



Original: English

No. ICC-01/12-01/18

Date: 11 February 2022

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

Decision on Associate Counsel's request to withdraw

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

The Office of the Prosecutor

Karim A. A. Khan
James Stewart

Counsel for the Defence

Melinda Taylor
Kirsty Sutherland

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

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 of Trial Chamber X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Article 64 (2) of the Rome Statute (‘Statute’) and Regulation 78(1) of the Regulations of the Court (the ‘Regulations’), issues the following ‘Decision on Associate Counsel’s request to withdraw’.

1. On 2 October 2020, the Chamber was notified of Ms Kirsty Sutherland’s appointment as associate counsel for Mr Al Hassan.¹
2. On 4 February 2022, Ms Sutherland filed a request, seeking the Chamber’s authorisation under Regulation 78(1) of the Regulations to withdraw from the position of associate counsel with immediate effect (the ‘Request’).²
3. The Single Judge recalls that Ms Sutherland is the fifth associate counsel to withdraw from the case since March 2020.³ On the last occasion – the request from Ms Nicoletta Montefusco to withdraw from the position of associate counsel – the Chamber was sufficiently concerned about this pattern of withdrawals such that it directed the Registrar to appoint an independent counsel to engage with Mr Al Hassan.⁴ This was done with a view to establishing whether he wished to raise any issue related to his legal representation.⁵
4. In light of this background, the Single Judge is troubled by yet another withdrawal by associate counsel in this case. In addition, the Single Judge notes that the Chamber has yet to receive notification of the appointment of a new alternative associate counsel to replace Ms Sutherland.

¹ Notification of the Appointment of Ms Kirsty Sutherland as Associate Counsel for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-1087.

² Request to Withdraw, ICC-01/12-01/18-2104.

³ See Decision on Associate Counsel’s Request to Withdraw, 6 March 2020, ICC-01/12-01/18-637; Decision on Associate Counsel’s Request to Withdraw, 5 June 2020, ICC-01/12-01/18-860; Decision on Ms Marie-Hélène Proulx’s request for withdrawal, 2 July 2020, ICC-01/12-01/18-920; Decision on Associate Counsel’s request for withdrawal, 22 September 2020, ICC-01/12-01/18-1065-Conf (a public redacted version of the decision was filed on the same date, ICC-01/12-01/18-1065-Red).

⁴ Decision on Associate Counsel’s request for withdrawal, 22 September 2020, ICC-01/12-01/18-1065-Red, para. 12.

⁵ Decision on Associate Counsel’s request for withdrawal, 22 September 2020, ICC-01/12-01/18-1065-Red, para. 12.

5. However, the Single Judge notes that according to the filing, the Request was made with the consent of the Lead Counsel and Mr Al Hassan, taking into account the continuing appointment of other associate counsel on the record, the juncture presented by the conclusion of the Prosecution case, and the opportunity to afford incoming counsel time to prepare for the upcoming Defence case.⁶
6. Therefore, having considered the present stage of the proceedings, particularly the forthcoming conclusion of the Prosecution's presentation of evidence, as well as the fact that the Lead Counsel continues to represent the accused and has confirmed that Ms Sutherland's withdrawal will not impact Defence preparations or existing deadlines in an adverse manner,⁷ the Single Judge considers that no undue prejudice would arise by granting the Request.
7. As acknowledged in the Request,⁸ the Single Judge reminds Ms Sutherland that she remains bound by her obligations under Articles 8, 15 and 17-18 of the Code of Professional Conduct for Counsel as well as any provisions of the Statute and the Rules of Procedure and Evidence relating to confidentiality.

⁶ Request, ICC-01/12-01/18-2104, para. 2.

⁷ Request, ICC-01/12-01/18-2104, para. 2.

⁸ Request, ICC-01/12-01/18-2104, para. 3.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request.

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

A handwritten signature in grey ink, appearing to read 'K. Prost', is positioned above a horizontal line.

Judge Kimberly Prost
Single Judge

Dated this Friday, 11 February 2022

At The Hague, The Netherlands