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No. ICC-01/12-01/18 A A2

Date: 7 March 2025

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
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

Decision on the notices of discontinuance of the appeals

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

Al Hassan Defence

☒ **Legal Representatives of the Victims**

Al Hassan case

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☐ **The Office of Public Counsel for
Victims**

☐ **The Office of Public Counsel for the
Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☒ **Victims Participation and Reparations
Section**

☐ **Other**

The Appeals Chamber of the International Criminal Court,

In the appeals of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud and the Prosecutor against the decision of Trial Chamber X entitled “Trial Judgment” of 26 June 2024 (ICC-01/12-01/18-2594-Red),

Having before it the “Defence Notice of Discontinuance of Appeal against Trial Judgment rendered by Trial Chamber X on 26 June 2024” of 17 December 2024 (ICC-01/12-01/18-2667) and the “Prosecution Notice of Discontinuance of its Appeal against the Trial Judgment of Trial Chamber X dated 26 June 2024” of 17 December 2024 (ICC-01/12-01/18-2668),

Renders, the following

DECISION

1. The Appeals Chamber finds that the aforementioned notices of discontinuance of appeals are valid and the appellate proceedings are terminated.
2. The “Observations of the Victims in Burkina Faso/Niger following the Withdrawal of the Notice of Appeal against the Judgment Convicting Mr Al Hassan Article 68(3): the Court may Obtain the Views and Concerns of the Victims at any Appropriate Stage when their Interests are at Stake” are dismissed.

REASONS

I. PROCEDURAL HISTORY

1. On 26 June 2024, Trial Chamber X (hereinafter: “Trial Chamber”) rendered its decision entitled “Trial Judgment” (hereinafter: “Conviction Decision”) in which Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (hereinafter: “Mr Al Hassan”) was convicted on eight counts of crimes against humanity and war crimes.¹

¹ [Trial Judgment](#), ICC-01/12-01/18-2594-Red (confidential version filed on the same day, ICC-01/12-01/18-2594-Conf).

2. On 18 September 2024, the Defence and the Prosecutor filed their respective notices of appeal against the Conviction Decision.²

3. On 20 November 2024, the Trial Chamber rendered its decision entitled “Sentencing Judgment” (hereinafter: “Sentencing Decision”),³ in which it sentenced Mr Al Hassan to a total period of imprisonment of 10 years and ordered that the time that he has spent in detention from 28 March 2018 and onwards be deducted from the total period of imprisonment.⁴

4. On 17 December 2024, the Defence and the Prosecutor filed, pursuant to rule 152(1) of the Rules of Procedure and Evidence (hereinafter: “Rules”), their respective notices of discontinuance of the appeals against the Conviction Decision (hereinafter: jointly, “Notices of Discontinuance”).⁵

5. On 19 December 2024, the Appeals Chamber by majority, with Judge Gocha Lordkipanidze and Judge Erdenebalsuren Damdin dissenting, invited the legal representatives of the victims (hereinafter: “LRVs”) to file observations on the Notices of Discontinuance.⁶

6. On 30 December 2024, the LRVs filed their observations (hereinafter: “Victims’ Observations”)⁷ together with an Annex A, containing handwritten and typed statements from three victim organisations, and an Annex B, containing handwritten statements from seven participating victims.

7. On 9 January 2025, the Prosecutor and the Defence submitted their respective responses to the Victims’ Observations.⁸

² [Defence Notice of Appeal against the Trial Judgment](#), ICC-01/12-01/18-2648; [Prosecution notice of appeal](#), ICC-01/12-01/18-2649.

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

⁴ [Sentencing Decision](#), p. 68.

⁵ [Defence Notice of Discontinuance of Appeal against Trial Judgment rendered by Trial Chamber X on 26 June 2024](#), ICC-01/12-01/18-2667 (hereinafter: “Defence’s Notice of Discontinuance”), with public [Annex A](#); [Prosecution Notice of Discontinuance of its Appeals against the Trial Judgment of Trial Chamber X dated 26 June 2024](#), ICC-01/12-01/18-2668 (hereinafter: “Prosecutor’s Notice of Discontinuance”).

⁶ [Order concerning reclassification and the filing of observations on the notices of discontinuance of the appeals](#), ICC-01/12-01/18-2670 (hereinafter: “Order on Observations”).

⁷ [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](#).

⁸ [Prosecution Response to the Observations of the Legal Representatives of the Victims on the Discontinuances of the Appeals](#), ICC-01/12-01/18-2672 (hereinafter: “Prosecutor’s Response”); [Defence Response to the Observations of the Legal Representatives of the Victims Regarding the Discontinuance of Appeals](#), ICC-01/12-01/18-2673 (hereinafter: “Defence’s Response”).

8. On 31 January 2025, following an order of the Appeals Chamber,⁹ the LRVs filed a reply to the parties' responses (hereinafter: "Victims' Reply").¹⁰

9. On 7 February 2025, the LRV filed further observations received from victims located in Burkina Faso and Niger (hereinafter: "Victims' Further Observations").¹¹

II. SUMMARY OF THE SUBMISSIONS

1. *The parties' submissions*

10. The parties submit that they have decided to discontinue their respective appeals against the Conviction Decision and not to appeal the Sentencing Decision. In their view, the interests of justice would be served by bringing the proceedings in the present case to an end thus providing a definite and final resolution.¹²

11. The Defence further notes that Mr Al Hassan has been fully informed by his counsel of the legal consequences of his decision, understands and accepts the consequences of his decision,¹³ and has voluntarily decided to withdraw his appeal against the Conviction Decision and to waive his right to appeal the Sentencing Decision.¹⁴

2. *The Victims' Observations*

12. The victims, through their legal representatives, have expressed a feeling of "betrayal" and frustration about the Prosecutor's decision to discontinue his appeal.¹⁵ The legal representatives have also emphasised the difficulty for the victims to accept a decision which, they submit, is contrary to the Prosecutor's policy on the prosecution of sexual and gender-based crimes.¹⁶

⁹ [Order on procedural matters](#), 13 January 2025, ICC-01/12-01/18-2674 (hereinafter: "Order on Procedural Matters").

¹⁰ [Reply of the Legal Representatives of Victims to the Observations of the Parties](#), ICC-01/12-01/18-2677-tENG.

¹¹ [Observations of the Victims in Burkina Faso/Niger following the Withdrawal of the Notice of Appeal against the Judgment Convicting Mr Al Hassan Article 68\(3\): the Court may Obtain the Views and Concerns of the Victims at any Appropriate Stage when their Interests are at Stake](#), ICC-01/12-01/18-2679-tENG.

¹² [Annex A to Defence's Notice of Discontinuance](#), para. 5, p. 2; [Prosecutor's Notice of Discontinuance](#), para. 3.

¹³ [Annex A to Defence's Notice of Discontinuance](#), pp. 2-3.

¹⁴ [Annex A to Defence's Notice of Discontinuance](#), pp. 2-3.

¹⁵ [Victims' Observations](#), paras 13-14, 17.

¹⁶ [Victims' Observations](#), para. 21.

13. Further, the legal representatives have expressed concerns about the Prosecutor's reliance on Mr Al Hassan's apologies and the "interests of justice" as a justification to terminate the proceedings, which, they argue, do not reflect the interests of the victims in this case.¹⁷

14. Finally, the victims consider that Mr Al Hassan's apology was "opportunistic" and not sincere and submit that, in the absence of an appeal, the acceptance of any apology will become particularly complicated.¹⁸

3. *The parties' submissions in response to the Victims' Observations*

15. The Prosecutor submits that Prosecution counsel contacted the legal representatives to inform them about potential withdrawals of the appeals by the parties and to seek their views, which were subsequently "heard and noted".¹⁹ The Prosecutor further submits that, since Mr Al Hassan's convictions will become final due to the filing of the Notices of Discontinuance, victims of the crimes for which Mr Al Hassan was convicted may seek and obtain reparations "without awaiting the uncertain outcomes of complex appeals by both the Prosecution and Defence in potentially lengthy appellate proceedings".²⁰ Lastly, the Prosecutor has expressed his commitment to support the efficient and effective conduct of the reparations proceedings.²¹

16. The Defence submits that the trial process respected victims' rights, including their right of access to justice, and that their views were heard fully throughout this process, including in connection with the lead up to the withdrawals of the two appeals.²² Finally, the Defence emphasises that the withdrawal of the appeals by the parties is consistent with the Statute and international human rights law.²³

4. *The Victims' Reply*

17. The victims submit that the explanations provided in the Prosecutor's Notice of Discontinuance and in the Prosecutor's Response do not denote consideration of the victims'

¹⁷ [Victims' Observations](#), para. 22. See also [Prosecutor's Notice of Discontinuance](#), para. 2.

¹⁸ [Victims' Observations](#), para. 24.

¹⁹ [Prosecutor's Response](#), para. 2.

²⁰ [Prosecutor's Response](#), para. 5.

²¹ [Prosecutor's Response](#), para. 6.

²² [Defence's Response](#), para. 3; see also paras 23-24.

²³ [Defence's Response](#), paras 20-25.

concerns, and that the Prosecutor did not provide an explanation as to how their concerns were evaluated and balanced with other factors that led to the withdrawal of his appeal.²⁴

18. Finally, the victims submit that, given that the Trial Chamber ordered the parties and participants to file submissions on reparations before the withdrawal of the appeals,²⁵ its intention was to begin the reparation phase independently of the appeal.²⁶

III. MERITS

19. Rule 152(1) of the Rules provides that:

Any party who has filed an appeal may discontinue the appeal at any time before judgement has been delivered. In such case, the party shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

20. At the outset, the Appeals Chamber recalls that pursuant to article 21(3) of the Statute, the application and interpretation of the law, in the instant case being rule 152 of the Rules, must be consistent with internationally recognised human rights law.²⁷ In the context of proceedings on discontinuance, the Appeals Chamber has found that “[o]nce [it] is seised of an appeal, it is for the Appeals Chamber to decide whether the proceedings may be considered to be terminated as a result of the appellant’s notice of discontinuance of his or her appeal”.²⁸ In doing so, the Appeals Chamber “shall verify the validity of [a] notice of discontinuance” which “may be considered valid and have the effect of terminating the appellate proceedings”, only if it complies with certain requirements.²⁹ In verifying the validity of a notice of discontinuance, the Appeals Chamber has thus far assessed whether it contains reservations or conditions and whether it concerns the appeal in its entirety.³⁰

21. In the case at hand, the Appeals Chamber notes that the Notices of Discontinuance explicitly express the intention of the parties to withdraw their respective appeals against the Conviction Decision in a manner that is void of any reservations or conditions and concerns

²⁴ [Victims’ Reply](#), paras 12-13; see also para. 18.

²⁵ [Order for Submissions on Reparations](#), 13 December 2024, ICC-01/12-01/18-2666.

²⁶ [Victims’ Reply](#), para. 19.

²⁷ See [Order on Observations](#), para. 8.

²⁸ *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Decision on the discontinuance of the appeal](#), 13 February 2024, ICC-01/14-01/22-323 (OA4) (hereinafter: “*Mokom OA4 Decision*”), para. 9, referring to *Situation in the Islamic Republic of Afghanistan*, [Decision on Prosecutor’s notice of discontinuance of the appeal](#), 16 March 2023, ICC-02/17-216 (OA5), para. 34 (hereinafter: “*Afghanistan OA5 Decision*”).

²⁹ [Afghanistan OA5 Decision](#), para. 33. See also [Mokom OA4 Decision](#), paras 9-10.

³⁰ [Afghanistan OA5 Decision](#), paras 33-34 (footnote omitted).

the appeals in their entirety. The Notices of Discontinuance thus satisfy the procedural formalities required. Nevertheless, with respect to the Prosecutor's Notice of Discontinuance the Appeals Chamber notes that it fails to indicate, either explicitly or implicitly, whether the participating victims were consulted and whether their views and concerns were considered in reaching the decision to discontinue the appeal.

22. In light of this, the Appeals Chamber considered it appropriate to permit participating victims to file observations on the Notices of Discontinuance and to reply to the responses of the parties to the Victims' Observations.³¹ In their observations, the victims confirmed that prior to the filing of the Notices of Discontinuance, they were "contacted by the parties".³² In particular, the victims note that the Prosecutor was informed "that the victims were firmly opposed to the idea of abandoning the appeal".³³ Furthermore, the victims submit that:

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 explanations 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 [...].³⁴

23. In their responses to the Victims' Observations, both parties indicated that the victims had been consulted beforehand and the Prosecutor clarified that he had "carefully considered the victims' communicated opinions as a relevant factor in exercising his independent statutory discretionary decision to discontinue the appeal".³⁵

24. The Appeals Chamber considers that a decision to discontinue an appeal against a decision pursuant to article 74 of the Statute will have a direct impact on the personal interests of participating victims including their right to effective judicial protection and to an effective remedy under internationally recognised human rights law.³⁶ In the case at hand, these rights

³¹ See [Order on Observations](#); [Order on Procedural Matters](#).

³² [Victims' Reply](#), para. 11.

³³ [Victims' Reply](#), para. 12.

³⁴ [Victims' Reply](#), para. 13.

³⁵ [Prosecutor's Response](#), para. 2; [Defence's Response](#), para. 3.

³⁶ [International Covenant on Civil and Political Rights](#), 16 December 1966, 999 United Nations Treaty Series 14668, article 2(3) ("Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy [...]"); [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power](#), 29 November 1985, UN Doc. A/RES/40/34, article 4 ("Victims [...] are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered"); [American Convention on Human Rights](#), 22 November 1969, 1144 United Nations Treaty Series 17955, article 25(1) ("Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention [...]"); [European Convention on Human Rights](#), 4 November 1950, as amended by Protocols No. 11

and interests are of particular importance for the victims of the sexual and gender-based crimes of which Mr Al Hassan was acquitted and with respect to which the Prosecutor intended to appeal. Moreover, the Appeals Chamber notes the victims' submissions regarding the apparent inconsistency between the Prosecutor's decision to discontinue proceedings and his office's stated policy to "consider the particular gravity of [gender-based crimes] affecting victims, their families and communities in its decisions regarding appeals and strategic litigation".³⁷ In these circumstances, the Appeals Chamber underscores the need for the Prosecutor to not only have indicated whether the victims were consulted but also to have indicated how their views and concerns were considered in reaching the decision to discontinue the appeal.

25. That said, the Appeals Chamber recalls that the right to discontinue an appeal is one that the Court's statutory framework permits and it involves an exercise of discretion of the parties concerned. At all times, this discretion must be exercised judiciously with full respect for the views and concerns of the victims. On the basis of the submissions received, the Appeals Chamber is satisfied that the participating victims were indeed consulted. However, as outlined above, given the impact of the Prosecutor's decision on the participating victims' rights and the level of dissatisfaction expressed by the victims with respect to the manner in which their views and concerns were taken into consideration, the Appeals Chamber recommends that, notwithstanding discontinuance of the proceedings, the Prosecutor further engage with the participating victims in order to meaningfully address their concerns.

26. As the Notices of Discontinuance satisfy the procedural requirements, the Appeals Chamber finds that they are valid and that the appellate proceedings in the case against Mr Al Hassan are terminated.

27. Finally, as noted above,³⁸ on 7 February 2025, the LRV filed the Victims' Further Observations on behalf of victims located in Burkina Faso and Niger. The observations, which

and No. 14, 213 United Nations Treaty Series 2889, article 13 ("Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority [...]"); IACtHR, *Velásquez Rodríguez v. Honduras*, [Judgment \(Merits\)](#), 29 July 1988, Series C no. 4, paras 62 ("Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1)"), 177 ("[investigation of a situation involving a violation of the rights protected by the Convention] must be undertaken in a serious manner and not as a mere formality preordained to be ineffective").

³⁷ The Office of the Prosecutor, [Policy on Gender-Based Crimes](#), 12 January 2023, para. 141. See also [Victims' Observations](#), para. 21.

³⁸ See paragraph 9 above.

were filed without the leave of the Appeals Chamber, were filed solely by the legal representative who had also contributed to the submissions that were ordered by the Appeals Chamber, namely, the Victims' Observations and the Victims' Reply. Moreover, the Appeals Chamber notes that the observations appear to relate in the main to proposals that may be relevant to the reparations phase of the proceedings and not the proceedings on discontinuance of the appeals. In these circumstances, the Appeals Chamber dismisses the Victims' Further Observations.

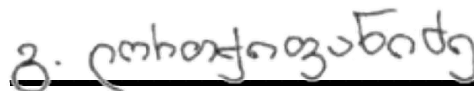
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Judge Luz del Carmen Ibáñez Carranza
Presiding



Judge Solomy Balungi Bossa



Judge Gocha Lordkipanidze



Judge Miatta Maria Samba



Judge Erdenebalsuren Damdin

Dated this 7th day of March 2025

At The Hague, The Netherlands