

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/18
Date: 5 March 2025

TRIAL CHAMBER X

Before: Judge Kimberly Prost, Presiding Judge
Judge María del Socorro Flores Liera
Judge Keebong Paek

SITUATION IN THE REPUBLIC OF MALI

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

Public

**Defence Response to the Request for Guidance by the Victims Participation and
Reparations Section of the Registry (ICC-01/12-01/18-2684)**

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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Al Hassan Defence Team

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V43

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I. INTRODUCTION

1. The ICC reparations framework is governed by Article 75 of the Rome Statute and affords the Trial Chamber considerable flexibility in devising a reparations regime that is fair and proportionate to the victims while remaining consistent with both Mr Al Hassan’s rights¹ and the content and parameters of the Trial Judgment. While this phase cannot be used to expand the scope of Mr Al Hassan’s criminal convictions or the Chamber’s findings on his individual responsibility for the purposes of reparations, the statutory regime *does* allow for holistic interpretations of the notion of ‘harm’ that may encompass a broad range of persons, entities, and regions beyond those expressly recognised in the Trial Judgment or the Decision on Sentence.

2. With this in mind, the Defence respectfully submits the present response to the ‘Registry submissions on implementation of Trial Chamber X’s “Order for Submissions on Reparations” (ICC-01/12-01/18-2666)’² for the purpose of clarifying its understanding of Mr Al Hassan’s personal responsibility to make amends as well as the broader possibilities envisaged by the activities of the Trust Fund for Victims under Article 75(2) of the Statute.

II. SUBMISSIONS

3. The VPRS seeks clarity and guidance on the following matters:

- (i) Geographical scope (Category 1) – in particular, whether the area of Kabara and general references to ‘Timbuktu’ not more narrowly tailored can be included;
- (ii) Temporal scope (Category 2) – in particular, whether crimes committed just prior to 7 May 2012 may be included; and
- (iii) Material scope (Category 3) – in particular, whether the Chamber accepts that there may be more ‘direct victims’ than those set out in Annex III of the Trial Judgment.

4. Reparations are intended to oblige those responsible to repair the harm caused to victims and may “assist in promoting reconciliation between the victims of the crime, the affected communities and the convicted person”.³ While it is likely that Mr Al Hassan is likely to be found indigent, an order for reparations may encompass other forms of personal amends. Bearing in mind that Mr Al Hassan was convicted primarily under Article 25(3)(d) and there may be future

¹ [ICC-01/12-01/15-236](#), para. 37 (“[t]he reparations ordered cannot be prejudicial to or inconsistent with the rights of [the accused].”)

² [ICC-01/12-01/18-2684](#).

³ [ICC-01/12-01/15-236](#), paras 27, 28.

convictions against persons who bear greater responsibility, the potency of the reparations order directed personally against Mr Al Hassan may be diluted if it is interpreted in an overly expansive manner to encompass a range of individuals and/or acts falling outside the scope of his conviction. It is thus arguable that Mr Al Hassan's obligation to make amends to direct victims of the crimes for which he was convicted, such as P-0557 and P-0565, is not of the same weight or degree as his responsibility to the entire population of Timbuktu (comprising roughly **780,000** persons),⁴ who were found by the Chamber to have been targeted by the group's persecutory policy and to have suffered a deprivation of their rights by virtue of their presence in Timbuktu in 2012.⁵

5. Where an institution, in lieu of or in addition to an individual, is charged with applying reparations, it may be appropriate to analyse the notion of harm in a systemic and holistic manner. The crimes set out in the Trial Judgment arose from a specific context: a situation of severe insecurity that gave rise to the adoption of rules and policies that were applied irrespective of the wishes and consent of members of the local population. This set of circumstances impacted the original inhabitants, those who fled from Timbuktu, and those who fled to Timbuktu from surrounding areas. Since the goal of reparations is to recognise and repair the harm caused by crimes – and reparations may be granted to direct and indirect individual victims, provided that the harm suffered is personal⁶ – it may be counter-productive to limit the scope of reparations to the specific individuals who were direct victims of the crimes for which Mr Al Hassan was convicted.

6. As such, the Defence respectfully submits that it may be helpful to distinguish between the direct victims of the crimes for which Mr Al Hassan was convicted as compared to victims who have suffered harm *in connection with* the crimes set out in the Trial Judgment, including the crimes for which Mr Al Hassan was convicted. This distinction may assist in preserving Mr Al Hassan's rights under Articles 66 and 67(1) of the Statute while taking effective steps to repair systemic forms of harm, which affected persons beyond the direct victims alone.

⁴ [ICC-01/12-01/18-461-Conf-Corr](#), para. 189.

⁵ [ICC-01/12-01/18-2662](#), para. 71.

⁶ ICC Rules of Procedure and Evidence, [Rule 85\(a\)](#). See also [ICC-01/12-01/15-236](#), para. 40; [ICC-01/04-01/06-3129-AnxA](#), para. 10.

A. *The Defence’s understanding of the crimes for which Mr Al Hassan was convicted and for which he is required to make amends*

7. The Trial Chamber set out the crimes for which Mr Al Hassan was convicted in Annex III to the Trial Judgment; only the crimes in bold form part of the conviction. None of the crimes set out in Counts 1-13 occurred before 7 May 2012. The only crime that does not have an approximate date is the whipping of Foma, which in any event, according to the Trial Judgment, occurred during the period of the charges (*i.e.* after 7 May 2012).⁷ The physical location of *the actus reus* of the crimes was primarily: the BMS, the Youbatao market, the Sankoré market, the *Gouvernorat*, the Islamic Tribunal, the Islamic Prison, the Central Prison, and the square near Hotel Azalai. The occurrence of the crimes in these locations, however, may nevertheless have generated effects for individuals not resident in these specific locations.

8. In its Decision on Sentence, the Chamber rejected Prosecution arguments that the crime of persecution encompassed Timbuktu and its regions; the scope was confined to “the city of Timbuktu.”⁸ The Trial Judgment does not define the city of Timbuktu. It is also the Defence’s understanding that the term ‘city’ is not employed in a geographic sense in the context of local regulations: the relevant descriptions are ‘region’, ‘cercle’ or ‘commune’. The ‘commune’ of Timbuktu includes Kabara,⁹ and as noted by VPRS, the *Al Mahdi* reparations order included Kabara within the ‘community’ of Timbuktu.¹⁰

9. As concerns the scope of persecution, the Trial Chamber clarified in footnote 201 of the Sentencing Judgment that, in line with Annex III to the Trial Judgment, Mr Al Hassan’s conviction does not encompass any acts of sexual violence, forced marriage, or rape. This limitation arises from the fact that, by virtue of Judge Mindua’s separate opinion acquitting Mr Al Hassan in full, Judge Akane’s separate opinion controls the scope of persecution. Judge Akane, in turn, found that Count 14 was restricted to the “acts charged under Counts 1-5 and 14, apart from those falling outside the common purpose”.¹¹ Judge Akane further clarified that the crime of persecution did

⁷ [ICC-01/12-01/18-2594-Red](#), fn. 2779 (“the Chamber is satisfied that the event occurred during the period of the charges”).

⁸ [ICC-01/12-01/18-2662](#), para. 71.

⁹ [LOI N°2023-007 DU 13 MARS 2023 PORTANT CREATION DES COLLECTIVITES TERRITORIALES EN REPUBLIQUE DU MALI](#), p. 163, listing as part of the ‘commune’ of Timbuktu, Abaradjou, Badjende, Bella-ferandi, Djingareye-ber, Hammabangou, Kabara, Sankore, Sareikaina.

¹⁰ [ICC-01/12-01/15-236](#), para. 56.

¹¹ [ICC-01/12-01/18-2594-OP1](#), para. 100. *See also* para. 99 (“[a]s part of this assessment, and in view of the accused’s rights under Article 67 of the Statute, only those acts that are set out in the charges with sufficient clarity may be taken into account as underlying acts of persecution”).

not encompass acts of forced marriage/rape/sexual slavery or the detention of women, as applied by *Hesbah* under the leadership of Mohamed Moussa.¹²

B. The potential scope of victims as defined under Rule 85 for the purpose of reparations applied by the Trust Fund for Victims

10. In *Ntaganda*, the Appeals Chamber found that “in reparation proceedings it is the harm suffered and not the crimes of which the person has been convicted that is further defined or elaborated upon.”¹³ In line with this principle, rather than expanding the definition of ‘direct victims’ or adopting new interpretations of existing judicial findings, the Defence respectfully submits that it may be appropriate to address such matters through the definition of ‘harm’ and by further distinguishing between individuals who were direct victims of the crimes for which Mr Al Hassan was convicted as compared to individuals who suffered harm as a result of the crimes established by the Trial Judgment. The reparations order can encompass both direct victims as well as other individuals who suffered harm in connection with the crimes set out in the Trial Judgment, while using specific terminology to distinguish between the two.

11. The Defence notes further that in *Ntaganda*, the Appeals Chamber accepted that, depending on the circumstances of the crimes, the notion of indirect victims could extend beyond family members.¹⁴ This allows for a category/ies of persons, who suffered harm by virtue of their personal circumstances/exposure to the effects of crimes/membership of a specific group. The Defence appreciates that the terms ‘direct’ and ‘indirect victims’ may be experienced as a form of unfair distinction to persons who suffered in equal measure albeit by virtue of different degrees of proximity as concerns Mr Al Hassan’s personal culpability. The Defence is, for this reason, open to discuss potential terminology that sufficiently captures the experience of harm while preserving Mr Al Hassan’s rights *vis-à-vis* the findings in the Trial Judgment

12. Viewed through this lens, it is open to the Trial Chamber to identify and classify different types of harms relating to the crimes for which Mr Al Hassan was convicted while at the same time respecting *first*, the boundaries of the specific incidents underpinning the crimes for which Mr Al Hassan was convicted, and *second*, his right to enjoy fully the legal consequences of his

¹² [ICC-01/12-01/18-2594-OPI](#), paras 101-102.

¹³ [ICC-01/04-02/06-2908-Red](#), para. 4.

¹⁴ [ICC-01/04-02/06-2782](#), paras 624-625, 638.

acquittal for other incidents set out in the Judgment and his presumption of innocence in respect of those incidents not forming part of the charges.

13. The Defence sets out below an example of how these concerns can be potentially reconciled. By virtue of Judge Akane’s controlling opinion, acts of rape and forced marriage were found to fall *outside* the scope of both the common purpose/contextual elements and of Mr Al Hassan’s personal liability. It would therefore impermissibly expand the conviction and violate Mr Al Hassan’s innocence to describe individuals who suffered rape/forced marriage/sexual slavery as *direct* victims of the crimes for which Mr Al Hassan was convicted. At the same time, it may be possible to find that the imposition of new rules by Ansar Dine, irrespective of the wishes of the local population, gave rise to an environment in which women and children found it difficult to seek protection or make complaints before the authorities established by the groups, which may have led them to be more vulnerable to acts of forced marriage and rape. Similarly, by virtue of their prior experiences of systemic discrimination combined with socio-economic factors, certain ethnicities –including those descended from or associated with stigmatised or subordinated castes – were more vulnerable to the effects of the occupation, for example, as concerns co-option within the groups or subordination to the groups’ rules and policies. Thus, while such individuals may fall outside the definition of direct victims of the criminal acts for which Mr Al Hassan was convicted, it could be possible to conclude that they have nonetheless suffered harm for acts occurring *in connection with* the crimes for which he was convicted and should thus form part of any reparations order to be implemented by the Trust Fund for Victims.

14. Finally, the Defence notes that the Chamber has requested the parties to submit observations concerning the estimated number of victims and “specification of the types and extent of the harm suffered by the victims of the crimes for which Mr Al Hassan was convicted” by 16 June 2025. The Defence has communicated to the Legal Representatives for Victims its willingness to adopt common positions and has further offered to collaborate with the VPRS in any manner that may be of assistance. This may include agreed definitions and terminology and presumptions of fact. The Defence is also willing to participate in any public messaging concerning the reparations process if this would be of assistance. Given that this process is ongoing, it may be premature to issue a final legal determination on such matters at the current juncture.

15. Nonetheless, to facilitate the work of the VPRS in the interim, the Defence respectfully informs the Trial Chamber that, subject to its understanding that the reparations phase cannot expand or modify the content of Mr Al Hassan's convictions or otherwise increase the scope of his culpability or individual responsibility:

- The Defence does not oppose the proposal of the VPRS to include Kabara within the geographic scope of Timbuktu;
- The inclusion of applications mentioning *Timbuktu*, without further specification as to location but including contextual words such as the “‘occupation’, the ‘crisis’ and/or the presence of ‘armed men’/‘jihadist’, ‘islamists’ or ‘rebels’”, may need to be determined on a case-by-case basis, as the term ‘rebels’ can also refer to the MNLA;
- The Defence does not oppose a flexible approach to temporal or geographic harm where there is a causal nexus to the circumstances of the crimes; and
- The Defence does not oppose the VPRS collecting or transmitting applications in connection with persons who have suffered harm in connection with crimes related to the incidents for which Mr Al Hassan was convicted on the understanding that the designation of such individuals as ‘direct victims’ does not need to be decided at the current juncture.



Melinda Taylor
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Dated this 5th day of March 2025

At The Hague, The Netherlands