

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/12-01/18
Date: 7 October 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**

Confidential

**Decision on the request from the Legal Representatives of Victims for additional
resources**

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

The Office of the Prosecutor

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Legal Representatives of Victims

Seydou Doumbia
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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

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Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

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 the present decision.

I. Procedural history and submissions

1. On 20 March 2019, the Single Judge of Pre-Trial Chamber I (hereinafter: 'PTC I') issued a decision regarding *inter alia* the appointment of the legal representatives of victims (the 'LRVs') and the funding of the legal representation of victims, including the investigation they would conduct, one post of field assistant in Mali, and, from the start of the confirmation of charges hearing, one case manager.¹
2. On 28 February and 9 April 2020, the LRVs requested from the Registry Counsel Support Section (the 'CSS') additional resources under Regulation 83 of the Regulations of the Court (the 'Regulations') in the form of « *un assistant juridique qui pourra à la fois faire le travail juridique préalable au dépôt des formulaires de demande de participation et procéder aux démarches nécessaires notamment auprès des intermédiaires* ». ² The LRVs argued *inter alia* that « *en l'absence de la ressource sollicitée, il est actuellement impossible aux Représentants légaux de faire face à la quantité de travail que représentent: [...] La préparation du procès [...]* », ³ and noted that the assigned budget, although not fully used for investigations and the field assistant in Mali, could not be relocated.⁴
3. On 5 May 2020, the CSS rejected the LRVs' request on the ground that « *l'incertitude de l'ouverture du procès dans les circonstances actuelles ne justifie pas d'augmentation des ressources allouées conformément au système*

¹ [Decision on Principles Applicable to Victims' Applications for Participation, to Legal Representation of Victims, and to the Manner of Victim Participation in the Proceedings](#), ICC-01/12-01/18-289-Red-tENG-Corr (English translation notified on 17 June 2019), paras 32, 40.

² Annex 1 to the Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf-Anx1, p. 4.

³ Annex 2 to the Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf-Anx2, pp. 2-3.

⁴ Annex 1 to the Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf-Anx1, p. 4.

d'aide judiciaire sur la base d'une augmentation de travail », arguing that the suspension of missions to the field allowed the LRVs to focus their resources on the tasks referred to in their request.⁵

4. On 5 May 2020, the LRVs submitted a request for reconsideration of the CSS' rejection of their request for additional resources, arguing that the date for the start of the trial was not suspended and that the tasks identified in the LRVs' request had to be carried out before then.⁶
5. On 22 June 2020, the CSS reconsidered and partially granted the LRVs' request to the extent that « *la position d'un gestionnaire de dossier à 75% a été approuvée pour une période de six mois* » (the 'Decision').⁷ The CSS explained that the Decision had been taken in consideration of the amount of pages added to the case file and the nature of the tasks that have to be accomplished by the LRVs.⁸
6. On 23 July 2020, the LRVs submitted to the Chamber a request for review of the Decision in order to obtain the requested additional resources, namely a full-time legal assistant position (the 'LRVs Request').⁹ The LRVs submit that the Registrar's decision to grant them the additional resources for the appointment of another case manager at 75% does not respond to their request and needs,¹⁰ taking into account in particular the scope of the ongoing proceedings and the number of currently and potentially participating victims.¹¹ Moreover, the LRVs argue that the Decision does not elaborate on the reasons for not granting their

⁵ Annex 3 to the Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf-Anx3, p. 4.

⁶ Annex 3 to the Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf-Anx3, p. 3.

⁷ Annex 3 to the Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf-Anx3, p. 2.

⁸ Annex 3 to the Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf-Anx3, p. 2.

⁹ Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles, ICC-01/12-01/18-973-Conf.

¹⁰ LRVs Request, ICC-01/12-01/18-973-Conf, paras 10-13.

¹¹ LRVs Request, ICC-01/12-01/18-973-Conf, paras 17-28.

request for additional resources,¹² and that the Registry is not flexible enough regarding the reallocation of funds.¹³

7. On 1 September 2020, pursuant to instructions from the Single Judge,¹⁴ the Registry submitted observations on the LRVs Request (the ‘Registry Observations’).¹⁵ The Registry observes that it does not contest the LRVs’ need for additional resources and submits that approving a position of a case manager at 75% instead of a legal assistant at 100% is in line with the principles of necessity, economy and objectivity.¹⁶ The Registry submits that the LRVs’ previous request for the additional support of a case manager was considered,¹⁷ and that the majority of the tasks proposed by the LRVs for the requested legal assistant form part either of the core responsibilities of the LRVs themselves or fall into the responsibility of a case manager or a field assistant.¹⁸ Moreover, the Registry submits that objective reasons for approving a position of a case manager at 75% instead of a legal assistant at 100% were outlined in the Decision,¹⁹ and that the number of pages added to the case file does not make the requested resource necessary at this stage.²⁰ Finally, the Registry submits that the lack of an appointment of a field assistant by the LRVs and the fact that one of the LRVs has taken over the tasks of the field assistant cannot be invoked to justify a request for resources for a legal assistant who, once appointed, would perform the tasks that are to be performed by field assistants.²¹ In this regard, the Registry submits that the field budget cannot be used for the appointment of additional staff to the core team of the LRVs based in The Hague.²²

¹² LRVs Request, ICC-01/12-01/18-973-Conf, paras 14-16.

¹³ LRVs Request, ICC-01/12-01/18-973-Conf, paras 29-32.

¹⁴ Email from the Chamber to the parties and participants, 3 August 2020 at 8:58.

¹⁵ Registrar’s observations on “Demande de réexamen des Représentants légaux de la décision du Greffe relative à la demande de ressources additionnelles” (ICC-01/12-01/18-973-Conf, 23 July 2020), ICC-01/12-01/18-1028-Conf.

¹⁶ Registry Observations, ICC-01/12-01/18-1028-Conf, paras 38-39.

¹⁷ Registry Observations, ICC-01/12-01/18-1028-Conf, para. 22.

¹⁸ Registry Observations, ICC-01/12-01/18-1028-Conf, paras 24-29.

¹⁹ Registry Observations, ICC-01/12-01/18-1028-Conf, para. 23.

²⁰ Registry Observations, ICC-01/12-01/18-1028-Conf, paras 30-31.

²¹ Registry Observations, ICC-01/12-01/18-1028-Conf, paras 32-33.

²² Registry Observations, ICC-01/12-01/18-1028-Conf, paras 34-37.

8. On 7 September 2020, the Single Judge dismissed a request for leave to reply filed by the LRVs.²³

II. Analysis

9. The Chamber refers to Regulations 83 and 85 of the Regulations, as well as Regulations 113, 130, 133 and 135 of the Regulations of the Registry (the 'Registry Regulations').
10. According to Regulation 83(4) of the Regulations, decisions taken by the Registrar on the scope of legal assistance paid by the Court 'may be reviewed by the relevant Chamber on application by the person receiving legal assistance'. Further details on the procedures for review are provided in Regulation 135(1) of the Registry Regulations which stipulates that '[t]he Registrar shall take a decision on any dispute concerning the calculation and payment of fees or the reimbursement of expenses at the earliest possible juncture and notify counsel accordingly'. Paragraph 2 of said Regulation also provides that counsel may request the Chamber to review any decision taken under Regulation 135(1) '[w]ithin 15 calendar days of notification'. Thus, the wording makes it clear that the 15-day time limit applies from the date of notifying the LRVs of the Decision.²⁴
11. The Decision issued and notified by the CSS on 22 June 2020 qualifies as the decision on dispute within the meaning of Regulation 135(2) of the Registry Regulations.
12. The LRVs Request was filed on 23 July 2020, thus 32 calendar days following the notification of the Decision to the LRVs and therefore out of time.
13. The Chamber could therefore dismiss *in limine* the LRVs Request on this ground. However, in this particular instance, the Chamber considers it appropriate to address the LRVs Request.

²³ Email from the Chamber to the parties and participants, 7 September 2020 at 16:48.

²⁴ *The Prosecutor v. Callixte Mbarushimana*, [Decision on the 'Requête en contestation de deux décisions de la Section à l'appui des conseils relatives à l'aide judiciaire'](#), 3 September 2012, ICC-01/04-01/10-517, para. 9.

14. In this regard, the Chamber refers to Trial Chamber II's findings in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* on the applicable standard of review, which were that '[i]n reviewing such decisions [of the Registrar on the administration of the legal aid budget], the Chamber must not consider whether it would have made the same decision as the Registrar',²⁵ and, specifically, that:

Instead, the Chamber must assess (a) whether the Registrar has abused her discretion; (b) whether the Registrar's decision is affected by a material error of law or fact; and (c) whether the Registrar's decision is manifestly unreasonable. The Chamber will only intervene if counsel can show that the Registrar's decision falls foul of one or more of these criteria.²⁶

15. Applying each of these criteria, the Chamber declines to interfere with the Registrar's discretion in taking the Decision.
16. Contrary to the arguments put forward by the LRVs, the Registrar did not abuse his discretion when adopting the Decision. Instead, the Registrar considered the arguments put forward in the LRVs Request and applied the criteria contained in the Registry's single policy document on the Court's legal aid system (the 'LAP').²⁷
17. In particular, the Chamber agrees with the Registrar that the number of pages added to the case file at the time of the Decision did not reach the threshold envisaged in the LAP to recruit additional team members.²⁸ Moreover, the Registrar rightly pointed out that the majority of the tasks proposed by the LRVs for the requested legal assistant, namely to draft submissions, prepare for the proceedings and communicate with the victims, fall into the responsibility of the LRVs themselves, a case manager or a field assistant.²⁹
18. Furthermore, the LRVs do not point out any error in the Decision, but argue instead that the Registrar is not flexible enough regarding the reallocation of

²⁵ *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the Urgent Requests by the Legal Representative of Victims for Review of Registrar's Decision of 3 April 2012 regarding Legal Aid](#), 23 April 2012, ICC-01/04-01/07-3277, para. 9.

²⁶ ICC-01/04-01/07-3277, para. 9.

²⁷ [Registry's single policy document on the Court's legal aid system](#), 4 June 2013, ICC-ASP/12/3.

²⁸ Registry Observations, ICC-01/12-01/18-1028-Conf, para. 31.

²⁹ Registry Observations, ICC-01/12-01/18-1028-Conf, paras 27-29.

funds allocated but not used by the LRVs for the position of field assistant.³⁰ In this regard, the Chamber agrees with the Registrar that the fact that one of the LRVs has taken over the tasks of the field assistant cannot be invoked to justify a request for resources for a legal assistant because the field budget cannot be used for the appointment of additional staff based in The Hague.³¹

19. Finally, the LRVs' argument that the Decision is manifestly unreasonable must also be dismissed. The Chamber finds that, although the Registrar could have elaborated more extensively on his reasoning, the Decision sufficiently identifies the reasons for approving a position of a case manager at 75% instead of the requested legal assistant at 100%, namely the tasks to be accomplished, the number of pages added to the case file by other participants and the envisaged date of start of the trial.
20. As noted above, the task of Chamber in the current circumstances is not to consider whether it would have made the same decision as the Registrar. In light of the above, the Chamber declines to intervene with respect to this Decision of the Registrar. The Chamber nonetheless encourages the LRVs, if and when they consider that additional resources are necessary, to make a request to the Registrar.

³⁰ LRVs Request, ICC-01/12-01/18-973-Conf, paras 29-32.

³¹ Registry Observations, ICC-01/12-01/18-1028-Conf, para. 37.

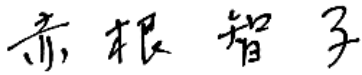
FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the LRVs 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 Wednesday, 7 October 2020

At The Hague, The Netherlands