



**Original: English**

**No. ICC-01/12-01/18  
Date: 15 December 2022**

**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***

**Public**

**Decision on the Defence's urgent request for judicial review**

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

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Defence****States Representatives*****Amicus Curiae*****REGISTRY**

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**Registrar**

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Section****Other**

**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 and 67 of the Rome Statute (the ‘Statute’), Regulation 83 of the Regulations of the Court (the ‘Regulations’) and Regulations 133 and 135 of the Regulations of the Registry, issues the following ‘Decision on the Defence’s urgent request for judicial review’.

## **I. Procedural history**

1. On 2 December 2022, the Defence filed a request for the Chamber to review ‘the Registrar’s refusal to apply the fee formula set out in the 2013 Single Legal Aid Policy (the ‘LAP’) in a manner that is consistent with the formula itself and the principles of equivalence and equality of arms [...]’ (the ‘Request’).<sup>1</sup>
2. On 12 December, in line with the time limit set by the Single Judge,<sup>2</sup> the LRVs filed their response to the Request (the ‘Response’).<sup>3</sup> The LRVs subscribe to the arguments advanced by the Defence and underscore that the issue at stake pertains, not only to the rights of the accused, but also to the victims’ rights, as the LRVs are similarly affected by the alleged error committed by the Registrar.<sup>4</sup>
3. On the same date, the Registry filed its observations (the ‘Observations’).<sup>5</sup> The Registry observes, *inter alia*, that the Request is inadmissible and should be rejected *in limine* as it relates to a policy rather than ‘a concrete dispute regarding the calculation, payment of fees, or the reimbursement of expenses of a team member of the Al Hassan Defence’.<sup>6</sup> In this regard, the Registry observes that the Defence already receives the maximum remuneration per allocated team members as per the remuneration scales for defence and that it is not for the

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<sup>1</sup> Urgent Request for Judicial Review, ICC-01/12-01/18-2431-Conf (with five confidential annexes; a public redacted version was filed on the same date; a corrigendum was filed on 6 December 2022), para. 1.

<sup>2</sup> Email dated 5 December 2022 at 14:42.

<sup>3</sup> Réponse des Représentants légaux des victimes au document de la Défense «Urgent Request for Judicial Review» (ICC-01/12-01/18-2431-Conf), ICC-01/12-01/18-2437-Conf.

<sup>4</sup> Response, ICC-01/12-01/18-2437-Conf, paras 9-10.

<sup>5</sup> Registry’s Observations on “Urgent Request for Judicial Review” (ICC-01/12-01/18-2431), ICC-01/12-01/18-2439.

<sup>6</sup> Observations, ICC-01/12-01/18-2439, *inter alia*, paras 14, 22.

Registrar, but for the Assembly of States Parties, to change the current remuneration scheme.<sup>7</sup>

## II. Analysis

4. The Chamber observes that rather than seeking judicial review of a Registrar's decision regarding calculation, payment of fees or reimbursement of expenses as contemplated by Regulation 83(4) of the Regulations and Regulation 135(2) of Regulations of the Registry, the Request is, in essence, an expression of disagreement with the current policy in place governing the payment of Defence salaries.<sup>8</sup> It seeks not a review of the Registrar's interpretation or application of the LAP but rather a change of its terms. The Chamber finds 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.<sup>9</sup> The Chamber also considers that judicial proceedings before the Court should not be used 'as a platform to pursue financial and labour law related agendas, regardless of whether they are justified or not'.<sup>10</sup>
5. The Defence also alleges that the Request concerns the fair trial rights of the accused.<sup>11</sup> The Chamber considers that the Defence's submissions made in this regard, which relate to the preparation of the final briefs,<sup>12</sup> are unrelated to the Registrar's interpretation and application of the LAP. General arguments that 'the Defence lacks the ability to motivate qualified staff'<sup>13</sup> also fall well short of

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<sup>7</sup> Observations , ICC-01/12-01/18-2439, paras 15-17.

<sup>8</sup> See, for example, Request, ICC-01/12-01/18-2431, para. 50 ('[t]hese conditions are not met in the current case due to the fact that the LAP undermines rather than supports the goal of ensuring availability of qualified staff [...]').

<sup>9</sup> See Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on Bemba Defence Request regarding the Employment Conditions of Defence Staff, 17 July 2018, ICC-01/05-01/13-2301 (the '*Bemba et al.* Review Decision'), paras 4, 8.

<sup>10</sup> See Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Urgent Joint Defence Motion for an Adjournment and a Suspension of Deadlines, ICC-01/14-01/18-1684, para. 5.

<sup>11</sup> Request, ICC-01/12-01/18-2431, paras 47-48.

<sup>12</sup> Request, ICC-01/12-01/18-2431, para. 45.

<sup>13</sup> Request, ICC-01/12-01/18-2431, para. 45.

demonstrating a concrete effect on Mr Al Hassan's fair trial rights under Article 67 of the Statute.<sup>14</sup>

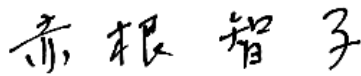
6. In light of the above, the Chamber rejects the Request.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY  
REJECTS** the Request.

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 Thursday, 15 December 2022

At The Hague, The Netherlands

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<sup>14</sup> Similarly see *Bemba et al.* Review Decision, ICC-01/05-01/13-2301, para. 7 rejecting Counsel's request in which she submitted, *inter alia*, that the application of the LAP affected Counsel's ability to retain motivated and qualified staff. See Request to Review the Registry's Decision to Neither Apply or Comply With Legal Service Agreements with the Defence Support Staff, 20 June 2018, ICC-01/05-01/13-2292, para. 45.