

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **5 July 2024**

TRIAL CHAMBER X

Before:

Judge Kimberly Prost

Judge Joanna Korner

Judge Keebong Paek

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF

THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG MAHMOUD

Public

Request for Clarification Following Re-composition of Trial Chamber X

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:

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1. The Defence for Mr Al Hassan Ag Abdoul Aziz introduces the current application for the purpose of seeking clarity as concerns its procedural right to be heard in relation to the implications of the recent re-composition of Trial Chamber X for the sentencing phase.
2. On 26 June 2024, Trial Chamber X, then composed of Judge Antoine Kesia-Mbe Mindua (Presiding), Judge Tomoko Akane, and Judge Kimberly Prost, issued the Article 74 judgment concerning Mr Al Hassan. Judge Mindua issued a separate and partly dissenting opinion, acquitting Mr Al Hassan of all charges; Judge Akane issued a separate and partly dissenting opinion, acquitting Mr Al Hassan of some charges; and Judge Prost issued a separate and partly dissenting opinion, convicting Mr Al Hassan of all charges. The Trial Judgment, together with the separate and dissenting opinions, represent a complex factual and legal analysis of the trial record undertaken by the Judges over the last twelve months.
3. Two days after the Article 74 verdict was delivered, an *ad hoc* composition of the Presidency issued a decision replacing Judge Mindua and Judge Akane with new judges.¹ The two newly appointed judges, Judge Joanna Korner and Judge Keebong Paek, had not been designated previously as ‘alternative judges’ for this case nor had any prior notice been provided to the parties about a potential change to the composition of the Chamber.
4. Since the decision on re-composition, the sentencing schedule established by the former Trial Chamber X has, despite Mr Al Hassan’s stated preference for a speedy sentencing hearing, been suspended for all but one deadline. The email decision suspending such

¹ [ICC-01/12-01/18-2596](#).

deadlines alluded to the need for the reconstituted bench to engage in consultations, including “to address issues related to other judicial commitments.”²

5. The Presidency’s decision was predicated on its interpretation that the sentencing phase is not part of the trial process and that the requirements of Article 74(1) therefore do not apply.³
6. Although there is no procedural vehicle for appealing a decision of the Presidency,⁴ the ICC Appeals Chamber has determined that the existence of a final decision by the Presidency or Bureau does not prevent the Defence from raising fair trial implications before the Chamber hearing the case.⁵ The ICTY has also found that even in the absence of an explicit rule, the interests of transparency and fairness militate in favour of hearing from the accused in relation to such a development.⁶
7. At first blush, the replacement of two-thirds of the Chamber during evidential proceedings based primarily on the trial record appears to raise issues that could impact the fair trial rights of the parties and participants. The Defence therefore respectfully requests the Trial Chamber to notify the parties and participants as to whether it intends to invite submissions

² Email, TCX Communications, “Single Judge decision on pending requests related to the sentencing procedure”, 3 July 2024, 11:46.

³ [ICC-01/12-01/18-2596](#), paras 4-5.

⁴ [ICC-01/04-01/07-3697](#) paras 14-17; [ICC-01/04-02/06-2666-Red](#), para. 85.

⁵ *Ntaganda*, Appeals Judgment, [ICC-01/04-02/06-2666-Red](#), 30 March 2021, para. 87.

⁶ *Šešelj*, IT-03-67-T, [Order Following Decision of the Panel to Disqualify Judge Frederik Harhoff](#), 3 September 2013, p. 2 (“[w]hile the present case is at a more advanced stage than that envisaged by Rules 15bis(C) and 15bis(D) of the Rules and cannot strictly speaking be described as part-heard, in the interests of fairness and transparency, the procedures applicable under Rules 15bis(C) and 15bis(D) of the Rules ought to be applied to it *mutatis mutandis*; CONSIDERING that Rule 15bis(C) of the Rules **provides for consultation with the Accused on the question of whether to rehear the case or continue the proceedings**, and that **the remaining Judges of the Chamber are best placed to proceed with such consultation, given their familiarity with the case and their long-standing relationship with the Accused**; FINDING that, in these circumstances, **it is appropriate to stay the assignment of another Judge to sit in the place of Judge Frederik Harhoff**, until such time as the remaining Judges of the Chamber have: (i) reported to me, following consultation with the Accused on the question of whether to rehear the case or continue the proceedings; and (ii) decided, in the event that the Accused withholds his consent to the continuation of proceedings, whether or not to nonetheless continue the proceedings with a substitute Judge” (emphasis added). See also *Šešelj*, IT-03-67-AR15bis, [Decision on Appeals against Continuation of Proceedings, 6 June 2014](#), para. 20.

in relation to the legal and procedural implications of the current composition of Trial Chamber X.

8. For these reasons, the Defence for Mr Al Hassan requests the Trial Chamber to:

NOTIFY the parties and participants whether it intends to invite submissions in relation to the legal and procedural implications of the current composition of Trial Chamber X as well as the timeframe for such submissions.



Melinda Taylor
Lead Counsel for Mr Al Hassan

Respectfully submitted this 5th day of July, 2024
At The Hague, The Netherlands