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TRIAL CHAMBER X

Before: Judge Kimberly Prost, Single Judge

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF

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

Public

**Public redacted version of Urgent Defence motion concerning insurance for
non-medical evacuation caused by acts of war**

**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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I. Introduction

1. The Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (the “Defence”) submits the present urgent motion to compel the Registry to provide adequate solutions to the issue of insurance or reimbursement for exceptional and unforeseen expenses incurred by Defence team members travelling in an official capacity. This includes expenses related to non-medical evacuation caused by acts of war, or other costs, which are not covered by policies available to private individuals.
2. As members of the *Al Hassan* Defence team are scheduled to travel to [REDACTED], the Defence is respectfully seeking the urgent intervention of the Single Judge.

II. Classification

3. In accordance with Regulation 23*bis*(1) of the Regulations of the Court (the “RoC”), this request is classified as confidential *ex parte*, available only to the Defence and to the Registry, as it contains sensitive information relating to ongoing Defence investigations.

III. Submissions

4. At the outset, the Defence notes that Regulation 83(4) of the Regulations of the Court gives jurisdiction to the Single Judge to rule on the present motion, even though it pertains to a purely administrative matter, namely, the Legal Aid scheme and its interpretation by the Registry. In any event, the issue at the core of this motion clearly impacts on defence preparation for trial, matters on which the Single Judge has inherent competence.
5. In [REDACTED], on the day of the scheduled departure of a Defence mission to [REDACTED], the Defence were informed that the Counsel Support Section (“CSS”) would not refund any costs that might occur during a defence mission, as a result of unforeseen medical or security incidents (including forced evacuation). The onus was instead on the Defence to obtain insurance for such matters.¹

¹ Annex A

6. The Defence has subsequently attempted to do so, but has yet to identify an insurance provider that will cover non-medical evacuation costs related to [REDACTED], or expenses caused by acts of war, and some forms of terrorism. The Defence has also liaised with other Defence teams, who have indicated that they were also unable to identify an insurance provider who would cover non-medical evacuation, or costs associated with countries in a state of armed conflict, for private individuals.
7. On [REDACTED], the Defence contacted CSS to ask for assistance in identifying insurance providers who would cover this particular form of assistance, but received no response.²
8. During a mission preparation meeting on [REDACTED], the Defence informed CSS that it had been unable to identify an insurance provider, and therefore requested clarification as to whether the Legal Aid scheme would cover any costs that might arise in case of evacuation for non-medical reasons. CSS informed the Defence that Legal Aid would not cover such costs, but rather, that Defence team members would be personally liable even though they are travelling on an official mission.
9. During the same meeting, the ICC [REDACTED] expressed their view that the UN would evacuate Defence team members as ICC officials on mission, but there had been indications in the past that the UN might charge the Court. Although there was no precision on this point, it did not seem that it could be excluded that the ICC, and the Defence, might be charged for flights and transport necessitated by an emergency security evacuation.
10. On [REDACTED], the Defence then sought a further review of this position before the Registrar, on an urgent basis, with a view to either³:
 - obtaining concrete information as concerns the availability of specific insurance providers that would agree to cover this situation (for private individuals); or
 - in the event that no such options can be identified, confirming that any uninsured expenses that might arise in the course of an official Defence mission would be reimbursed.

² Annex B

³ Annex C

11. The Defence did not receive a response. While the Defence appreciates the short time frame involved, it is nonetheless critical that this issue be resolved in advance of the pending missions.
12. The Defence is concerned that the unwillingness of insurance providers to offer an insurance plan for Defence team in case of evacuation for non-medical reasons, combined with the inability of the Registry to suggest adequate alternatives, places the Defence team members in an untenable situation: either they forego critical investigations that are necessary for the effective representation of their client, or they expose themselves to an unacceptable degree of risk to their personal lives, or personal liability for costs resulting from the avoidance of such risk.
13. Absent a currently available solution, and a suitable insurance provider covering Defence team members, the Defence submits that the Legal Aid scheme should cover the costs of any necessary evacuation for non-medical reasons. This would fall within the scope of Regulation 83(1), which specifies that “Legal Assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient Defence”.
14. Should the Registry fail to offer any reasonable solution to the lack of possibility of insurance for field missions [REDACTED], this would result in a practical incapacity for the Defence to conduct meaningful investigations in preparation for trial. The Court should not expect Defence team members to put their lives at risk without any safety net to simply do their work. No reasonable decision maker could conclude, in the absence of any workable options, that Defence team members acting in their official capacity while on Court-approved missions, are personally liable for expenses related to evacuation for non-medical reasons.

IV. Time limits and urgency of the present motion

15. If the Single Judge believes that a response from the Registry is required before she rules on the present motion, the Defence suggests that time limits for doing so should be considerably shortened.
16. In addition, the Defence respectfully requests the Single Judge to adopt immediate interim measures for the upcoming mission due to take place [REDACTED]. This

will ensure that fundamental rights are protected, pending the receipt of any observations by Registry, and a decision on a durable solution for future missions.

V. Conclusion

17. For these reasons, the Defence respectfully requests the Single Judge to direct the Registry to seek durable solutions regarding the issue of insurance for upcoming Defence missions; and to urgently confirm that pending such a solution, the costs of any expenses that cannot reasonably be insured in advance will be covered by the Legal Aid scheme. The Defence further requests that interim measures be immediately adopted pending receipt of any Registry observations.



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Dated this 31st Day of January 2019
At The Hague, The Netherlands