

**Cour
Pénale
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**International
Criminal
Court**

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Date: 9 May 2018

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou

**SITUATION IN THE REPUBLIC OF MALI
IN THE CASE OF
THE PROSECUTION V. AL HASSAN AG ABDOUL AZIZ
AG MOHAMED AG MAHMOUD**

Confidential

**With Confidential *EX PARTE* Annex I, only available to the Registry, and
Confidential Annex II**

**Registry Observations on Aspects Related to the Admission of Victims for
Participation in the Proceedings**

Source: Registry

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

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**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. Introduction

1. In view of the confirmation of charges hearing scheduled to start on 24 September 2018,¹ the Registry hereby submits, pursuant to regulation 24 *bis* of the Regulations of the Court ("RoC"), observations on aspects related to the admission process for victims seeking to participate in the proceedings in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud Case* ("Case").
2. The Registry further requests Pre-Trial Chamber I's ("Chamber") approval of the annexed proposed victim's application form for participation and reparations ("Proposed Application Form").² It also provides two different proposed approaches for the admission process of applications and seeks the Chamber's guidance as to its preferred option.³

II. Classification

3. Pursuant to regulation 23 *bis*(1) of the RoC, this document is classified confidential in accordance with standard Registry practice regarding procedural and administrative suggestions made to the Chamber. In addition, Annex I is classified confidential *ex parte* only available to the Registry, also following Registry practice, as it contains the suggested format for how the personal information of potential victims would be collected which would, if the Chamber were to accept the form, remain *ex parte* throughout the proceedings.

¹ Transcript of 4 April 2018, ICC-01/12-01/18-T-1-Red-ENG (WT), p.11, lines 17-21.

² Annex I.

³ Annex II contains a table with relevant victim-related information transmitted to the Chamber and the parties should the Chamber choose the second approach on the admission process of victim applications as outlined *infra*.

III. Applicable Law

4. The Registry submits the present request in accordance with article 68(1) and (3) of the Rome Statute, rules 16(1), 85, 89 and 94 of the Rules of Procedure and Evidence ("Rules"), regulations 23 *bis*(1), 24 *bis*, 86 and 88 of the RoC, and regulations 98, 106 to 111 of the Regulations of the Registry ("RoR").

IV. Submissions

A. Application form

5. A standard one-page application form for victims has been approved by the Presidency in 2017 pursuant to regulation 23(2) of the RoC. However, the Registry notes (1) the specific circumstances of the *Al Hassan* case in terms of security and accessibility to victim communities, and (2) the need to apply the most efficient and meaningful approach to collect victims' information for the purposes of participation and reparations, as appropriate. These considerations have led the Registry to propose a new application form described in greater detail below. The Registry respectfully seeks the Chamber's approval to use this form for the purpose of victim participation in the upcoming confirmation of charges hearing in the Case ("Proposed Application Form").⁴
6. This proposed form essentially contains the standard one-page form approved by the Presidency in 2017 together with an ensuing reparations component. The purpose of the first part of the form is to collect essential information on each individual victim required for the Chamber's determination on their status.⁵ In addition, the Proposed Application Form

⁴ Confidential *Ex Parte* Annex I.

⁵ See Chambers Practice Manual (version of May 2017, section C. I. (i)).

contains three pages that include questions related to reparations in keeping with rule 94(1) of the Rules and regulation 88 of the RoC. For the specific questions in the Proposed Application Form, the Registry uses formulations from prior application forms for reparations filed in other proceedings and approved by the Presidency at the time.

7. The rationale for including at this early stage questions relating to reparations in the Proposed Application Form is driven by: (1) the challenging security context in Mali; (2) the Registry's past experiences from *inter alia* the case *The Prosecutor v. Ahmad Al Faqi Al Mahdi*;⁶ and (3) the overall need for efficiency in the application process in order to enable as many victims as possible to participate in the proceedings as soon as possible, mindful of the parties' rights.
8. Given the limited access the Registry will have to victims owing to the volatile security situation on the ground, collecting information on participation and reparations at the same time would maximise the efficiency of the Registry's field activities. A maximum of victim-related information could be secured with minimum impact on victims' personal safety and security. Simultaneous collection of reparations-related information would also enable the Registry to provide relevant notifications to the Defence at the start of trial in accordance with rule 94 of the Rules.
9. In addition, should the Case reach the reparations phase, relevant processes would be accelerated since core information related to reparations would have already been securely registered in the Registry database.⁷ Victims

⁶ *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15.

⁷ The Registry notes that having this information at the early stage does not replace the potential need for the legal representative of the victims or the Registry to seek from the victims updated information regarding reparations at a later stage of the proceedings.

would not need to apply separately for reparations and many application forms would already be complete and ready for transmission.

10. By including questions on reparations before a conviction, the Registry is cognisant that victims' expectations will need to be managed. The Registry's Victims Participation and Reparations Section has relevant experience in this regard and will tailor its communication in the field accordingly. Applicants' will be made aware that requesting reparations in their application form does not imply that reparation awards will follow automatically and that if reparations were to be awarded after a conviction, it is likely to occur a number of years after the victim application process.

11. The Registry would also like to inform the Chamber that concomitant to the Proposed Application Form presently submitted, the Registry is developing the following tools, which may become available for use in the present Case when finalised:

- an electronic version of the Proposed Application Form (if approved), which will allow the collection of victims' applications in the field electronically with a relevant device (as opposed to filling in the traditional paper forms). This initiative aims to increase the efficiency and safety of the application process both in the field and at headquarters. It would be particularly useful in the context of the present situation in Mali as it would enhance the protection of sensitive information provided by victims;
- an online version of the Proposed Application Form (if approved) on the ICC web page, which would facilitate access to the proceedings to those potential applicants who may be out of reach for the Registry and who have (albeit limited) access to internet. The online version of the application would allow victims:

(i) to download the application form (as well as related guidelines on how to fill in the form) and send the filled form back to the ICC; or

(ii) to fill in an application form directly online, including uploading all required documentation to complete the application form (for both participation in the proceedings and reparations).

B. Admission Process

12. To prepare and organize the victim application process in light of the contextual realities present in the *Al Hassan* case, the Registry proposes to the Chamber two options for the admission process. The proposed processes aim at speeding up the admission of victims in the proceedings while respecting the suspect's rights. The overall objective is to facilitate the participation of the maximum and most representative number of victims at the confirmation of charges hearing.

Option 1:

13. The following proposal for the admission process is informed mostly by the approaches adopted in the cases of *The Prosecutor v. Dominic Ongwen* and *The Prosecutor v. Bosco Ntaganda* and the Chambers Practice Manual. This approach includes the following features:

- The Registry receives applications and assesses these applications against Rule 85 of the Rules and any other criteria set by the Chamber. Further, it categorizes the applicants into three groups:
Group A: Applicants who clearly qualify as victims;
Group B: Applicants who clearly do not qualify as victims;
Group C: Applicants for whom the Registry could not make a clear determination for any reason.⁸

⁸ Chambers Practice Manual, section C. I. (ii).

- The Registry then transmits on a rolling basis all complete applications to the Chamber.
- The applications that, in the Registry's view, are incomplete and/or fall clearly outside the scope of the concerned case are not transmitted to the Chamber.⁹
- The Registry prepares periodic reports which list the victim applications falling into each of the aforementioned three groups. These reports are notified to the Chamber, the parties and participants. They are without application-by-application reasoning or analysis.
- For Groups A and B, barring a clear and material error apparent in the Registry's assessment, the Chamber would endorse the assessments regarding these applicants.
- As regards the transmission of applications to the parties, as foreseen in rule 89(1) of the Rules and section C. I. (v) of the Chambers Practice Manual, there are two sub-options, both informed by previous Chambers practice:
 - i. **Sub-Option 1:** Group A and C applications would be transmitted to the parties (with the necessary redactions). The Registry would also submit a report with information on each individual victim including the VPRS' *prima facie* assessment of the applications. Once the parties' observations have been received on applications as appropriate, the Chamber would determine whether each individual victim shall be admitted to participate or not (following in relevant part the approach taken in the *Ongwen* proceedings);

⁹ Chambers Practice Manual, section C. I. (ii), (iii), (iv).

- ii. **Sub-Option 2:** Only Group C applications presenting unclear or borderline issues on which the Registry is unable to make a clear determination would be transmitted to the parties (with the necessary redactions) for observations. The Registry would also provide a report to the Chamber and parties that clearly highlights the issues arising from the application forms that the Registry was unable to make a clear determination on. Once the parties' observations have been received on the unclear applications, the Chamber would assess the Group C applications individually and determine whether they shall be admitted to participate or not.¹⁰ Barring a clear or material error in the Registry's assessment of Group A applications, the Chamber would ratify the Registry's assessment and admit the applicants falling under Group A. This would be without transmission to the parties, in slight deviation from Chambers Practice Manual, section C. I. (v).¹¹

The benefit of sub-option II, as adopted in the trial proceedings in *The Prosecutor v. Bosco Ntaganda*,¹² is that parties as well as the Chamber would only (have to) concentrate on pre-assessed unclear or borderline issues, in a bundled fashion, saving time for other tasks and duties. In addition, Registry processing and redaction obligations would extend to only a fraction of relevant forms submitted to the parties, leading to considerable resource savings. This, in turn, would enable the Registry to process the highest number of victims' applications with a view to their

¹⁰ This suggested approach follows Trial Chamber VI, "Decision on victims' participation in trial proceedings", 6 February 2015, ICC-01/04-02/06-449, para. 24(iv), (vi) and (vii).

¹¹ It is noted that all forms would remain on file with the Registry and could be transmitted to the parties at any stage as necessary (with redactions as appropriate).

¹² Trial Chamber VI, "Decision on victims' participation in trial proceedings", 6 February 2015, ICC-01/04-02/06-449.

timely participation in the proceedings leading up to the confirmation of charges. This is particularly relevant in the present circumstances, due to (1) the considerable security challenges faced in the Case, (2) the resulting likelihood for the administration of heavy redactions, and (3) the high number of expected victim applicants due to the broad scope of the Case.

Option 2:

14. As an alternative, the Registry proposes an approach whereby the parties will receive the relevant data derived from the first page of the one-page application form for participation, together with the Registry's individual assessment, per application, in consolidated reports. This information would be presented to the parties and the Chamber without redactions and would avoid transmission of the forms themselves. Annex II outlines the suggested relevant information retrieved from the forms that would be presented to the parties in comprehensive tables.

15. This approach includes the following features:

- The Registry transmits all applications received to the Chamber on a rolling basis;
- Rather than transmitting copies of the forms to the parties, the Registry prepares reports in a table format with all relevant data per individual victim relating to rule 85 of the Rules that can be found on the first page of the application form;¹³
- This table includes data from all victims' applications that either clearly fall within the scope of the Case, or unclear applications (both categories clearly marked as such). Data from applications that, in the

¹³ Annex II.

view of the Registry, are incomplete and/or fall outside the scope of the concerned case would not be included in the table;¹⁴

- The parties would be invited to present their observations, if any, for each victim applicant;
- The Chamber may consider that applications which are not opposed by the parties within 14 days of the notification of the table would be automatically admitted in the proceedings.¹⁵ For applications the parties commented on, the Chamber may then issue decisions based on the parties' observations.

16. The Registry considers that this approach would remain within the spirit of rule 89(1) of the Rules and the Chambers Practice Manual. It also provides sufficient information on individual applicants for the parties to make meaningful observations if they so choose. As an additional safeguard, the Chamber would receive all applications in their original format for its consideration. Importantly, since no applications would be transmitted, generally no redactions would be necessary. Again, in light of the anticipated number of applications, this could be a substantial efficiency gain.

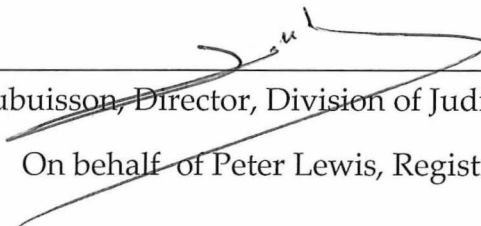
17. The Registry anticipates that this approach will also prove highly beneficial once the electronic application tools become available, since many of the forms will be received as data files as opposed to the traditional paper forms - a development already anticipated to an extent in the *Al Hassan* case. Once available, the Registry would be able to prepare reports for the admission process at a faster pace.

¹⁴ Chambers Practice Manual, section C. I. (iv).

¹⁵ See, for example, Pre-Trial Chamber II, "Decision concerning the procedure for admission of victims to participate in the proceedings in the present case", 3 September 2015, ICC-02/04-01/15-299, para. 7.

V. Conclusion

18. The Registry requests the Chamber's approval of the annexed Proposed Application Form for the purpose of victim participation in the upcoming confirmation of charges hearing in the Case. It also seeks the Chamber's guidance as to its preferred *modus operandi* in relation to the admission process of applications.



Marc Dubuisson, Director, Division of Judicial Services
On behalf of Peter Lewis, Registrar

Dated this 9 May 2018

At The Hague, The Netherlands