

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 29 May 2026

THE APPEALS CHAMBER

Before: Judge Tomoko Akane, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN MALI

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

Public

OPCV Notice of Appeal against the Reparations Order

Source: Office of Public Counsel for Victims

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

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| ☒ Legal Representatives of the Victims | ☐ Legal Representatives of the Applicants |
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| ☒ The Office of Public Counsel for Victims | ☒ Trust Fund for Victims |
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I. NOTICE OF APPEAL

1. The Office of Public Counsel for Victims (the “OPCV or the “Office”), representing four victims in the proceedings,¹ provides notice of appeal against parts of the “Reparations Order” (the “Impugned Decision”) issued on 28 April 2026 by Trial Chamber X (“the Trial Chamber”) in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*.²

2. This appeal is brought under article 82(4) of the Rome Statute (the “Statute”), rules 150(1) and 150(3) of the Rules of Procedure and Evidence (the “Rules”) and regulation 57 of the Regulations of the Court. It will demonstrate that:

- **Ground 1** : The Trial Chamber committed a combination of errors of law or fact or procedure by finding that only the 49 individuals specifically referred to in the Trial Judgment and in the Sentencing Decision should be eligible for reparations as direct victims of the crimes under Counts 1-6 and 14.
- **Ground 2** : The Trial Chamber committed a combination of errors of fact or procedure by failing to recognise material harm suffered by direct victims (sub-ground 1) and indirect victims (sub-ground 2) of the crimes under Counts 1-6 and Count 14.
- **Ground 3** : The Trial Chamber committed an error of fact or procedure by failing to rule on the appropriate type and modality of reparations for victims having suffered material harm as a result of the crimes under Counts 1-6 and 14 for whom it recognised material harm.
- **Ground 4** : The Trial Chamber committed a combination of errors of fact or procedure by failing to recognise that direct victims of the crime under Count 6 suffered physical harm.

¹ See the “Decision on the LRV’s submission on a potential conflict of interest” (Trial Chamber X), No. ICC-01/12-01/18-2728-Conf, 5 June 2025, disposition. A public redacted version [No. ICC-01/12-01/18-2728-Red](#), was filed the same day.

² See the “Reparations Order” (Trial Chamber X), [No. ICC-01/12-01/15-2872](#), 28 April 2026 (the “Impugned Decision”).

- **Ground 5** : The Trial Chamber committed a combination of errors of law or fact or procedure by failing to properly address and consider that, in the circumstances of the present case, victims suffered transgenerational harm.

II. GROUNDS OF APPEAL

1. Ground 1 : The Trial Chamber committed a combination of errors of law or fact or procedure by finding that only the 49 individuals specifically referred to in the Trial Judgment and in the Sentencing Decision should be eligible for reparations as direct victims of the crimes under Counts 1-6 and 14.³

3. The Trial Chamber erred in finding that victims of the crimes under Count 1-6 and 14 - who suffered harm during the period of the charges, but who were not specifically named in the Trial Judgment or in the Sentencing Decision - cannot be eligible for reparations.

4. First, the Trial Chamber misapplied the standard of proof at reparations. The applicable legal framework provides that the standard of proof governing the determination of victims' eligibility for reparations is the balance of probabilities. In the Impugned Decision, the Trial Chamber limited eligibility for reparations - in respect of the crimes under Counts 1-6 and 14 - exclusively to the 49 individuals specifically referred to in the Trial Judgment, characterising them as "*the direct victims of Mr Al Hassan's convictions*".⁴ By doing so, the Trial Chamber effectively treated the beyond reasonable doubt standard as the applicable standard of proof for determining the eligibility for reparations in clear departure from the legally mandated balance of probabilities standard and deprived any other victim of said Counts of the right of being recognised as such.

5. Second, the Trial Chamber failed to take into account available evidence in the record of the case. In particular, it failed to give due consideration to relevant facts and

³ *Ibid.*, paras. 64-66.

⁴ *Ibid.*, para. 66.

circumstances that it had itself acknowledged in the Trial Judgment and in the Sentencing Decision, including, *inter alia*, the temporal and territorial extent of the system of repression imposed by Ansar Dine/AQIM. It likewise failed to take into account other evidence in the record of the case demonstrating the breadth of victimisation, such as the material submitted by the Trust Fund for Victims (the “TFV”). This omission constitutes an error. The evidence in question clearly established, on a balance of probabilities, that it is more likely than not that significantly more than the 49 individuals specifically referred to in the Trial Judgment suffered harm as a result of the crimes under Counts 1-6 and 14.

6. Said errors materially affect the Impugned Decision. First, as a direct consequence, victims of the crimes under Counts 1-6 and 14 – other than 49 individuals referred to in the Trial Judgment – were deprived from the acknowledgement of their multidimensional harm, which, in and of itself, constitutes a satisfaction measure.⁵ Second, for the same reason, and contrary to the overarching purpose of the Court’s reparations system,⁶ the full scope of victimisation in the present case was not properly recognised nor addressed to the fullest extent possible. Third, if these errors are not corrected, the Impugned Decision risks establishing a precedent detrimental to the integrity of the Court’s reparations system. In future cases where the crime of persecution will not be among the crimes for which the person is convicted, numerous victims – other than those expressly named in the trial judgment in relation to other crimes - will likely be deprived of any type of reparations. Accordingly, the errors warrant the intervention of the Appeals Chamber.

⁵ *Ibid.*, para. 74.

⁶ See, *inter alia*, the “Reparations Order” (Trial Chamber VI), [No. ICC-01/04-02/06-2659](#), 8 March 2021, paras. 1-3 (the “*Ntaganda* Reparations Order”).

2. Ground 2: The Trial Chamber committed a combination of errors of fact or procedure by failing to recognise material harm suffered by direct victims (sub-ground 1) and indirect victims (sub-ground 2) of the crimes under Counts 1-6 and Count 14.⁷

a. Sub-Ground 2-1: The Trial Chamber committed a combination of errors of fact or procedure by failing to recognise material harm suffered by direct victims of the crimes under Counts 1-6 and 14.

7. The Trial Chamber failed to make explicit findings as to whether direct victims of the crime under Count 6 suffered material harm and rather limited itself to reiterate the reasons for the detention of the victims, as established in the Trial Judgment, without reaching any conclusion regarding the nature and extent of the harms they suffered.⁸ This constitutes an error.

8. First, the Trial Chamber erred in failing to rule on the explicit request made by the victims that it recognise the material harm they suffered.⁹ This omission is inconsistent with the Court's established jurisprudence, which requires trial chambers to identify and define the harm caused to direct and indirect victims as a result of the crimes for which the person was convicted.¹⁰ It is also at odds with the Trial Chamber's own finding that the detailed articulation of the harms suffered constitutes, in and of itself, a satisfaction measure.¹¹

⁷ See the Impugned Decision, *supra* note 2, paras. 128-138; in particular para. 137 (for victims of the crime under Counts 6); paras. 145-175 (direct victims of the crimes under Counts 1-5 and 14); and para. 171 (for indirect victims).

⁸ *Ibid.*, paras. 128-138, in particular para. 137.

⁹ See the "Public redacted version of "Corrected version of 'The OPCV's Submissions on Reparations' (ICC-01/12-01/18-2747-Conf, 22 August 2025)" (ICC-01/12-01/18-2747 Conf-Corr, 27 August 2025)", [No. ICC-01/12-01/18-2747-Corr-Red](#), 27 August 2026, paras. 20-22, 32-34 (the "OPCV Submissions").

¹⁰ See the "Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 and public annexes 1 and 2" (Appeals Chamber), [No. ICC-01/04-01/06-3129 A A2 A3](#), 3 March 2015, para. 1 (the "*Lubanga* 2015 Appeals Judgement on Reparations"), with AMENDED order for reparations (Annex A) [No. ICC-01/04-01/06-3129-AnxA A A2 A3](#), (the "*Lubanga* Amended Order for Reparations").

¹¹ See the Impugned Decision, *supra* note 2, para. 74.

9. Second, the Trial Chamber found that certain victims of the crimes under Counts 1-5 and 14 did not suffer any material harm as a result of what they endured.¹² To reach this conclusion, the Trial Chamber committed an error by relying exclusively on the factual findings set out in the Trial Judgment while disregarding other available evidence in the record of the case demonstrating that said individuals suffered material harm that was both foreseeable and directly linked to the crimes. In particular, it failed to consider evidence from victims of the crimes under Counts 1-5 and 14 indicating that they were ostracised and excluded from participating in society,¹³ with lasting effects on their productive capacity, to date.

10. Concerning the material harm suffered by the victims of the crime under Count 6, the Trial Chamber correctly found that said harm encompasses losses relating to “*opportunity to work, reduced standard of living and socio-economic opportunities*”.¹⁴ Accordingly, in light of this determination, its failure to find that victims of the crime under Count 6 suffered from material harm is inexplicable, particularly given the evidence in the record of the case demonstrating such harm.

11. Third, while recognising material harm for certain victims of the crimes under Counts 1-5 and 14, the Trial Chamber introduced the notion of *persisting* harm and interpreted it as existent only in situations in which victims incurred expenses for medical costs directly arising from the flogging,¹⁵ or the payment of fines.¹⁶ By contrast, the Trial Chamber concluded that the harm suffered by a victim who lost their business due to the ostracism resulting from their arrest and flogging constituted material harm but did not persist.¹⁷

¹² *Ibid.*, paras. 145-146, paras. 147-150 concerning P-0556 (because she did not show payment of medical expenses contrary to P-0557); paras. 151-153, 166-167.

¹³ *Ibid.*, *inter alia*, paras. 159-160.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, paras. 147-150 concerning P-0557 (payment of medical expenses), paras. 154-161, 162-165.

¹⁶ *Ibid.*, paras. 162-165.

¹⁷ *Ibid.*, paras. 154-157, 158-161.

12. The Trial Chamber failed to indicate on which basis it assessed the persistence of the harm. This deficiency is compounded by the fact that, in reaching its conclusions, it relied on evidence provided years earlier during the trial proceedings, without considering any updated or contemporaneous information.

13. Further, this conclusion is contradicted by other available evidence in the record of the case demonstrating that victims who lost their source of income have never fully recovered economically. Moreover, the Trial Chamber's approach leads to an unsound and untenable result: it recognises that the one-time payment of a fine constitutes *persistent* material harm,¹⁸ while the loss of a business – representing a stable and ongoing source of income – does not.¹⁹ This reasoning is also incompatible with the very definition of material harm that the Trial Chamber expressly endorsed, namely that it encompasses the “*opportunity to work, reduced standard of living and socio-economic opportunities*”.²⁰

14. Fourth, the Impugned Decision violates the principles of non-discrimination and equality amongst victims. Indeed, the Trial Chamber's erroneous approach inevitably results in unequal treatment: victims who will be identified during the forthcoming identification process will have the opportunity to be asked about, and provide information concerning expenses incurred at the time of the crime, or any material harm suffered as a consequence. *A contrario*, those victims who testified at trial – providing accounts of the harm they suffered solely for the purpose of establishing the accused's criminal responsibility – and without knowledge of the future reparations order – were not afforded any opportunity to elaborate on the material harm they incurred. This differential treatment is incompatible with the principles of equality and non-discrimination that govern the Court's reparations system.²¹

¹⁸ *Ibid.*, paras. 164-165.

¹⁹ *Ibid.*, paras. 160-161.

²⁰ *Ibid.*

²¹ See the *Ntaganda* Reparations Order, *supra* note 6, paras. 41-44.

15. These errors materially affect the Impugned Decision as they led the Trial Chamber to decline to award reparations for the material harm suffered by the victims. Specifically, “[f]or victims of the crimes other than persecution [that is Count 1-6 and 14], the Chamber recognises that [they] may have experienced specific harm, that is, physical and psychological harm” warranting “a more individualised component”.²² It consequently ordered that “an individualised component should be added to the [...] rehabilitation programmes to address the physical and psychological harm”.²³ By limiting its findings in this manner, the Trial Chamber failed to acknowledge and remedy the material harm suffered by the concerned victims.

16. Accordingly, the errors warrant the intervention of the Appeals Chamber.

*b. Sub-Ground 2-2: The Trial Chamber committed a combination of errors of fact or procedure by failing to recognise material harm suffered by indirect victims of the crimes under Counts 1-6 and 14.*²⁴

17. Contrary to the Trial Chamber’s findings,²⁵ the evidence available in the record of the case unequivocally demonstrates that family members of direct victims of the crimes under Counts 1-6 and 14 suffered material harm in multiple forms.

18. The record clearly shows that such harm extended beyond the direct victims themselves and affected their households economically and socially. The Trial Chamber’s failure to recognise this material harm constitutes an error which has significant consequences for the ability of the concerned victims to access adequate forms of reparation.

19. Accordingly, the errors warrant the intervention of the Appeals Chamber.

²² See the Impugned Decision, *supra* note 2, para. 187.

²³ *Ibid.*, para. 202.

²⁴ *Ibid.*, para. 171.

²⁵ *Ibid.*

3. Ground 3: The Trial Chamber committed an error of fact or procedure by failing to rule on the appropriate type and modality of reparations for victims having suffered material harm as a result of the crimes under Counts 1-6 and 14.

20. The Trial Chamber found that the “*physical, moral, material and community harm*” caused by the crime of persecution was best addressed through collective community-based reparation,²⁶ whereas the “*physical and psychological harm*” resulting from the other crimes was best addressed through an individualised component.²⁷

21. The Trial Chamber erred by failing to determine the appropriate type and modality of reparations for victims who suffered material harm as a result of the crimes under Counts 1-6 and 14.

22. Indeed, although imperfectly,²⁸ the Trial Chamber did find that certain victims of the crimes under Counts 1-6 and 14 suffered material harm, and that for some of them this harm persists to the present day. Yet, inexplicably, and without providing any justification, it declined to award any form of reparations for this harm. This error affects the Impugned Decision as it deprives victims of an important form of reparations.

23. Accordingly, the error warrants the intervention of the Appeals Chamber.

4. Ground 4: The Trial Chamber committed a combination of errors of fact or procedure by failing to recognise that direct victims of the crime under Count 6 suffered physical harm.

24. Similar than for material harm, the Trial Chamber erred by declining to make explicit findings on whether direct victims of the crime under Count 6 suffered physical harm. Instead of assessing the nature and extent of the harm, the Trial

²⁶ *Ibid.*, para. 186.

²⁷ *Ibid.*, para. 187 (emphasis added).

²⁸ See *supra*, paras. 7-16.

Chamber merely reiterated the reasons for the victims' detention, as set out in the Trial Judgment, without reaching a conclusion on the specific harms they endured.²⁹

25. First, the Trial Chamber failed to rule on the request by victims to recognise that they suffered physical harm.³⁰ This omission is inconsistent with the Court's established jurisprudence, which requires trial chambers to define the harm suffered by both direct and indirect victims as a result of the crimes for which the person was convicted.³¹ It also contradicts the Trial Chamber's own finding that a detailed recounting of the harms suffered constitutes, in itself, a satisfaction measure.³²

26. Second, the Trial Chamber correctly found that physical harm "*is not restricted to the infliction of a physical or bodily injury*", and that "*hurt, pain, suffering otherwise not caused by a bodily injury can also amount to physical*".³³ In light of this determination, its failure to find that victims of the crime under Count 6 suffered from physical harm is inexplicable, particularly given the evidence available in the record of the case demonstrating such harm.

27. These errors materially affect the Impugned Decision, as they deprive victims of the crime under Count 6 – and similarly situated victims – of the possibility, first, to have their harm properly acknowledged, and, second, to benefit from individualised reparations for said harm. Accordingly, the errors warrant the intervention of the Appeals Chamber.

²⁹ See the Impugned Decision, *supra* note 2, paras. 128-138, in particular para. 137.

³⁰ See the OPCV Submissions, *supra* note 9, paras. 20-22, 32-34.

³¹ See the *Lubanga* 2015 Appeals Judgement on Reparations, with the *Lubanga* Amended Order for Reparations", *supra* note 10, para. 1.

³² See the Impugned Decision, *supra* note 2, para. 74.

³³ *Ibid.*, para. 71.

5. Ground 5: The Trial Chamber committed a combination of errors of law or fact or procedure by failing to properly address and consider that in the circumstances of the present case victims suffered transgenerational harm.

28. The Trial Chamber erred by failing to consider, on the applicable standard of proof, whether it was more likely than not that transgenerational harm was caused in the circumstances of the case.

29. The Trial Chamber was not required to determine the scientific mechanism through which transgenerational harm is transmitted. However, at the reparations stage, it was under a duty to establish, to the fullest extent possible, the scope of victimisation in the present case.³⁴ Having been expressly seized by the parties, the Trial Chamber was required, as part of its judicial functions, to determine whether it was more likely than not that transgenerational harm occurred in the circumstances of the present case. Instead, it decided not to conduct any analysis at all.

30. In doing so, the Trial Chamber failed to take into account its own findings in the Trial Judgment and in the Sentencing Decision concerning the multidimensional harm, including long-term consequences, caused by the crimes to the entire population of Timbuktu and to the community as a whole. In particular, it expressly recognised that *“to the extent that the Reparations Order addresses the harm of the current population in a timely manner, it thereby mitigates the harm of the next generations”*.³⁵ Yet, in making this observation, it disregarded the fact that the Reparations Order was issued 13 years after the commission of the crimes, and that the timeline for its implementation remains largely uncertain. This omission undermines the Trial Chamber’s reasoning and its assessment of whether transgenerational harm is more likely than not to have occurred.

³⁴ See the *Lubanga* 2015 Appeals Judgement on Reparations, *supra* note 10, para. 1.

³⁵ See the Impugned Decision, *supra* note 2, para. 179.

31. In declining to rule on the matter, the Trial Chamber also disregarded its own finding that a detailed recounting of the harms suffered constitutes, in and of itself, a satisfaction measure.³⁶ By failing to assess whether transgenerational harm was more likely than not to have occurred, the Trial Chamber deprived victims of this recognised satisfaction measure and left a significant aspect of the harm unaddressed.

32. Further, the Trial Chamber erred by failing to address and consider the parties' and participants' submissions that, in the circumstances of the present case, transgenerational harm was indeed caused. In their respective submissions, the parties, the Prosecution and the TFV all argued that the crimes for which Mr Al Hassan was convicted could have resulted, *inter alia*, in transgenerational harm. The Trial Chamber nevertheless concluded that it was "*unnecessary to include transgenerational harm*".³⁷ While a trial chamber is not required to substantiate every finding in detail, it must, as part of its judicial functions, address, at least succinctly, the submissions before it.³⁸ By failing to engage at all with the parties' and participants' arguments on transgenerational harm, the Trial Chamber erred in the exercise of its discretion, in a manner that amounts to an abuse of discretion.

33. The errors materially affect the Impugned Decision. First, they result in the scope of victimisation in the present case not being properly addressed and established. Second, the Trial Chamber's refusal to address a significant matter squarely before it is striking and undermines the integrity of its reparations analysis. Accordingly, the errors warrant the intervention of the Appeals Chamber.

³⁶ *Ibid.*, para. 74.

³⁷ *Ibid.*

³⁸ See the "Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute"" (Appeals Chamber), [No. ICC-01/05-01/13-2275-Red A A2 A3 A4 A5](#), 8 March 2018, paras. 105-108.

III. RELIEF SOUGHT

34. Pursuant to article 82(4) of the Statute and rule 153(1) of the Rules, the Office respectfully requests the Appeals Chamber to:

- In respect of *Ground 1*, **REVERSE** the Trial Chamber's findings as challenged and **FIND** that any victim – other than the 49 individuals specifically referred to in the Trial Judgment – who, on a balance of probabilities, suffered harm caused by any of the crimes under Counts 1-6 and 14, should be deemed eligible for reparations with respect to said crimes; or, in the alternative, **REMAND** the matter to the Trial Chamber for a new determination;
- In respect of *Grounds 2, 3 and 4*, **REVERSE** the Trial Chamber's findings as challenged and **REMAND** the matters to the Trial Chamber for a new determination;
- In respect of *Ground 5*, **REVERSE** the Trial Chamber's finding as challenged and **FIND** that transgenerational harm was caused in the circumstances of the case; or, in the alternative, **REMAND** the matter to the Trial Chamber for a new determination.



Dmytro Suprun



Paolina Massidda

Dated this 29th day of May 2026
At The Hague (The Netherlands)