

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/12-01/18**
Date: **11 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 Redacted Version of

Decision on the Registry's Reports concerning Victim Participation

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Mr Yasser Hassan

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

**Other
Public Information and Outreach Section**

Judge Péter Kovács, designated by **Pre-Trial Chamber I** (“Chamber”) of the International Criminal Court (“Court”) as the Single Judge responsible for carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”) as of 28 March 2018,¹ decides as follows.

I. Procedural History

1. On 20 March 2018, the Prosecution filed an application (“Prosecution’s Application”) seeking the issuance of a warrant for the arrest of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).²
2. On 27 March 2018, pursuant to article 58 of the Rome Statute (“Statute”) the Chamber issued a warrant of arrest for Mr Al Hassan.³
3. On 31 March 2018, Mr Al Hassan was surrendered to the Court, and he is currently in custody at the Court’s detention centre in The Hague.⁴
4. On 3 April 2018, the Single Judge set the date of first appearance for 4 April 2018.⁵
5. On 4 April 2018, at the first appearance hearing, the confirmation hearing was scheduled to commence on Monday, 24 September 2018.⁶
6. On 9 May 2018, the Chamber received observations from the Registry on the process for the admission of victims’ applications for participation; *inter alia*, a

¹ “Decision Designating a Single Judge”, 28 March 2018, reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG.

² “*Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*”, 20 March 2018, ICC-01/12-01/18-1-Secret-Exp. A confidential version, *ex parte* Office of the Prosecutor and the Defence Team for Mr Al Hassan (ICC-01/12-01/18-1-Conf-Exp-Red2) and a public redacted version (ICC-01/12-01/18-1-Red) of the application were filed on 31 March 2018.

³ “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 27 March 2018, reclassified as public on 31 March 2018, ICC-01/12-01/18-2-tENG.

⁴ ICC-01/12-01/18-11-US-Exp.

⁵ “Order Scheduling the First Appearance of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 3 April 2018, ICC-01/12-01/18-12-tENG.

⁶ Transcript of the first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-CONF-FRA ET.

proposed form for individual victims wishing to participate in the proceedings was appended thereto.⁷

7. On 18 May 2018, the Registry filed a report on the identification documents currently available in Mali and which the victims could use to prove their identity in compliance with rule 85 of the Rules of Procedure and Evidence (“Rules”), and it proposed two forms: one for the organizations and institutions referred to at rule 85(b) of the Rules, and another for groups of victims.⁸

8. The Prosecution and the Defence made no submissions in response.

9. On 24 May 2018, the Single Judge issued the “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (“Decision of 24 May 2018”),⁹ in which, among other things, it instructed the Registry to submit observations on a number of points: (i) the implementation of outreach activities, in particular “set[ting] down the measures taken, their impact on those concerned, and any difficulties encountered and suggestions to avoid their future recurrence”;¹⁰ (ii) the matter of a form for collective applications and especially the victims’ willingness to form groups, the benefit of such a system and whether it could really facilitate the participation of a large number of victims, and the most suitable approach for putting such a system in place;¹¹ and (iii) the legal representation of victims.¹²

⁷ “Registry Observations on Aspects Related to the Admission of Victims for Participation in the Proceedings”, 9 May 2018, reclassified as public on 11 May 2018, ICC-01/12-01/18-28-Conf, and two annexes ICC-01/12-01/18-28-Conf-Exp-AnxI and ICC-01/12-01/18-28-Conf-AnxII.

⁸ “Registry’s Report on Proof of Identity Documents Available in Mali and Transmission of Proposed Application Forms for Rule 85(b) RPE Victims and Groups of Victims”, 18 May 2018, ICC-01/12-01/18-33, and four annexes, ICC-01/12-01/18-33-AnxI, ICC-01/12-01/18-33-Conf-Exp-AnxII, ICC-01/12-01/18-33-Conf-Exp-AnxIII and ICC-01/12-01/18-33-Conf-Exp-AnxIV.

⁹ ICC-01/12-01/18-37-tENG.

¹⁰ Decision of 24 May 2018, para. 17.

¹¹ Decision of 24 May 2018, para. 36.

¹² Decision of 24 May 2018, paras. 69-70.

10. On 20 July 2018, the Single Judge postponed the confirmation hearing to 6 May 2019.¹³

11. On 23 July 2018, the Registry filed a report on the matter of victims' legal representation ("Registry's Report on Legal Representation", "Report on Legal Representation"),¹⁴ in which it requested the Single Judge to grant the Victims Participation and Reparations Section ("VPRS") additional time for it to: (i) continue reaching out to victims on the topic of legal representation; (ii) continue to facilitate (as necessary) with victims and their representatives a more coordinated legal representation scheme; and (iii) submit a further report on, *inter alia*, [REDACTED] the existence of distinct groups of victims.¹⁵

12. On 27 July 2018, the Registry submitted a joint report on outreach and other victim-related matters ("Registry's Joint Report on Outreach"),¹⁶ in which VPRS requested additional time [REDACTED] and proposed collecting more information for the purpose of submitting an additional report.¹⁷

13. On 9 August 2018, the Registry filed a public redacted version of Annex I to the Registry's Report on Legal Representation¹⁸ and of the Annex to the Registry's Joint Report on Outreach.¹⁹

14. The Prosecution and the Defence made no submissions in response.

¹³ "Décision portant report de la date de d'audience de confirmation des charges", 20 July 2018, ICC-01/12-01/18-94-Conf-Exp. That same day, the Single Judge issued a public redacted version of the decision, ICC-01/12-01/18-94-Red.

¹⁴ "Registry's Report on Legal Representation of Victims", 23 July 2018, ICC-01/12-01/18-98, and two annexes, classified as confidential *ex parte* available only to the Registry, ICC-01/12-01/18-98-Conf-Exp-AnxI and ICC-01/12-01/18-98-Conf-Exp-AnxII.

¹⁵ Registry's Report on Legal Representation, paras. 5, 57.

¹⁶ "Registry's Joint Report on Outreach and Other Victim Related Issues", 27 July 2018, ICC-01/12-01/18-102, and one annex, classified as confidential *ex parte* available only to the Registry, ICC-01/12-01/18-102-Conf-Exp-Anx.

¹⁷ Registry's Joint Report on Outreach, paras. 39-40.

¹⁸ ICC-01/12-01/18-98-AnxI-Red.

¹⁹ ICC-01/12-01/18-102-Anx-Red.

II. Applicable law

15. The Single Judge refers to articles 21, 43, 57(3)(c) and 68 of the Statute, rules 16(1), 22 and 90 of the Rules, regulations 24, 34, 67, 79 and 81 of the Regulations of the Court, and regulations 112, 113 and 123(1) of the Regulations of the Registry.

III. Analysis

A. The Registry's Report on Legal Representation

16. The Single Judge notes the efforts made by VPRS to respond to the questions raised by the Single Judge in the Decision of 24 May 2018, in the circumstances and within the time frame indicated. Yet, as VPRS points out,²⁰ the information collected, and, consequently, presented in its report to the Single Judge, is limited.

17. VPRS explains the [REDACTED] consultations it carried out in preparation for its Report on Legal Representation. It refers, in particular, to the prevailing insecurity in the country,²¹ the victims' lack of knowledge and a lack of confidence in the official legal system,²² [REDACTED],²³ [REDACTED].²⁴ These challenges have led to the collection of responses that are difficult to assess,²⁵ and to limited opportunities [REDACTED],²⁶ [REDACTED],²⁷ to address the action points raised²⁸ and to obtain specific, reliable information concerning any adverse interests between the victims or possible groups of victims.²⁹

18. VPRS therefore asks for more time to gather further information and submit it to the Single Judge.³⁰

²⁰ Registry's Report on Legal Representation, paras. 2, 41.

²¹ Registry's Report on Legal Representation, paras. 8-9, 11, 21.

²² Registry's Report on Legal Representation, paras. 10, 18-20.

²³ Registry's Report on Legal Representation, paras. 8, 24.

²⁴ [REDACTED].

²⁵ Registry's Report on Legal Representation, para. 10.

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ Registry's Report on Legal Representation, para. 4.

²⁹ Registry's Report on Legal Representation, para. 41.

³⁰ Registry's Report on Legal Representation, paras. 5, 57.

19. The Single Judge considers that, as rule 16(1)(b) stipulates that it is the responsibility of the Registry to assist victims in obtaining legal advice and organizing their legal representation, it falls to the Registry to establish a presence in the field – subject to security conditions – and to consult victims for long enough for a legal representative to be chosen, with their consent, subject to the provisions set out in paragraph 25 below.

20. In this regard, the Single Judge agrees with VPRS that it seems appropriate to facilitate the organization of coordinated representation,³¹ in accordance with rule 90(2) of the Rules.

21. Moreover, the Single Judge recalls that, in addition to information on the individual interests of each victim and on the existence of conflicts of interest, in the Decision of 24 May 2018 the Registry was requested to submit the following information:

- (ii) how the victims may have organized and the consequences for the choice of legal representative;³²

[...]

- (i) should common legal representation under rule 90(2) of the Rules be necessary to ensure the effectiveness of the proceedings, the most appropriate number of common legal representatives, given the requirement of rule 90(4) of the Rules to take into account the distinct interests of the individual victims and to avoid any conflict of interest;
- (ii) whether the victims have identified common legal representatives and whether it is necessary to help them do so by referring them to the list of counsel in accordance with rule 90(2) of the Rules; and
- (iii) where it is necessary for the Registry to choose common legal representatives when victims cannot agree on the choice, the availability of persons who are able to communicate with the victims in the field, safely and in their language, and the views of the victims on the persons thus identified by the Registry, as required by rule 90(3) of the Rules and regulation 79(2) of the Regulations of the Court.³³

22. The Single Judge [REDACTED] instructs [the Registry] to submit to him additional information on each of the above points.

³¹ Registry's Report on Legal Representation, paras. 5, 57.

³² Decision of 24 May 2018, para. 69(ii).

³³ Decision of 24 May 2018, para. 70(iii)-(v).

23. Moreover, the Single Judge notes that the Registry was requested to submit to him a report on the

budgetary capacity currently available to the Court, should the victims be unable to bear the financial cost of their legal representatives and should they not have *pro bono* representation, so that the Court may pay for all or part of their representation under the head of legal assistance.³⁴

24. In response to this matter, the Registry reminds the Single Judge of the content of the Registry's Single Policy Document on the Court's Legal Aid System,³⁵ and adds that

[u]ltimately, the resources made available to legal representatives of victims, including the number of teams eligible for legal aid, will be commiserate with the modalities of victim participation ordered by the Chamber and the contextual realities faced on the ground in Mali.³⁶

25. The Single Judge considers that VPRS's proposed response is not specific enough and that its logic is inverted. It is precisely so that the funds available to the Court under the head of legal assistance can be taken into consideration in his future decision on the legal representation of victims, chosen first by the victims themselves, that the Single Judge wishes to receive an assessment of those funds. The Single Judge considers, therefore, that it would be useful to receive an estimate – based on the funds that will be available in 2019 and the teams of legal representatives financed by the Registry in other cases – of the funds the Registry could earmark to legal assistance for the legal representation of victims in the current case, taking into account any potential conflicts of interest.

26. Regarding the time frame for filing its additional report, VPRS proposes that it will file it well in advance of the confirmation hearing.³⁷

27. Considering (i) the difficulties encountered by the Registry, as described above; (ii) the limited amount of information collected to date; (iii) that the Single Judge decided, in his Decision of 24 May 2018, to give priority to the victims' choice and that, therefore, it would be beneficial for the Single Judge to obtain – to the

³⁴ Decision of 4 May 2018, para. 70(ii).

³⁵ ICC-ASP/12/3, 4 July 2013.

³⁶ Registry's Report on Legal Representation, paras. 52-56.

³⁷ Registry's Report on Legal Representation, para. 57.

extent possible – more information from them; and (iv) that the confirmation hearing has been postponed to 6 May 2019, the Single Judge decides to grant the Registry's request and authorizes it to submit an additional report by 19 December 2018.

28. The [REDACTED] information contained in the new report should cover the points raised in the Registry's Report on Legal Representation and all matters raised in the Decision of 24 May 2018, including those highlighted above.

B. Registry's Joint Report on Outreach

29. The Single Judge has taken due note of the information provided by the Public Information and Outreach Section on its outreach activities.

30. Concerning the application form presented on behalf of groups of victims ("collective form"), VPRS reports the difficulties it has encountered [REDACTED].³⁸ VPRS adds that, consequently, the information collected is both limited and conflicting,³⁹ and it proposes [REDACTED] filing an additional report on this matter in due course.⁴⁰

31. Considering that the information presented falls short of what was requested of the Registry in the Decision of 24 May 2018,⁴¹ and in order for the Single Judge, among other things, to rule on the adoption of a collective form, the Single Judge hereby grants the Registry's request and, accordingly, authorizes the Registry to submit an additional report on this matter by 19 December 2018.

³⁸ [REDACTED].

³⁹ Registry's Joint Report on Outreach, paras. 37-40.

⁴⁰ Registry's Joint Report on Outreach, para. 40.

⁴¹ Decision of 24 May 2018, para. 36.

FOR THESE REASONS, the Single Judge

AUTHORIZES the Registry to [REDACTED] obtain additional information on the points raised in its Report on Legal Representation and in the Decision of 24 May 2018; and

INSTRUCTS the Registry to submit to the Single Judge the information thus collected in the form of additional reports, as set forth in paragraphs 26 and 30 of the current Decision, to be submitted by Wednesday, 19 December 2018.

Done in both English and French, the French version being authoritative.

[signed]

Judge Péter Kovács

Single Judge

Dated this 11 September 2018

At The Hague, Netherlands