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Date: 17 September 2018

**PRE-TRIAL CHAMBER I**

**Before: Judge Péter Kovács, Single Judge**

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

**Public  
With Confidential Annex A**

**Registry's First Assessment Report on Applications for Victims' Participation in  
Pre-Trial Proceedings**

**Source: Registry**

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

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**The Office of Public Counsel for  
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**Amicus Curiae**

**REGISTRY**

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Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
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## I. Introduction

1. In paragraph 59 of the Decision Establishing the Principles Applicable to Victims' Applications for Participation ("Decision")<sup>1</sup>, the Single Judge established an admission system whereby the Registry should *inter alia* "classif[y] the applicants into three categories: (a) applicants who clearly qualify as victims ("Group A"); (b) applicants who clearly do not qualify as victims ("Group B"); and (c) applicants for whom the Registry could not make a clear determination for any reason ("Group C")."<sup>2</sup>
2. Additionally, the Single Judge ordered the Registry to prepare "regular reports that list the applications for participation and classify them according to the three groups"<sup>3</sup> and "assessment reports for the attention of the Chamber and the parties, highlighting the difficulties encountered regarding Group C applications."<sup>4</sup>
3. The Registry hereby transmits its first report on the 34 complete applications received to date<sup>5</sup> in the case of the *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Case") which includes:
  - An update on the steps taken by the Registry so far to organize the victim application process;
  - A brief description of the assessment criteria applied in relation to the 20 applicants who clearly, in the Registry's assessment, qualify as victims in Group A;
  - A brief overview of the reasons why the Registry was not in a position to make a clear determination on the 14 applicants falling under Group C.

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<sup>1</sup> Pre-Trial Chamber I, "Decision Establishing the Principles Applicable to Victims' Applications for Participation", 24 May 2018, ICC-01/12-01/18-37-tENG.

<sup>2</sup> *Id.* at para. 59(i).

<sup>3</sup> Decision, para. 59(iii).

<sup>4</sup> Decision, para. 59(v).

<sup>5</sup> As detailed further at paragraphs 11-12 *infra*, this number only includes the complete applications received on the form approved by the Single Judge in the Case.

4. The applications falling in Groups A and C have been listed and classified in Annex A to the present submission and separately transmitted to the Chamber and the parties respectively, in accordance with paragraphs 59(ii) and (iv) of the Decision. To date, the Registry has not yet received any applications that fall into the Group B category.

## **II. Procedural History**

5. On 27 March 2018, Pre-Trial Chamber I (“Chamber”) issued the Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Arrest Warrant”).<sup>6</sup>
6. On 4 April 2018, Mr Al Hassan had his initial appearance before the Chamber.
7. On 24 May 2018, the Single Judge issued the Decision setting out *inter alia* the admission procedure for victim participation in the Case.<sup>7</sup>
8. On 20 July 2018, the Chamber decided to postpone the commencement of the hearing on the confirmation of charges in the Case to 6 May 2019.<sup>8</sup>

## **III. Applicable Law**

9. The present report is submitted on the basis of article 68(1) and (3) of the Rome Statute, rules 85 to 89 and 92 of the Rules of Procedure and Evidence, regulation 86 of the Regulations of the Court (“RoC”), and regulations 107 to 109 of the Regulations of the Registry.

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<sup>6</sup> Pre-Trial Chamber I, “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 27 March 2018, ICC-01/12-01/18-2-tEng.

<sup>7</sup> See *supra* footnote one.

<sup>8</sup> Pre-Trial Chamber I, « Décision portant report de la date de d'audience de confirmation des charges », 20 July 2018, ICC-01/12-01/18-94-Red.

#### IV. Submissions

##### Update on the Victim Application Process

10. Following the input received from its initial mission to Mali, the VPRS decided to encourage victims to complete and transmit the joint application form approved by the Single Judge in the Case<sup>9</sup> ("*Al Hassan* Form") rather than attempting to collect supplementary information for the applications already received concerning reparations in the *Prosecutor v. Ahmad Al Faqi Al Mahdi* case ("*Al Mahdi* Case"), or applications received at the Situation level on the 2009 Victim Application Form.<sup>10</sup>
11. The principal reasons for this prioritization of processing *Al Hassan* Forms over other application form types include:
  - The previous forms received were completed with the *Al Mahdi* scope (and reparations phase) of the case in mind and the VPRS has been informed that many of the victims who completed these forms have omitted facts that may be relevant to the *Al Hassan* Case due to the fact that the latter case is wider in scope as per the Arrest Warrant;
  - It is impossible to know without asking which or how many victims who have previously submitted forms have forgone the opportunity at the time to share their complete stories;
  - The vast majority of the applications received in relation to the *Al Mahdi* case would require supplementary information to be considered complete for the *Al Hassan* Case. Asking the victims to recount their narratives for the purposes of supplementary information is no

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<sup>9</sup> Decision, para. 29; Registry, Annex I to Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings, 9 May 2018, ICC-01/12-01/18-28-Conf-Exp-AnxI.

<sup>10</sup> The VPRS notes that all but 24 of the previously received applications in question have been submitted by the legal representative of victims in the *Al Mahdi* Case.

different than asking them to do so for the purposes of a new form.<sup>11</sup> In addition, the resources required to meet the victim again to request supplementary information are the same resources required to complete a new *Al Hassan* Form;

- Working with three different types of forms<sup>12</sup> in a single case would be very difficult to manage in the field regarding the training of intermediaries and the preparation of instructional materials; in addition, it would increase the complexity of handling and reporting of the information at headquarters.

12. For these reasons, unless the Single Judge instructs otherwise, the VPRS will carry on encouraging the use of the *Al Hassan* Form in the Case and transmit, by way of priority, only those *Al Hassan* forms deemed complete in accordance with the instructions provided by the Single Judge in paragraph 46 of the Decision.<sup>13</sup>

13. Additionally, in accordance with paragraph 33 of the Decision, the VPRS is in the process of finalizing the electronic version of the *Al Hassan* Form and will publish it in the coming days, together with integrated guidance, on the Court's website.

#### Details on the Assessment Criteria and List of Applications Falling within Group A

14. Applying the criteria set out in paragraph 46 of the Decision, the VPRS has assessed each of the 20 applications transmitted under Group A as complete. In conducting its *prima facie* assessment in accordance with paragraph 48 of

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<sup>11</sup> The VPRS will follow best practices in the field in order to try and minimize any possible secondary traumatization to victims.

<sup>12</sup> The VPRS notes that the three forms include 1) the form approved for reparations in the *Al Mahdi* Case; 2) the seven-page 2009 Standard Victim Application Form; and 3) the 2018 *Al Hassan* Form.

<sup>13</sup> Applications received on other form types will only be transmitted if the Registry is unable to reach out to the victim to complete the *Al Hassan* form and if the information received is deemed complete in accordance with paragraph 46 of the Decision.

the Decision, the VPRS confirms that each of the 20 applicants whose applications have been transmitted in Group A have met the following criteria:

- i. His or her identity as a natural person is established;
- ii. He or she has suffered harm;
- iii. The harm suffered is a result of an incident falling within the temporal, geographic and material scope of the *Al Hassan* case.

15. In relation to point (i), the VPRS noted that certain applications<sup>14</sup> falling under Group A contain minor discrepancies pertaining to *inter alia* the spelling of the applicants' names.<sup>15</sup> In these cases, the VPRS took note of the Single Judge's instruction that "a certain degree of flexibility must be shown"<sup>16</sup> and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]"<sup>17</sup>.

#### Description of Legal Issues Encountered and List of Applications Falling within Group C

16. The Registry notes that the 14 applications listed in Group C have each satisfied the first two criteria set out by the Single Judge in paragraph 48 of the Decision<sup>18</sup> and that the reason why the Registry was not in a position to make a clear determination arises from whether or not the personal harm

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<sup>14</sup> a/45131/18; a/45132/18; a/45152/18; a/45172/18; a/45186/18; a/45199/18; a/45206/18; a/45232/18; a/45244/18; a/45246/18; a/45252/18.

<sup>15</sup> The VPRS has noted slight discrepancies such as 1) the mix of the applicant's first name and surname in the application form; 2) spelling mistakes in the applicant's first name and/or surname in the application form; and 3) applicants' faces obscured due to poor picture quality on the ID card.

<sup>16</sup> Decision, para. 50.

<sup>17</sup> *Ibid.*

<sup>18</sup> The applicants have established their identities as natural persons and the applicants alleged to have suffered harm.

reported by the applicants resulted from “an incident falling within the temporal, geographic and material parameters of the of the *Al Hassan* case.”<sup>19</sup>

17. Furthermore, the Registry notes that the issues raised by these applications can broadly be categorised into three main issues:

- temporal scope (Issue 1);
- material scope (Issue 2); and
- witnessing crimes (Issue 3).

18. Clear guidance on the issues presented below will greatly facilitate the processing of the victim application forms and the training of intermediaries and victims’ legal representatives in the field.

#### *Issue 1: Temporal Scope*

19. The Registry considers that it is unable to make a clear determination in relation to certain applications where the *precise* date of the alleged crime(s) is inferable from the circumstances or missing. The Registry takes note of the Decision whereby the Single Judge considers applications to be complete when they, *inter alia*, contain “the date of the crime(s)”.<sup>20</sup> Based on its experience assisting victims to complete application forms in other situations before the Court, the VPRS notes that in many instances it is difficult for victims to recall the precise dates of crimes allegedly committed against them. The reasons for this include (but are not limited to) a lack of familiarity or use of the Western calendar system, or a lack of recollection due to the traumatic nature of the events allegedly experienced by the victims.

20. When victims are unable to recall the precise dates of the events in question, as a matter of standard practice, the VPRS trains its intermediaries to elicit descriptions of the event that may, in considering the totality of the circumstances, assist the Court in determining whether the victims have

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<sup>19</sup> Decision, para. 48(iii).

<sup>20</sup> Decision, para. 46(ii).

indeed suffered harm within the temporal confines of the Case. In lieu of specific dates, such descriptions may include, for example, seasonal descriptors such as “it happened during the rainy season” or significant event descriptors such as “it happened two weeks after the attack on the city”.

21. In the examples identified by the Registry, in lieu of precise dates, the victims have cited contextual elements in various combinations such as “2012”, “during the occupation” and “in Timbuktu”. In light of the criteria set by the Single Judge and in an abundance of caution, the Registry has provided a table in Annex A with an extract from the unclear applications received thus far that fall under this category.

#### *Issue 2: Material Scope*

22. For certain applications received thus far, the VPRS is unable to make a clear determination regarding the scope of the crime of persecution on religious and gender grounds. The VPRS notes that to qualify as a victim in the Case, an applicant must *prima facie* establish that *inter alia* “the harm suffered is a result of an incident falling within the [...] material parameters of the *Al Hassan* case.”<sup>21</sup> However, based on the Arrest Warrant, it is unclear to the Registry whether persecution of the population of Timbuktu on religious and gender grounds as a crime against humanity is limited to the other crimes against humanity alleged against Mr. Al Hassan (namely torture, rape, sexual slavery and other inhumane acts) or if it may also include “any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court”.<sup>22</sup> In a number of unclear examples provided in Annex A, certain victims describe underlying criminal acts, like destruction of property, that are not among the specific charges brought by the Prosecution but are nevertheless within the jurisdiction of the Court.

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<sup>21</sup> Decision, para. 48.

<sup>22</sup> Elements of Crimes, Article (7)(1)(h), sub-paragraph 4.

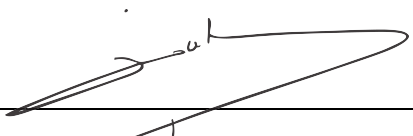
*Issue 3: Witnessing Crimes*

23. The VPRS also considers that it is unable to make a clear determination on a number of applications received thus far where the victims claim to have suffered harm as a result of crimes perpetrated against other members of the population in Timbuktu. The VPRS takes note of the instruction of the Single Judge that “for an indirect victim to be admitted to participate in the proceedings the identity of the direct victim and of the indirect victim must be duly established, as must their family relationship [...]”.<sup>23</sup> However, in the examples provided in Annex A, victims allege to have suffered personal harm after having witnessed crimes allegedly perpetrated against residents of Timbuktu albeit without mentioning any family relationship. The VPRS therefore notes that if one were to consider the witnessing of the commission of crimes alleged in the Case against non-family residents of Timbuktu to “only” result in an indirect harm, the individuals concerned could not be afforded victim status based on the instructions received from the Single Judge. However, it may also be argued that persons witnessing atrocities committed in their community may sustain *direct* psychological harm. The Registry therefore respectfully requests guidance on whether individuals that allege to have witnessed atrocities committed against other individuals in their community may be considered *direct* victims sustaining psychological harm.
24. The Registry has provided a table in Annex A with an extract from the unclear applications received thus far that fall under this category.

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<sup>23</sup> Decision, para. 51.

25. The Registry will continue to assess all applications in its possession according to the criteria established by the Single Judge and will transmit all complete applications on a rolling basis in accordance with the deadlines set out in the Decision.

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

Dated this 17 September 2018

At The Hague, The Netherlands