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No. ICC-01/12-01/18

Date: 14 August 2020

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 Defence request for leave to appeal the ‘Decision on the Self-
contained set of charges’**

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

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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

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
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*, issues this ‘Decision on Defence request for leave to appeal the “Decision on the Self-contained set of charges”’.

I. Procedural history and submissions

1. On 30 September 2019, Pre-Trial Chamber I (hereinafter: ‘PTC I’ or the ‘Pre-Trial Chamber’) confirmed charges against Mr Al Hassan of crimes against humanity and war crimes, allegedly committed in Timbuktu, Mali (the ‘Confirmation Decision’).¹ On 23 April 2020, PTC I subsequently granted the Prosecution request to amend the charges (the ‘Amending Decision’)² (together, the ‘Charging Documents’).
2. On 6 May 2020, the Chamber issued its ‘Decision on the conduct of proceedings’.³ In Annex A to its decision, the Chamber set out the directions on the conduct of proceedings.⁴ The Chamber also issued a self-contained set of charges (Annex B containing the English version and Annex C containing the French version, both to be referred as the ‘Self-contained set of charges’).⁵
3. On 28 May 2020, the Chamber issued a decision on the Defence request⁶ for leave to appeal the Decision on the conduct of proceedings, in which it invited the parties and participants to make submissions on the corrections contained in

¹ Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-461-Conf (a corrected version of the decision was filed on 8 November 2019, ICC-01/12-01/18-461-Conf-Corr; a public redacted version of the decision was filed on 13 November 2019, ICC-01/12-01/18-461-Corr-Red).

² Décision portant modification des charges confirmées le 30 septembre 2019 à l’encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 23 April 2020, ICC-01/12-01/18-767-Conf (a corrected version of the decision was filed on 1 May 2020, ICC-01/12-01/18-767-Conf-Corr; a public redacted version of the decision was filed on 11 May 2020, ICC-01/12-01/18-767-Corr-Red). A complete list of the confirmed charges was annexed to the Decision, ICC-01/12-01/18-767-Conf-Anx.

³ Decision on the conduct of proceedings, ICC-01/12-01/18-789, with Annex A and confidential Annexes B and C.

⁴ Directions on the conduct of proceedings, ICC-01/12-01/18-789-AnxA.

⁵ ICC-01/12-01/18-789-Conf-AnxB and ICC-01/12-01/18-789-Conf-AnxC.

⁶ Defence request for leave to appeal Trial Chamber X’s “Decision on the conduct of proceedings” (ICC-01/12-01/18-789), 12 May 2020, ICC-01/12-01/18-804-Conf. A public redacted version was filed on 13 May 2020, ICC-01/12-01/18-804-Red.

the Self-contained set of charges, as well as to identify any other issue of concern with respect to the formulation of the charges within that document, notably any concerns that this document does not reflect fully the findings of PTC I.⁷

4. On 2 July 2020, on the basis of the submissions from the parties and participants,⁸ the Chamber issued its ‘Decision on the Self-contained set of charges’, in which it decided to amend the Self-contained set of charges (the ‘Impugned Decision’).⁹
5. On 8 July 2020, the Defence filed a request for leave to appeal the Impugned Decision (the ‘Defence Request’).¹⁰ Specifically, the Defence requests leave to appeal on the following issue: whether the declaration by the Chamber that ‘[f]or the purposes of the trial proceedings, any issues related to the charges have been exhaustively addressed and no further action by the Chamber is merited or required’ accords with the rules and jurisprudence of the Court (the ‘Issue’).¹¹
6. The Defence submits that this statement, when read strictly, suggests that the Chamber will decline to address any other issues relating to the charges during the course of the proceedings or when delivering its verdict, contrary to the requirements of Rule 134(3) of the Rules of Procedure and Evidence and Article 74 of the Statute.¹² The Defence further submits that the Issue arises from the Impugned Decision and is appealable because Mr Al Hassan, as a defendant, is entitled to have the Chamber dismiss any charges which, after hearing the

⁷ Decision on Defence request for leave to appeal the ‘Decision on the conduct of proceedings’, ICC-01/12-01/18-831, paras 19-20.

⁸ Observations en application de la Décision du 28 mai 2020 (ICC-01/12-01/18-831), 11 June 2020, ICC-01/12-01/18-872-Conf; Observations de l’Accusation sur les chefs d’accusation autonomes (“self-contained set of charges”) conformément aux paragraphes 19 et 20 de la décision ICC-01/12-01/18-831 de la Chambre, 12 June 2020, ICC-01/12-01/18-881; Defence observations on the form of the charges, 12 June 2020, ICC-01/12-01/18-882-Conf; Réponse aux observations de la Défense ICC-01/12-01/18-882-Conf, 25 June 2020, ICC-01/12-01/18-903-Conf; Prosecution Response to “Defence Observations on the form of the charges” (ICC-01/12-01/18-882-Conf), 25 June 2020, ICC-01/12-01/18-904-Conf.

⁹ Decision on the Self-contained set of charges, ICC-01/12-01/18-923-Conf, with confidential Annexes A and B.

¹⁰ Defence request for leave to appeal Trial Chamber X’s “Decision on the Self-contained set of charges” – ICC-01/12-01/18-923-Conf, ICC-01/12-01/18-939-Conf.

¹¹ Defence Request, ICC-01/12-01/18-939-Conf, para. 1.

¹² Defence Request, ICC-01/12-01/18-939-Conf, para. 2.

evidence, it considers too vague a pleading, was not supported by evidence, did not sufficiently particularise Mr Al Hassan's criminal responsibility and/or the common plan or did not constitute a crime.¹³ The Defence adds that the Issue will impact upon the fair and expeditious conduct of the proceedings and the outcome of the trial because Mr Al Hassan's right to a fair hearing includes a right not to be convicted on the basis of vague or otherwise inappropriate charges.¹⁴ Finally, the Defence argues that immediate resolution by the Appeals Chamber is required because, if the Chamber does not unfetter this power, the Issue will be unnecessarily deferred until the appeals stage, whereas an appellate decision would clarify the ability of the Chamber to make rulings based on the charges, and will prevent delay to the trial or prejudice to the parties and participants.¹⁵

7. On 14 July 2020, the Office of the Prosecutor (the 'Prosecution') filed its response, opposing the Defence Request (the 'Prosecution Response').¹⁶ The Prosecution argues that the Defence Request does not raise any appealable issue and instead amounts to a mere disagreement with the Impugned Decision.¹⁷ Further, it argues that the Issue does not meet the cumulative requirements of Article 82(1)(d) of the Statute, particularly as it has already been addressed by the Appeals Chamber.¹⁸

II. Analysis

8. The Chamber incorporates by reference the applicable legal framework for granting leave to appeal pursuant to Article 82(1)(d) of the Statute, as set out in previous decisions.¹⁹ The Chamber will accordingly examine whether the

¹³ Defence Request, ICC-01/12-01/18-939-Conf, para. 7.

¹⁴ Defence Request, ICC-01/12-01/18-939-Conf, para. 10.

¹⁵ Defence Request, ICC-01/12-01/18-939-Conf, para. 24.

¹⁶ Prosecution response to Defence request for leave to appeal Trial Chamber X's "Decision on the Self-contained set of charges" (ICC-01/12-01/18-923-Conf), ICC-01/12-01/18-955-Conf.

¹⁷ Prosecution Response, ICC-01/12-01/18-955-Conf, paras 2, 6-10.

¹⁸ Prosecution Response, ICC-01/12-01/18-955-Conf, paras 2, 11-19.

¹⁹ Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and familiarisation', 9 April 2020, ICC-01/12-01/18-734; Decision on Defence request for leave to appeal the Single Judge's 'Decision on Defence motion seeking disclosure of Prosecution's correspondence with national authorities', 8 May 2020, ICC-01/12-01/18-795-Conf; Decision on Defence request for leave to appeal the 'Decision on the conduct of proceedings', 28 May 2020, ICC-01/12-01/18-831.

Defence has met the requirements under Article 82(1)(d) of the Statute in relation to the Issue identified above.

9. The Chamber recalls that in providing an opportunity to the parties and participants to make submissions in relation to the Self-contained set of charges, it specifically restricted the scope of any potential submissions to the corrections contained in the Self-contained set of charges, as well as to any issue of concern with respect to the formulation of the charges within that document.²⁰ In the Impugned Decision, the Chamber then found that part of the Defence submissions had gone beyond the scope of observations requested, by raising several arguments on alleged defects and issues with notice in the Confirmation Decision, and appeared to have misconstrued the purpose of the Self-contained set of charges.²¹ The Chamber therefore noted that the Self-contained set of charges ‘was not intended to provide notice of the charges or to address alleged deficiencies in the Charging Documents in terms of notice or clarity’²² and dismissed any Defence arguments relating to deficiencies in the Confirmation Decision that were made in that context.²³
10. Moreover, directly preceding the finding in issue, the Chamber stated as follows:

‘What the Defence seeks at this stage primarily is to re-litigate the sufficiency of the Confirmation Decision before the Chamber, which is legally impermissible. Issues with respect to that decision fall solely within the purview of PTC I, which has taken its decision after full arguments by the parties. Requests for leave to appeal the Confirmation Decision and the Amending Decision were denied by PTC I, matters also solely within its mandate. For the purposes of the trial proceedings, any issues related to the charges have been exhaustively addressed and no further action by the Chamber is merited or required.’²⁴

²⁰ Decision on Defence request for leave to appeal the ‘Decision on the conduct of proceedings’, ICC-01/12-01/18-831, paras 19-20.

²¹ Impugned Decision, ICC-01/12-01/18-923-Conf, paras 88, 90.

²² Impugned Decision, ICC-01/12-01/18-923-Conf, para. 90.

²³ Impugned Decision, ICC-01/12-01/18-923-Conf, para. 91.

²⁴ Impugned Decision, ICC-01/12-01/18-923-Conf, para. 93.

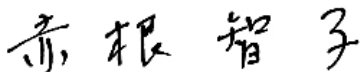
11. The Chamber finds that, by extracting the specific finding at issue from the Impugned Decision and detaching it from its proper context, the Defence misconstrues it. Read in context, there is no ambiguity to the finding for which the Defence seeks clarification or leave to appeal. It relates to the framing of the Self-contained set of charges for which submissions were fully considered and adjudicated upon. Evidently, the entire trial will ultimately focus on the evidence with respect to these charges as will the ultimate verdict and reasoned judgment. As such, the Chamber considers that no interpretation is required and the Issue as identified is not an appealable issue.
12. Accordingly, the Issue does not meet the requirements of Article 82(1)(d) of the Statute.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY
REJECTS** the Defence 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 Friday, 14 August 2020
At The Hague, The Netherlands