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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 one Confidential Annex**

**Registry's Second 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:

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor

Counsel for the Defence
Mr Yasser Hassan

Legal Representatives of Victims

Legal Representatives of Applicants
Mr Mayombo Kassongo
Mr Fidel Nsita
Mr Seydou Doumbia

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

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REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**
Mr Philipp Ambach

Other

I. Introduction

1. In paragraph 59 of the Decision Establishing the Principles Applicable to Victims' Applications for Participation ("First Decision")¹, 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")."²
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"³ and "assessment reports for the attention of the Chamber and the parties, highlighting the difficulties encountered regarding Group C applications."⁴
3. The Registry hereby transmits its second report on 74 additional applications received to date in the case of the *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Case") and assessed by the Registry as clearly falling within Group A.⁵
4. The 74 application numbers have been listed in the annex to the present submission and the applications themselves are being separately transmitted to the Chamber in accordance with paragraph 59(ii) of the First Decision.⁶

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

² *Ibid.*, para. 59(i).

³ First Decision, para. 59(iii).

⁴ First Decision, para. 59(v).

⁵ As detailed further at paragraphs 11-12 below, this number only includes the complete applications received on the form approved by the Single Judge in the Case.

⁶ The Registry's Second Transmission of 74 Group A Applications for Victims' Participation in Pre-Trial Proceedings is being filed simultaneously under a separate cover. The Registry notes that the total number of applications filed under Group A is now 94 and the total number of applications filed under Group C remains at 14.

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”).⁷
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 First Decision setting out *inter alia* the admission procedure for victim participation in the Case.⁸
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 2019.⁹
9. On 8 October 2018, the Single Judge issued the “Deuxième décision relative aux principes applicables aux demandes de participation des victimes”¹⁰ (Second Decision) providing guidance to the Victims Participation and Reparations Section (“VPRS”) on issues arising from certain applications falling under Group C.¹¹

III. Applicable Law

10. 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.

⁷ 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.

⁸ See, above, footnote 1.

⁹ 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.

¹⁰ Pre-Trial Chamber I, “Deuxième décision relative aux principes applicables aux demandes de participation des victimes”, 8 October 2018, ICC-01/12-01/18-146.

¹¹ As per paragraph 59(i) of the First Decision, Group C consists of “applicants for whom the Registry could not make a clear determination for any reason”. The Registry raised three issues arising from Group C applications in its first assessment report filed on 17 September 2018 (ICC-01/12-01/18-126).

IV. Submissions

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

11. Applying the criteria set out in paragraph 46 of the First Decision, the VPRS has assessed each of the 74 applications transmitted under Group A as complete. In conducting its *prima facie* assessment in accordance with paragraph 48 of the First Decision, the VPRS confirms that each of the 74 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;¹²
- 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.

12. In relation to point (i), the VPRS notes that certain applications¹³ falling under Group A contain minor discrepancies pertaining to *inter alia* the spelling of

¹² The VPRS notes that certain victims whose applications have been filed under Group A are under the age of 18 (a/45282/18; a/45194/18; a/45172/18). Noting the ICC's applicable Rules and Regulations [as cited in paragraph 10], the prevailing jurisprudence of the Court [cited below], the relevant international conventions including the Convention on the Rights of the Child (particularly art. 12 of the latter, UNGA Resolution 44/25 of 20 November 1989) and the clarification received from the victims' legal representative on the demonstrated maturity of the applicants and the contextual circumstances surrounding their decisions to participate individually and not with a person acting on their behalf (due to the sensitive nature of the harm they allegedly suffered), the VPRS considers that these applicants clearly qualify as victims in Group A. The VPRS notes the following jurisprudence as relevant to this assessment: i) *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Trial Chamber I, Decision on victims' participation status, 7 January 2016, ICC-02/11-01/15-379, para. 60) *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims, 23 September 2009, ICC-01/04-01/07-1491-Conf-tENG, para. 98) *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Annex 1 to the Corrigendum to "Decision on the applications by victims to participate in the proceedings", 13 January 2009, ICC-01/04-01/06-1556-Corr-Anx1, paras. 91-97.

¹³ The applications with minor discrepancies include: a/45157/18; a/45171/18; a/45173/18; a/45187/18; a/45190/18; a/45192/18; a/45193/18; a/45198/18; a/45200/18; a/45221/18; a/45225/18; a/45231/18; a/45256/18; a/45260/18; a/45263/18; a/45279/18; a/45282/18; a/45305/18; a/45310/18; a/45313/18; a/45316/18; a/45321/18; a/45322/18; a/45334/18; a/45335/18; a/45336/18; a/45336/18; a/45342/18; a/45343/18; a/45344/18; a/45347/18.

the applicants' names.¹⁴ In these cases, the VPRS took note of the Single Judge's instruction that "a certain degree of flexibility must be shown"¹⁵ and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]"¹⁶

13. 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 First Decision.



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

Dated this 6 November 2018

At The Hague, The Netherlands

¹⁴ The slight discrepancies identified by the VPRS include 1) the applicant's first name and surname are in the reverse order in the application form; 2) spelling mistakes in the applicant's first name and/or surname in the application form; 3) the applicants' faces are obscured due to poor picture quality on the ID card; 4) the applicant's second first name was not written in the application form; 5) the presence of an additional first name in the application form; 6) the applicant's date of birth does not appear in the application form; 7) a slight difference between the application form and the identity card regarding the applicant's date of birth; 8) the applicant signed in the PAB box instead of the victim's signature box; 9) the applicant's second surname was written in the part allocated for first names.

¹⁵ First Decision, para. 50.

¹⁶ *Id.*