



Original: English

**No. ICC-01/12-01/18
Date: 14 February 2020**

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
with confidential, *ex parte* Annexes A and B, only available to the Defence and
Registry**

**Public redacted version of ‘Decision on Defence request for judicial review of the
Registrar’s decision concerning insurance’ dated 3 February 2020**

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

The Office of the Prosecutor

Counsel for the Defence

Melinda Taylor

Marie-Hélène Proulx

Sarah Bafadhel

Legal Representatives of Victims

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

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Kimberly Prost, acting as Single Judge on behalf of Trial Chamber X (the ‘Single Judge’ and the ‘Chamber’, respectively) 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(2), 64(6)(f) and 67 of the Rome Statute (the ‘Statute’) and Regulation 83 of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on Defence request for judicial review of the Registrar’s decision concerning insurance’.

1. On 31 January 2020, the Defence filed an urgent request seeking the Single Judge’s intervention on the issue of insurance for Defence team members while on mission (the ‘Request’).¹ The Defence reports that it (i) was told by the Counsel Support Section (the ‘CSS’) that the onus was on the Defence to obtain insurance for costs that might occur during a defence mission as a result of unforeseen medical or security incidents (including forced evacuation),² (ii) has subsequently been unable to identify an insurance provider who would cover non-medical evacuation costs related to [REDACTED],³ (iii) received no response from the CSS to a request for assistance in identifying relevant insurance providers,⁴ (iv) was further told by the CSS that legal aid would not cover such costs,⁵ and (v) was told by the Court [REDACTED] that the UN would evacuate Defence team members as Court officials on mission, but it could not be excluded that these costs may be passed on to the Court and Defence.⁶ The Defence indicates that it has sought review of this position by the Registrar on [REDACTED], as well as related clarifications.⁷ The Defence requests the Single Judge to ‘direct the Registry to seek durable solutions regarding the issue of insurance for upcoming Defence missions’ and, pending such a resolution, ‘to confirm that the costs of any expenses that cannot

¹ Urgent Defence motion concerning insurance for non-medical evacuation caused by acts of war, ICC-01/12-01/18-570-Conf-Exp (confidential, *ex parte*, available only to the Defence and Registry; confidential, *ex parte* annexes A, B and C available only to the Defence and Registry).

² Request, ICC-01/12-01/18-570-Conf-Exp, para. 5.

³ Request, ICC-01/12-01/18-570-Conf-Exp, para. 6.

⁴ Request, ICC-01/12-01/18-570-Conf-Exp, para. 7.

⁵ Request, ICC-01/12-01/18-570-Conf-Exp, para. 8.

⁶ Request, ICC-01/12-01/18-570-Conf-Exp, para. 9.

⁷ Request, ICC-01/12-01/18-570-Conf-Exp, paras 10-11; Annex C to the Request, ICC-01/12-01/18-570-Conf-Exp-AnxC.

reasonably be insured in advance will be covered by the Legal Aid scheme’.⁸ The Defence notes that it has a mission due to take place [REDACTED], and requests that ‘interim measures be immediately adopted pending receipt of any Registry observations’.⁹

2. On the evening of 31 January 2020, a representative of the Division of Judicial Services of the Registry wrote to the Defence by email in relation to the Request (the ‘Registry Email’).¹⁰ The Registry notes that the Request was filed prior to the Registry having a chance to respond to the queries raised on [REDACTED]. The Registry further notes, *inter alia*, that the ‘Court continues to offer its assistance to look for contact details of possible insurance companies that may cover the costs of evacuation for medical or security reasons’. It confirms that the Defence ‘may benefit from [REDACTED] during [its] mission to [REDACTED] and under the conditions required by [REDACTED]’ and that the Registry is ‘doing its utmost’ to finalise [REDACTED], to cover the issue of evacuation for medical reasons, and is looking for further re-assurance [REDACTED] that evacuation for security reasons will also be covered. The Registry notes that the ‘[REDACTED] will be finalised before [Defence] departure so that [REDACTED] will be able to facilitate [its] mission [REDACTED]’. The Registry also notes, in relation to an interpreter who would accompany the Defence on mission, that this person was under Defence responsibility, should be insured, and would benefit from the aforementioned [REDACTED] assistance.
3. On 2 February 2020, the Defence provided further observations by email (the ‘Defence Email’),¹¹ stating that, in its view, and although it appreciates the Registry’s ongoing efforts and the information provided, no concrete and sufficient solution had been communicated. The Defence notes, *inter alia*, that the Registry Email is silent on the issue of the passing on of costs of

⁸ Request, ICC-01/12-01/18-570-Conf-Exp, para. 17.

⁹ Request, ICC-01/12-01/18-570-Conf-Exp, para. 16.

¹⁰ Email from Registry to Defence, 31 January 2020, at 18:44. This email is annexed to the present Decision at Annex A.

¹¹ Email from Defence to Chamber, 2 February 2020, at 11:00. This email is annexed to the present Decision at Annex B.

[REDACTED] assistance to the Court and Defence. The Defence also objects to the Registry's position that the Defence is responsible for the protection and insurance of the interpreter. The Defence maintains 'its request for a solution that it will allow it to investigate the case, under the same conditions as the Prosecution, and in a manner, which is consistent with the protection rights that underpin the Statute'.

4. At the outset, the Single Judge notes that Regulation 83(4) of the Regulations states that 'decisions by the Registrar on the scope of legal assistance [...] may be reviewed by the relevant Chamber on application by the person receiving legal assistance'. The Chamber's role in this regard is limited to reviewing decisions by the Registrar and, as such, the Single Judge emphasises that the Chamber's intervention pursuant to Regulation 83(4) is clearly meant to take place *after* any relevant decision by the Registrar.¹²
5. The Single Judge observes that although the underlying problem with insurances appears to have been first identified in [REDACTED], with further related email exchanges dated [REDACTED], it appears that the Defence only clearly seised the Registry of the issue on [REDACTED]. The Request was then filed with the Chamber on 31 January, before the Registry had a chance to respond to the Defence's [REDACTED] correspondence.
6. The Registry Email reveals that there are ongoing efforts to resolve this issue. This includes the process of [REDACTED], which the Registry states will be finalised before the Defence departure for the [REDACTED] mission. There is also the question raised by the Defence of [REDACTED].
7. While conscious of the difficulties faced by the Defence, noting that there appears to be ongoing efforts to resolve these matters, and notwithstanding the fact that the Defence has a mission planned [REDACTED], the Single Judge is of the view that it would be premature for the Chamber to intervene at this stage. Indeed, since the Registrar has not rendered a decision on the Request,

¹² See e.g. Pre-Trial Chamber III, *The Prosecutor v Laurent Gbagbo*, [Decision on "Requête de la Défense sur le champ de l'aide judiciaire"](#), 27 January 2012, ICC-02/11-01/11-32-tENG, paras 13-15.

the Single Judge is of the view that it is not within the Chamber's competence pursuant to Regulation 83(4) of the Regulations to rule on the merits of the contested issues. In the circumstances, the Single Judge does not find it appropriate for the Chamber to substitute its own decision for one still to be made by the Registrar.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

DECLARES the Request inadmissible.

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

A handwritten signature in black ink, appearing to read 'K. Prost', is written over a horizontal line.

Judge Kimberly Prost

Single Judge

Dated this Monday, 3 February 2020

At The Hague, The Netherlands