

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **24 June 2019**

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Howard Morrison

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR V. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD**

Public

**Prosecution's response to
Request for the disqualification of Judge Marc Perrin de Brichambaut**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart

Counsel for the Defence

Ms Melinda Taylor
Ms Marie-Hélène Proulx

Legal Representatives of the Victims

Mr Seydou Doumbia
Mr Mayombo Kassongo
Mr Fidel Luvengika Nsita

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Submissions

1. On 14 June 2019, the Al Hassan Defence requested the Plenary to disqualify Judge Marc Perrin de Brichambaut from the case, with immediate effect.¹ According to the Defence, the Judge “has continued to engage in a variety of professional activities, which are geared towards advancing the political and military interests of France”.² Based on the underlying materials, the Defence argues that “[i]n this capacity, [the Judge] has issued multiple pronouncements on factual issues that have yet to be adjudicated in this case.”³ The Defence seeks disqualification on two grounds: *first*, that the Judge’s “ongoing participation in French political and military affairs” is “incompatible with the appearance of judicial independence”;⁴ and *second*, that there is “the appearance that [the Judge] has pre-determined key issues in this case or would not be in a position to determine them with a mind free from bias or partiality”.⁵ Judge Perrin de Brichambaut had the right to respond, after the parties had made their submissions.⁶ However, the Judge filed his observations on 24 June 2019, asking the Plenary to reject the Defence submissions.⁷

2. In this context, and noting the Judge’s observations, the Prosecution respectfully makes these limited submissions to assist the Plenary. On their face, the Request and the underlying material, as presented by the Defence, raise certain issues for the Plenary’s consideration, including:

¹ ICC-01/12-01/18-376-Red (“[Request](#)”), para. 51. *See* ICC-01/12-01/18-379 (“[Presidency Order](#)”), p. 3 (ordering Parties and participants to file any responses by 24 June 2019).

² [Request](#), para. 3.

³ [Request](#), para. 3.

⁴ [Request](#), para. 34-41.

⁵ [Request](#), para. 42-47.

⁶ [Presidency Order](#), p. 3 (requesting Judge Perrin de Brichambaut to present any written observations by 25 June 2019).

⁷ *See* ICC-01/12-01/18-382 (“Judge Perrin de Brichambaut’s Observations”).

- The Judge's remarks at an 18 May 2016 conference (*Conseil d'État et la juridiction administrative, Cinquième conférence du cycle "Entretiens sur l'Europe" et les interviews des participants*), commenting on "l'opération qui se déroule actuellement au Mali", and noting, *inter alia*, that "il s'agit pour l'Union Européenne de prendre en quelque sorte le relais d'opérations à caractère essentiellement militaires qui avaient été menées par la France et les Nations Unies mais d'élargir leur champ dans la durée en s'engageant dans la voie de la stabilisation et du développement pour créer des conditions nouvelles et éviter le retour des facteurs de déstabilisation qui avaient obligé à ces interventions militaires [...]"⁸ ;
- Remarks attributed to the Judge in some papers published online and authored by *Le Club des Vingt*, including those noting "les sociétés maghrébines commencent à bouger sous l'effet de deux mouvements différents: d'une part une contestation sociale, exploitée par l'islamisme [...]" and "L'influence islamique se répand à partir des régions proches. Le groupe salafiste armé Ansar Eddine, venant du Mali, s'installe en Tunisie et commence à y recruter" (in the context of French policy and actions in "the Maghreb", *Redécouvrir le Maghreb*, 1 November 2018);⁹
- Actions attributed to the Judge as one "administrateur" of *Forum du Futur*, which is described as "un centre indépendant qui a pour vocation d'étudier et d'analyser les grands bouleversements qui sont à l'œuvre aujourd'hui: [...] diffusion des idéologies révolutionnaires ou radicales; dissémination des conflits armés. Son champ de réflexion est résolument pluriel et international. [...] Il se veut aussi le miroir de la société française, le creuset de ses interrogations. [...] Le Forum du Futur s'oppose aux systèmes de pensée rigides, aux opinions extrêmes. Dans son enceinte, les idées et les expériences font l'objet d'une analyse critique, en privilégiant la pluralité plutôt que l'homogénéité des points de vue [...]"¹⁰

⁸ See [Request](#), Annex A.

⁹ See e.g., [Request](#), para. 9.

¹⁰ See e.g., [Request](#), para. 11.

3. In light of the Prosecution's case against Mr Al Hassan, and without agreeing with all aspects of the Defence's characterisation thereof,¹¹ the issues raised for the Plenary's consideration may pertain to aspects of the forthcoming confirmation proceedings against Mr Al Hassan, including as they relate to the Ansar Dine, its ideology and the broader circumstances of the conflict and related events.

4. The Prosecution respectfully requests the Plenary's careful and prompt consideration of the matter, also particularly in light of the Judge's observations, bearing in mind the overall requirement for fair and expeditious proceedings.



Fatou Bensouda, Prosecutor

Dated this 24th day of June 2019
At The Hague, the Netherlands

¹¹ See e.g., [Request](#), para. 24-29.