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No.: ICC-01/12-01/18

Date: 30 December 2024

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Miatta Maria Samba
Judge Erdenebalsuren Damdin

SITUATION IN THE REPUBLIC OF MALI

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

Public Document

with Annex A (confidential *Ex Parte*, only available to the Legal Representatives of Victims, and a public redacted version) and Annex B (confidential *Ex Parte*, only available to the Legal Representatives of Victims, and a public redacted version)

Observations of the Legal Representatives of Victims on the Discontinuance of the Appeals

Source: Legal Representatives of Victims

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. BACKGROUND AND PROCEDURAL HISTORY

1. On 26 June 2024, Trial Chamber X ("Trial Chamber") convicted Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ("Mr Al Hassan"), by majority, of eight counts of crimes against humanity and war crimes,¹ namely:
 - the crime against humanity of torture and the war crimes of torture and outrages upon personal dignity, for directly committing the crimes himself, contributing to them with other persons or aiding and abetting their commission by other persons;
 - the crimes against humanity of other inhumane acts and persecution on religious grounds, the war crime of mutilation, the war crime of cruel treatment and the war crime of passing sentences without previous judgment pronounced by a regularly constituted court affording all judicial guarantees generally recognized as indispensable, for contributing to the commission of the crimes.
2. Mr Al-Hassan was found not guilty of the crime against humanity of other inhumane acts in the form of forced marriage, the crime against humanity and war crime of sexual slavery and the crime against humanity and war crime of rape. He was also acquitted of the war crime of attacking protected objects.
3. On 18 September 2024, the Defence and the Prosecutor filed their respective notices of appeal against the conviction decision.²
4. On 20 November 2024, the Trial Chamber delivered its sentencing decision.³
5. On 10 December, the parties filed with the Appeals Chamber an urgent request classified as *ex parte*, only available to the Prosecutor and the Defence,⁴ stating that

¹ Trial Judgment, ICC-01/12-01/18-2594.

² Prosecution Notice of Appeal, [ICC-01/12-01/18-2649](#), Defence Notice of Appeal, [ICC-01/12-01/18-2648](#).

³ Sentencing judgment, [ICC-01/12-01/18-2662](#).

⁴ Urgent Further Joint Request for Extension of Time, [ICC-01/12-01/18-2664 -Conf-Exp](#), reclassified as public pursuant to decision [ICC-01/12-01/18-2670](#) of 19 December 2024.

discussions were in progress *inter partes* about a mutual abandonment of the appeals and that further time was therefore requested in which to file the appeal briefs. The request was rejected⁵ on 12 December 2024; as to the confidentiality of the *inter partes* discussions on abandonment of the appeal, the Appeals Chamber made the point that:

it has permitted the victims, through their legal representatives, to participate in the appeals against the Conviction Decision. Accordingly, the parties are directed to file a confidential or confidential redacted version of the Joint Request [for an extension of time in which to file the appeal briefs] by 17 December 2024.⁶

6. On 17 December, the Defence and the Prosecutor filed their respective notices of abandonment of appeal.⁷
7. On 19 December 2024, the Appeals Chamber issued an order (“Order”),⁸ by majority, seeking observations from the Legal Representatives of Victims (LRVs) on the discontinuance of the appeals. The present observations are filed in accordance with that order.

II. OBSERVATIONS OF THE VICTIMS

A. Preliminary remark

8. The victims express their gratitude to the Majority of the Appeals Chamber for the opportunity to provide their observations in the matter *sub judice*.
9. The LRVs note the Majority’s reference to article 21(3) of the Statute and hence the application and interpretation of rules 152 and 157 in accordance with human rights as recognized by international standards. They note that, in the particular

⁵ Decision on the “Urgent Further Joint Request for Extension of Time”, [ICC-01/12-01/18-2665 -Conf-Exp](#), reclassified as public pursuant to decision [ICC-01/12-01/18-2670](#) of 19 December 2024.

⁶ [ICC-01/12-01/18-2665 -Conf-Exp](#), para. 14.

⁷ Prosecution Notice of Discontinuance of its Appeal against the Trial Judgment of Trial Chamber X dated 26 June 2024, [ICC-01/12-01/18-2668](#), Defence Notice of Discontinuance of Appeal against the Trial Judgment rendered by Trial Chamber X on 26 June 2024, [ICC-01/12-01/18-2667](#).

⁸ Order concerning reclassification and the filing of observations on the notices of discontinuance of the appeals, [ICC-01/12-01/18-2670](#).

circumstances of the case, the opportunity for the victims to provide their observations – which in no way affects the rights of the parties – is of particular importance given the consequences of the discontinuance, not least as regards the gravity of the crimes in question and the number of victims concerned.

10. The LRVs begin by setting out, below, the positions of the participating victims. The information relayed comes from (1) interviews conducted with the victims by the LRVs in recent weeks, in Timbuktu itself and other parts of Mali, before the notices of discontinuance were filed; and (2) various in-person and remote interviews conducted after the notices were filed. Enclosed herewith, in addition, are the written statements of seven participating victims,⁹ provided to the LRVs post-discontinuance, which reflect the positions expressed by all the participating victims with whom the LRVs met.
11. The LRVs also enclose three statements from associations that represent victims,¹⁰ a step which, the LRVs would emphasize, is consistent with the “victim-centered” approach to which the Chamber refers and the extent of the crimes to which the Trial Chamber drew attention. Specifically, as regards the crime of persecution, the Trial Chamber acknowledged in the trial judgment and the sentencing decision that the entire population of Timbuktu had been targeted. The sentencing decision clearly states that Ansar Dine/AQIM targeted not only those who opposed them, but also all the members of the population, who were forced to abide by rules and prohibitions that were imposed on them. The entire population of the city of

⁹ Namely victims a/45279/18, a/11214/21 and a/11005/21 and four other victims represented through the *Coordination des Associations des Femmes du Secteur de la Flamme de la Paix* [Collective of *Flamme de la Paix* District Women’s Associations] (a/20455/19).

¹⁰ Specifically: *Associations des Victimes de Tombouctou* [Timbuktu Victims’ Associations], the *Cadre de Concertation de Lutte Contre le VSBG à Tombouctou* [Consultation Framework for the Fight against SGBV in Timbuktu], *Organisations de la Société Civile Défenseurs des Droits Humains de Tombouctou* [Timbuktu Civil Society Organizations for the Defence of Human Rights] and the Collective of *Flamme de la Paix* District Women’s Associations.

Timbuktu was targeted¹¹ and was subjected to daily deprivations of fundamental rights,¹² which had a traumatic effect¹³ on all the townspeople. Women, moreover, suffered particularly from the commission of the crime of persecution.¹⁴

12. The LRVs consider that the entire population of Timbuktu is therefore affected by the abandonment of the appeal and it is with that in mind that they have taken the step of relaying the views of non-participating victims through statements from representatives of civil society and specific communities. In any event, the content of the statements accords fully with the remarks received from the participating victims, whose views and concerns they only serve to confirm.

B. Observations of the victims

13. In their conversations with the LRVs, the victims discussed, in turn, (1) how they feel about the Prosecutor's discontinuance in the light of the commitments he made, and (2) the matter of Mr Al Hassan's apology in connection with his possible return to Timbuktu.
14. The LRVs will address those two points in turn:
 - (1) The victims' position vis-à-vis the Prosecutor and his decision to discontinue his appeal
15. The Prosecutor filed a notice abandoning his appeal against, in particular, the acquittal of sexual and gender-based crimes (see, below, paragraphs 19-21), stating:

¹¹ [ICC-01/12-01/18-2662](#), para. 70: "(...) the entire population of the city of Timbuktu was targeted and was the subject of the deprivation of fundamental rights".

¹² [ICC-01/12-01/18-2662](#), para. 69: "In doing so, members of Ansar Dine/AQIM, including Mr Al Hassan, imposed and promoted a set of rules and prohibitions and set up and enforced a system of repression which regulated the way of living and religious practices of the people of Timbuktu, performing daily numerous acts which severely deprived civilians of certain fundamental rights and targeted them on religious grounds".

¹³ [ICC-01/12-01/18-2662](#), para. 73.

¹⁴ [ICC-01/12-01/18-2662](#), para. 74.

Pursuant to rule 152(1) of the Rules of Procedure and Evidence, the Prosecution discontinues its appeal against the Trial Judgment, having filed a notice of appeal on 18 September 2024. The Prosecution also decides not to appeal the Sentencing Judgment. The Prosecution considers that it will contribute to the interests of justice to bring the proceedings in this case to a close and to ensure that its outcome is final.¹⁵

16. The Prosecutor also noted Mr Al Hassan's request for forgiveness from all those he had harmed and from all the victims in Timbuktu during the period from May 2012 to January 2013, whose suffering was set out in the trial judgment and the sentencing decision.¹⁶
17. The victims' reactions to those remarks convey what is in essence a feeling of betrayal, one all the more understandable given the content of the notice of appeal and the various statements the Prosecutor has made. The words on the victims' lips are "[TRANSLATION] outrage", "[TRANSLATION] bitterness", "[TRANSLATION] lack of justice", "[TRANSLATION] denial of justice" and "[TRANSLATION] dismay".
18. This is because the victims had taken note of the fact that, on 18 September 2024, the Prosecutor had filed his notice of appeal and proceeded in a manner consistent with a clear intention to file his appeal brief, not least by making the requests for extensions of time which the Chamber helpfully recalls in its order.¹⁷
19. **In his notice of appeal**, the Prosecutor stated that his appeal related in particular to Mr Al Hassan's full acquittal of certain gender-based crimes, namely other inhumane acts in the form of forced marriage and associated acts of sexual slavery (counts 8-10) and rape (counts 11-12), and his partial acquittal of certain other gender-based crimes: cruel treatment, other inhumane acts, outrages upon personal dignity, sentencing without a fair trial and persecution on gender

¹⁵ Prosecution Notice of Discontinuance of its Appeal against the Trial Judgment of Trial Chamber X dated 26 June 2024, [ICC-01/12-01/18-2668](#).

¹⁶ Prosecution Notice of Discontinuance of its Appeal against the Trial Judgment of Trial Chamber X dated 26 June 2024, [ICC-01/12-01/18-2668](#), para. 2.

¹⁷ [ICC-01/12-01/18-2665 -Conf-Exp](#), reclassified as public, para. 13.

grounds (counts 2, 4-6 and 13).¹⁸ The Prosecutor underscored that the gendered dimension of the charges, affecting in particular women and girls in Timbuktu, had always been central to the Prosecution's view of the case.¹⁹ He stated that after carefully reviewing the trial judgment, the standards of appellate review for error of law or fact and the particular circumstances of the decision, he had adopted an approach that would benefit all the parties concerned in the proceedings, and most importantly the victims and affected communities.²⁰

20. **Furthermore, as regards the Prosecutor's statements to the victims,** the victims noted his remarks – on the day the judgment convicting Mr Al Hassan was given – expressing gratitude and admiration to victim groups and civil society organizations for their focus, stamina, commitment and partnership in walking this path together towards accountability.²¹
21. Lastly, the LRVs wish to call attention to the difficulty, for the victims, of accepting a decision that is completely at odds with the Prosecutor's stated policy on the prosecution of sexual crimes and the crime of gender persecution in particular. When his Office's new policy on the crime of gender persecution was adopted in December 2022,²² the Prosecutor stated that the initiative represented "a significant stride towards fulfilling [his] promise to address sexual and gender-based crimes in a more systematic and effective way". He stressed the importance of accountability for gender persecution crimes and signalled "[his Office's] commitment to ensuring that [it] properly reflect[s] the specific facts and

¹⁸ [Prosecution notice of appeal](#), ICC-01/12-01/18-2649, para. 2.

¹⁹ [Prosecution notice of appeal](#), ICC-01/12-01/18-2649, para. 3.

²⁰ [Prosecution notice of appeal](#), ICC-01/12-01/18-2649, paras. 5 and 6.

²¹ <https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-kc-conviction-mr-al-hassan-ag-abdoul-aziz-ag-mohamed-ag-mahmoud>

²² [Policy on the Crime of Gender Persecution](#), <https://www.icc-cpi.int/news/policy-crime-gender-persecution>

evidence”²³ in “all [its] future cases”.²⁴ In keeping with those statements, the Prosecutor in 2023 adopted a Policy on Gender-Based Crimes,²⁵ in which he said that his Office would consider the particular gravity of gender-based crimes affecting victims, their families and their communities in its decisions regarding appeals and strategic litigation. He also signalled its commitment to inform the LRVs, where appropriate, should it decide not to appeal issues relevant to gender-based crimes for legal and strategic reasons.²⁶

22. In this instance it must be noted that the only legal or strategic justification the victims are left with is the premise that Mr Al-Hassan has apologized and the interest of justice in bringing the proceedings to a close – an interest which, in any case, cannot reasonably be said to coincide with that of the victims. The legal argument therefore remains unknown, and the Prosecutor’s strategy marked by inconsistency between word and deed. The feelings of betrayal and frustration conveyed above are therefore unsurprising and, it transpires, entirely legitimate.

(2) The victims’ position on Mr Al Hassan’s apology and possible return to Timbuktu

23. The discussions held with the victims, and with all the civil society stakeholders and administrative and religious authorities of the city of Timbuktu, revealed high expectations for the outcome of the appeal. They also revealed a difficult situation regarding Mr Al Hassan’s apology and possible return to Timbuktu.
24. A non-negligible number of the victims feel that the apology is opportunistic and not obviously sincere when looked at in the light of the trial and the lack of any expression of remorse or apology from Mr Al Hassan at any phase whatsoever of

²³ <https://www.icc-cpi.int/news/prosecutor-international-criminal-court-icc-karim-aa-khan-kc-publishes-policy-crime-gender>

²⁴ *Ibid.*

²⁵ <https://www.icc-cpi.int/sites/default/files/2023-12/2023-policy-gender-en-web.pdf>

²⁶ *Ibid.*, para. 141.

the proceedings. The statements enclosed herewith make quite clear the scepticism with which the victims and affected communities view the sincerity of the apology in the circumstances in which it was made.

25. Many victims also speak of an apology as premature, a sentiment which the LRVs interpret as the need for reparations to be received before any apology or request for forgiveness can be contemplated.
26. The LRVs note that the lack of an appeal, and consequently of any opportunity for the harm caused by the sexual and gender-based crimes to be acknowledged through a reparations phase, will make any process of forgiveness-seeking particularly difficult.
27. Lastly, the matter of Mr Al Hassan's possible return to Timbuktu, which was already highly sensitive in the wake of the trial judgment, has become extremely problematic following the discontinuance of the appeals. As matters stand, all of the victims interviewed object to the prospect of return. That objection is also informed by purely security-related issues, as a number of victims report a current fear of attacks or reprisals.

(3) Conclusion

28. The Legal Representatives reiterate the importance of victim participation in the judicial process as a form of reparation, and as inseparable therefrom. They foresee the difficulties involved in the victims' accepting reparations proceedings that exclude crimes which, it is generally agreed, were the hallmark of the regime that terrorized Timbuktu in 2012 and 2013, and the trauma of which cannot be ignored.
29. Due heed must be paid to the extent of the trauma which the people of Timbuktu experienced and to which the sentencing decision, in particular, refers (see above). The victims speak painfully and in great detail of the suffering they experienced

under the jihadi occupation, and of the role played by Mr Al Hassan, whose acts and conduct remain very clearly etched in their memory. The statements enclosed reflect this.²⁷

30. The decision not to pursue the sexual and gender-based crimes therefore has a profound impact on the trauma, since the consequences of the crimes are now compounded by a feeling of desertion owing to the unexplained abandonment of a justice process in which the victims were asked to believe and to participate.

FOR THESE REASONS

May it please the Chamber to entertain these observations.

Mr Seydou Doumbia

[signed]

Mr Fidel Nsita Luvengika

[signed]

Mr Mayombo Kassongo

[signed]

Legal Representatives of Victims

Dated this 30 December 2024

At Bamako, Mali; Paris, France; and Gilly, Belgium

²⁷ The LRVs note that the statements are of course intended solely to illustrate the observations hereby submitted in connection with the discontinuance of the appeals.