



Original: **French**

No.: **ICC-01/12-01/18**
Date: **31 January 2025**

THE APPEALS CHAMBER

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

SITUATION

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

Public Document

Reply of the Legal Representatives of Victims to the Observations of the Parties

Source: Legal Representatives of Victims

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

☒ Office of the Prosecutor

☒ Counsel for the Defence

D28

☒ Legal Representatives of Victims

V43

☐ Legal Representatives of Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants for
Participation/Reparations

☐ Office of Public Counsel for Victims

☐ Office of Public Counsel for the
Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☒ Victims Participation and Reparations
Section

☐ Other

A. PROCEDURAL BACKGROUND

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
2. On 20 November 2024, the Trial Chamber delivered its sentencing decision.²
3. On 17 December 2024, the Defence and the Prosecutor filed their respective notices of abandonment of appeal.³
4. On 19 December 2024, the Appeals Chamber issued an order (“Order”),⁴ by majority, seeking observations from the Legal Representatives of Victims (“LRVs”) on the discontinuance of the appeals. The LRVs filed their observations (“LRVs’ Observations”) on 30 December 2024.⁵ The Office of the Prosecutor and the Defence filed their responses to those observations on 9 January 2025 (“Prosecutor’s Response” and “Defence Response”).⁶
5. On 13 January 2025, the Appeals Chamber issued an order entitled “Order on procedural matters”,⁷ granting the LRVs the opportunity to file a reply to the parties’ responses to their observations.
6. This filing is therefore a brief reply to the responses of the parties to the LRVs’ observations.

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

² Sentencing judgment, [ICC-01/12-01/18-2662](#).

³ 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](#).

⁴ Order concerning reclassification and the filing of observations on the notices of discontinuance of the appeals, [ICC-01/12-01/18-2670](#).

⁵ “Observations of the Legal Representatives of Victims on the Discontinuance of the Appeals”, ICC-01/12-01/18-2671-tENG, with ex parte and public redacted [Annex A](#) and [Annex B](#).

⁶ [Prosecution Response to the Observations of the Legal Representatives of the Victims on the Discontinuances of the Appeals](#), ICC-01/12-01/18-2672; [Defence Response to the to the Observations of the Legal Representatives of the Victims Regarding the Discontinuance of Appeals](#), ICC-01/12-01/18-2673.

⁷ ICC-01/12-01/18-2674.

B. SUBMISSIONS

I. Preliminary remark

7. The LRVs wish to convey the gratitude of the participating victims to the Appeals Chamber for the opportunity to be heard in the proceedings following the discontinuance of the appeals.

8. The LRVs view this as a particularly meaningful step by the Appeals Chamber given the specific circumstances of the discontinuances and what is set out in the LRVs' observations regarding the victims' reaction to the Prosecutor's discontinuance.

9. The victims appreciate the opportunity afforded to them, in the absence of a right of appeal against the trial judgment, to express their views and concerns within the statutory and regulatory framework of the Court.

II. Observations in reply

10. The LRVs wish to begin by addressing the matter of their "consultation" during the process of *inter partes* discussion on abandonment of the appeals.

11. Although the LRVs were indeed contacted by the parties, that step can hardly be said to have constituted consultation of a kind that would enable the Prosecutor to take full and appropriate account of the victims' views and concerns.

12. The Prosecutor was informed that the victims were firmly opposed to the idea of abandoning the appeal. Yet there is nothing in the Prosecutor's explanations, be it in his notice of discontinuance or his response to the LRVs' observations, to suggest that the victims' concerns were taken into account. The Prosecutor's interests of justice argument is particular to him, just as the argument based on Mr Al Hassan's apology bears no relation to the interests of the victims, who have rejected that apology. Moreover, the apology put forward in conjunction with the Defence's discontinuance could not, in any event, have been brought to the victims' attention by the time of the

Prosecutor's discontinuance minutes later. The Prosecutor therefore relies solely on his own assessment of the impact that the apology might have.⁸

13. In reality, irrespective of any discussions the LRVs may have had with the parties and the Prosecutor specifically, the victims note with regret the lack of explanation from the Prosecutor as to how their concerns were assessed and how they were weighed against the factors which led the Prosecutor to abandon his appeal, and how neither the interests of justice nor the existence of an apology from the convicted person can, it appears, reasonably be viewed as coinciding with the interests of the victims given what is at stake in the appeal.

14. Regarding the Office of the Prosecutor's argument that

the Trial Chamber [...] found that the restrictions imposed had a specific and disproportionate impact on female members of the population, who were in a position of particular vulnerability and were particularly affected by Ansar Dine/AQIM's rules and prohibitions[,]⁹

the LRVs stand by the position set out in their observations on the discontinuance of the appeal¹⁰ and view the consideration thus afforded to the sexual and gender-based violence as wholly inadequate.

15. Crimes of this kind attributable to Mr Al Hassan have been amply documented, and it was precisely to expose the extent of those crimes that one of the two witnesses the LRVs chose to call when presenting their evidence was a victim of forced marriage.

16. The LRVs deplore the Office of the Prosecutor's discontinuance of its appeal, its taking of a position which is completely at odds with its stated policy on the prosecution of sexual and gender-based crimes, and, more generally, the missed opportunity for the International Criminal Court to acknowledge the gravity of the gender-based crimes and gender persecution as a crime against humanity.

⁸ Prosecutor's Response, para. 4.

⁹ Prosecutor's Response, para. 4.

¹⁰ "Observations of the Legal Representatives of Victims on the Discontinuance of the Appeals", ICC-01/12-01/18-2671-tENG, with ex parte and public redacted [Annex A](#) and [Annex B](#).

17. Regarding the Defence's argument that the matter of the apology falls outside the scope of the proceedings before the Appeals Chamber,¹¹ the LRVs would point out that the apology is, specifically, a factor which both parties placed at the centre of their justifications for discontinuance.

18. Turning to the argument about the risks of the appeal,¹² the LRVs note that the risks at issue are inherent – in varying degrees – to any appeal. The Prosecutor necessarily implied, and the victims took note, that he had properly assessed the prospects of success before appealing. The lack of explanation for the about-turn is, therefore, as said above,¹³ a particular source of frustration and disappointment.

19. Lastly, regarding the argument based on a concern for prompt reparations to the victims, the LRVs refer to the previous cases in which the reparations phase was set in motion without waiting for the outcome of the appeal proceedings, and with the necessary safeguards in place to avoid creating false expectations. The LRVs note, moreover, that the order for submissions on reparations was made on 13 December 2024, before the appeals were discontinued, and so the Trial Chamber clearly intended to begin the reparations phase irrespective of any appeal. The argument thus advanced by the parties is, in fact, a denial of the reparative aspect of the judicial process – an aspect on which the victims have nonetheless laid unflagging emphasis.

¹¹ Defence Response, para. 19.

¹² Defence Response, para. 25, and Prosecutor's Response, para. 5.

¹³ See, above, para. 13.

For these reasons,

May it please the Appeals Chamber to entertain this reply.

[signed]

Mr Seydou Doumbia

[signed]

Mr Fidel Nsita Luvengika

[signed]

Mr Mayombo Kassongo

Legal Representatives of Victims

Dated this 31 January 2025

At Bamako, Charleroi and Kinshasa