation tasks. Such an outcome would further aggravate the prejudice occasioned by starting the post-judgment phase with insufficient resources.<sup>21</sup> Indeed, the principle of equality of arms would be seriously eroded if the Defence were forced to distribute limited resources over multiple litigation fronts before the Trial Chamber, Appeals Chamber and Registry, while the Prosecution has no such restrictions as concerns its ability to compose a fully operational trial team in advance of the trial judgment, while designating separate appellate counsel to assist.
29. The possibility to submit a request for additional resources following the issuance of the judgment is also not a suitable solution. First, if these resources are granted after the need for them has arisen, there will be a time lag as concerns the ability of the Defence to request the resources, obtain a favourable decision, and appoint and assign team members. This time lag will create further builds up in work-load, undermining

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<sup>20</sup> Annex B, email of 19 December 2023: "Activities ongoing at this stage besides the preparation of the notice of and/or grounds for appeal, such as the preparation of the sentencing may be factors taken into account for the determination of the complexity level or may be honoured by a request for additional means (under the conditions of paras 74 to 76 of the Policy)."

<sup>21</sup> See ICC-01/04-01/06-2800, para. 57: "It would in all likelihood be wholly unfair to the accused to dissolve his defence team following the closing submissions, leaving one lead counsel, a legal assistant and a case manager, who would - depending on the outcome of the Article 74 Decision - have to recruit a new team and file the accused's appeal in 30 days. It is of note that the prosecution will inevitably be in a far more advantageous position in this regard, since the Prosecutor is not under any obligation to lay off staff following the concluding submissions." See also para. 58: "the Registrar must ensure that leading counsel is given sufficient warning of the approximate date of the Article 74 Decision so that additional members of the team (to the extent that they are likely to be necessary) can at least be identified and, to the extent appropriate, recruited in advance; and iii) in any event, the defence must not be placed in the position of having to prepare submissions on sentence, reparations or for an appeal brief within an unreasonably short period of time {e.g. within 30 days for an appeal) with an inadequate legal team."

the Defence capacity and efficiency. Second, according to paragraph 76 of the LAP, “[a]dditional means are only granted on an exceptional basis and for a very limited time, and only in the case of unforeseen circumstances outside the control of defence or victims’ teams, and subject to the exhaustion of the re-assessment system of complexity levels as per paragraph 46.” The LAP thus imposes a high burden on the Defence to establish that the need for such resources could not be foreseen at an earlier point. Paragraph 76 thus assumes that the Registry will make a substantive assessment based on all known and foreseeable factors prior to the issuance of the judgment.

30. It is also artificial to defer an assessment of the need for the requested resources in circumstances where it is already apparent that the Defence needs more resources to participate effectively in concurrent appeal, sentencing and reparations proceedings. Given that the reparations phase commences immediately following the trial judgment, the Registry was required to decide now, in consultation with the Trial Chamber, whether the Defence can receive reparation-related resources. The LAP makes no distinction concerning the level of resources related to each complexity level at a reparations stage: irrespective as to whether the complexity level is assessed as 1, 2, or 3, each team is entitled to 50% of a Counsel, a legal assistant and 50% of a case manager for the duration of active litigation. Since reparations litigation occurs independently of the appeal phase, it is also arbitrary to withhold such resources until an undetermined future point. The existence of reparations litigation following the judgment will have a critical impact on the ability of the Defence to focus on sentencing or appellate proceedings. If the Defence is only allocated resources related to workload associated with a future appeal, the Defence cannot allocate any of these limited resources to other purposes, without jeopardizing Mr Al Hassan’s right to a fair appeal. Mr Al Hassan’s separate right to be heard and to participate in reparations proceedings will therefore be meaningless if the Defence is given no separate resources to use for reparations.

#### **IV. Relief Sought**

31. For the reasons set out above, the Defence for Mr Al Hassan respectfully requests the Trial Chamber to order the Registrar to:
- Classify the case as ‘level 3’ rather than ‘level 2’ for the purposes of allocating resources before and after the issuance of the judgment;

- In the event of a conviction, allocate resources based on the scheme applicable to trial, for the duration of the sentencing phase;
- In the event of a conviction, allocate resources for reparations immediately following the issuance of the judgment; and
- Provide resources for a full-time language assistant for the duration of active litigation before the Trial Chamber.



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Melinda Taylor  
Counsel for Mr. Al Hassan

Dated this 29<sup>th</sup> day of December 2023  
At The Hague, The Netherlands