



Original: English

No. ICC-01/12-01/18

Date: 23 July 2024

TRIAL CHAMBER X

Before:

**Judge Kimberly Prost, Presiding Judge
Judge Tomoko Akane
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

Third decision on the sentencing procedure

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

The Office of the Prosecutor Karim A. A. Khan Nazhat Shameem Khan Mame Mandiaye Niang	Counsel for the Defence Melinda Taylor
Legal Representatives of Victims Seydou Doumbia Mayombo Kassongo Fidel Luvengika Nsita	Legal Representatives of Applicants
Unrepresented Victims	Unrepresented Applicants for Participation/Reparations
The Office of Public Counsel for Victims	The Office of Public Counsel for the Defence
States Representatives	<i>Amicus Curiae</i>

REGISTRY	
Registrar Osvaldo Zavala Giler	Counsel Support Section
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Victims Participation and Reparations Section	Other

TRIAL CHAMBER X (the ‘Chamber’) 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, 67, 76-78 of the Rome Statute (the ‘Statute’), Rules 143-145 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 35 and 37(1) of the Regulations of the Court (the ‘Regulations’), issues the following ‘Third decision on the sentencing procedure’.

I. Background

1. On 26 June 2024, the Chamber, in a prior composition, delivered its judgment pursuant to Article 74 of the Statute.¹ Separate and partially dissenting opinions of Judge Tomoko Akane and Judge Kimberly Prost were filed on the same day² and that of Judge Antoine Kesia-Mbe Mindua, on 28 June 2024.³
2. Also on 28 June 2024, the Chamber, still in a prior composition, filed a Decision on the sentencing procedure (the ‘First decision on the sentencing procedure’), setting a calendar for relevant requests, submissions, and hearings related to the rendering of the Chamber’s decision pursuant to Article 76 of the Statute (the ‘Sentencing decision’).⁴
3. On the same day, following the notification of the First decision on the sentencing procedure, the Presidency re-composed the Chamber by replacing Judge Tomoko Akane with Judge Joanna Korner, and Judge Antoine Kesia-Mbe Mindua with Judge Keebong Paek⁵ (the ‘Presidency decision’).

¹ Trial Judgment, ICC-01/12-01/18-2594-Conf and its public redacted version, ICC-01/12-01/18-2594-Red and its annexes (ICC-01/12-01/18-2594-Anx1, ICC-01/12-01/18-2594-Anx2, ICC-01/12-01/18-2594-Anx3).

² See respectively Separate and Partly Dissenting Opinion of Judge Tomoko Akane, ICC-01/12-01/18-2594-OPI, Separate and Partly Dissenting Opinion of Judge Kimberly Prost, ICC-01/12-01/18-2594-OPI2.

³ Opinion individuelle et partiellement dissidente du Juge Antoine Kesia-Mbe Mindua, ICC-01/12-01/18-2594-OPI3.

⁴ ICC-01/12-01/18-2595.

⁵ Decision Replacing Judges in Trial Chamber X, ICC-01/12-01/18-2596, and its annexes (ICC-01/12-01/18-2596-Anx1 and ICC-01/12-01/18-2596-Anx2). The Chamber notes that the ‘*ad-hoc* presidency’, consisting of Judge Rosario Salvatore Aitala, Judge Reine Alapini-Gansou and Judge Sergio Gerardo Ugalde Godínez, was constituted pursuant to Regulation 11(2) of the Regulations (as detailed in ICC-01/12-01/18-2596-Anx2), on the basis of a request of Judge Akane seeking excusal from her functions as a judge of Trial Chamber X (see ICC-01/12-01/18-2596, para. 2, ICC-01/12-01/18-2596-Anx1 and

4. On 1 July 2024, the Prosecution requested an extension of time limits in the First decision on the sentencing procedure, and in particular asked the Chamber to postpone the 17 July 2024 deadline for the filing of written submissions to September 2024 (the ‘Request’).⁶ It argued notably that such an extension was justified by the volume of material to be analysed.⁷
5. On 1 and 2 July 2024 respectively, the LRVs⁸ and the Defence⁹ submitted their responses to the Request.¹⁰ The LRVs agreed with the Prosecution.¹¹ The Defence responded that having consulted with Mr Al Hassan, it was unable to support the requested extension. However, it indicated that it was amenable to extensions of the timetable, in particular the 8 July 2024 deadline for submitting requests for additional evidence, subject to the then current date for rendering the sentencing decision being maintained at 28 August 2024.¹²
6. On 3 July 2024, the Single Judge issued an email decision on the pending requests related to sentencing in which she notably: i) suspended the 8 July 2024 deadline with respect to requests to submit non-oral evidence, indicating that a new deadline would be set in the coming days;¹³ and ii) deferred the Chamber’s determination on the remainder of the Request.¹⁴
7. On 5 July 2024, the Defence filed a ‘Request for Clarification Following Re-composition of Trial Chamber X’, mainly seeking guidance as to whether the

ICC-01/12-01/18-2596-Anx2). The Chamber further notes that in the decision ruling on the matter it was seised of, the *ad-hoc* presidency seised itself *proprio motu* of an additional and separate issue, namely to decide on the removal and replacement of another judge of Trial Chamber X, Judge Mindua (see ICC-01/12-01/18-2596, paras 7-11).

⁶ Email from the Prosecution to the Chamber, 1 July 2024, at 15:54.

⁷ Email from the Prosecution to the Chamber, 1 July 2024, at 15:54.

⁸ Email from the LRVs to the Chamber, 1 July 2024, at 18:01.

⁹ Email from the Defence to the Chamber, 2 July 2024, at 14:04.

¹⁰ See also Email from the Single Judge, 1 July 2024, at 17:57, in which the Single Judge set 2 July 2024 as the deadline for any response to this request.

¹¹ Email from the LRVs to the Chamber, 1 July 2024, at 18:01.

¹² Email from the Defence to the Chamber, 2 July 2024, at 14:04.

¹³ The Single Judge noted that the deadline for requests to call *viva voce* witnesses in paragraph 3(a) of First decision on the sentencing procedure remained unchanged and that any such request must be fully motivated and submitted by 8 July 2024.

¹⁴ Email from the Single Judge, 3 July 2024, at 11:46.

Chamber would invite submissions on the legal and procedural implications of the re-composition and if it would, within what time frame.¹⁵

8. On 8 July 2024, the Single Judge rendered an email decision inviting the parties and participants to make any submissions they wish to present on the issue of the re-composition of the Chamber by 15 July 2024.¹⁶ Also on 8 July 2024, the Defence confirmed that it did not intend to file any requests to present additional *viva voce* evidence.¹⁷
9. On 9 July 2024, the Single Judge issued the ‘Second decision on the sentencing procedure’,¹⁸ suspending the remaining deadlines in the First decision on the sentencing procedure and vacating the hearing days previously scheduled.
10. On 10 July 2024, the Presidency, seized of a request by Judge Akane to withdraw her previous request for excusal, issued a second decision on the composition of the Chamber, re-assigning Judge Akane to the Chamber in replacement of Judge Korner.¹⁹
11. On 15 July 2024, the Defence filed its observations on the issue of the re-composition of the Chamber (the ‘Defence Observations’).²⁰
12. On the same day, the LRVs filed their observations (the ‘LRVs Observations’).²¹
13. On the same day, the Prosecution indicated that it had no submissions to make on the issue of the re-composition of the Chamber, without prejudice to any response to the observations from the Defence.²²

¹⁵ ICC-01/12-01/18-2599.

¹⁶ Email from the Single Judge, 8 July 2024, at 11:23.

¹⁷ Email from the Defence to the Chamber, 8 July 2024, at 17:59.

¹⁸ ICC-01/12-01/18-2600.

¹⁹ ICC-01/12-01/18-2601.

²⁰ Defence Observations on the Current Composition of Trial Chamber X, ICC-01/12-01/18-2607.

²¹ Observations des Représentants légaux des victimes (ICC01/12-01/18-2599), ICC-01/12-01/18-2608.

²² Email from the Prosecution, 15 July 2024, at 15:52.

II. Analysis

14. In light of the subject matter at hand and its duty to ensure the fair and expeditious conduct of the sentencing procedure, the Chamber issues the following decision without waiting for a response from the Prosecution to the Defence Observations.
15. The Chamber observes that the Defence has raised extensive arguments concerning the compatibility of Judge Mindua's replacement with the Court's legal framework.²³ The Chamber, Judge Prost appending a separate opinion,²⁴ fully notes these concerns involving the Presidency decision of such replacement. In this regard, the Chamber will continue to assess any fairness of the proceedings and any impact on Mr Al Hassan's rights on an ongoing basis throughout the sentencing procedure, under its competency.
16. The Chamber further notes that it will similarly rule, as relevant, on remaining issues raised in the Defence Observations and LRVs Observations, related to the assessment of the evidence, in its final Sentencing decision.²⁵

A. Sentencing calendar

17. To ensure the efficiency of the proceedings, and as already indicated by the Single Judge,²⁶ the Chamber hereby sets a new calendar for the sentencing proceedings.
18. First, any request to present additional evidence, other than those relating to *viva voce* witnesses, shall be filed by **22 July 2024** and in accordance with the Chamber's previous instructions.²⁷ Responses to any such requests shall be filed by **25 July 2024**.

²³ Defence Observations, ICC-01/12-01/18-2607, paras 18-27. As noted above, the LRVs have also raised questions regarding fair trial guarantees (LRVs Observations, ICC-01/12-01/18-2608, paras 6, 11-12).

²⁴ See Separate Opinion of Judge Kimberly Prost appended to the present decision.

²⁵ See *e.g.* Defence Observations, ICC-01/12-01/18-2607, para. 53; LRVs Observations, ICC-01/12-01/18-2608, para. 8.

²⁶ Second decision on the sentencing procedure, para. 8. The parties and participants were informed via an email from the Single Judge on 17 July 2024, at 9:57, that the Chamber would set to 22 July 2024 and 25 July 2024, respectively, the deadlines for the submission of any request to submit non-oral evidence and relevant responses.

²⁷ See First decision on the sentencing procedure, ICC-01/12-01/18-2595, paras 3, 4; Decision on Defence request to dispense with certain certification requirements under Rule 68(2)(b)(ii) of the Rules, 18 July 2024, ICC-01/12-01/18-2610. On 17 July 2024, the Single Judge informed the parties and

19. The Chamber is not satisfied that good cause has been shown to postpone the deadline for the filing of written submissions until September 2024. The Request is therefore partially granted and the deadline for these written submissions is set to **26 August 2024**.
20. As previously indicated, responses to these submissions, as well as any reply to be authorised by the Chamber, will be made orally at the hearing which the Chamber schedules for **4 September 2024**. The Chamber notes that, since no request to call further witnesses for the purpose of sentencing were put forward by the parties and participants, one day of hearing will be sufficient.
21. The Chamber will subsequently retire to deliberate for its determination pursuant to Article 76 of the Statute. Given the recent re-composition of the Chamber, and the necessary adjustments made to the timetable, the Chamber will not be in a position to render such decision on 28 August 2024. The previous timeline set would have only been possible with three judges already familiar with the record of the case, Mr Al Hassan's culpability and other relevant circumstances. The Chamber is very aware of the impact delays in the delivery of the trial judgement and additional delays in the sentencing calendar resulting from two subsequent re-composition of the Chamber have on Mr Al Hassan, as well as on the victims. The Chamber however reassures the parties and participants that, while respecting the time necessary to ensure the integrity of the judicial process and conduct of meaningful deliberations, it will do its utmost to deliver its Sentencing decision at the earliest opportunity.²⁸

participants that the Chamber would set the deadlines for the submission of any request to submit non-oral evidence and relevant responses respectively to 22 July 2024 and 25 July 2024. See email from the Single Judge, 17 July 2024, at 09:57.

²⁸ In this respect the Chamber recalls that the Chambers Practice Manual recommends that decisions under Article 76 of the Statute be delivered within four months of the date of the decision on conviction (See Chambers Practice Manual, para. 90).

FOR THE ABOVE REASONS, THE CHAMBER HEREBY

PARTIALLY GRANTS the Request; and

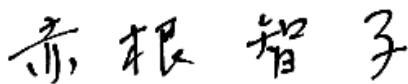
AMENDS the timetable for the sentencing procedure as detailed above.

Judge Prost appends a separate opinion to the present decision.

Done in both English and French, the English version being authoritative.



Judge Kimberly Prost
Presiding Judge



Judge Tomoko Akane



Judge Keebong Paek

Dated this Tuesday, 23 July 2024

At The Hague, The Netherlands