



Original: English

No.: ICC-01/12-01/18
Date: 25 January 2019

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**

**Registry's Third Assessment Report on Victims' Applications for 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

Mr James Stewart

Counsel for the Defence

Mr Yasser Hassan

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Seydou Doumbia

Mr Mayombo Kassongo

Mr Fidel Luvengika Nsita

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

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 third report on 98 complete applications received in the case of the *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ("Case") which includes:
 -) A brief description of the assessment criteria applied in relation to the 83 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 15 applicants falling under Group C.
4. The applications falling in Groups A and C have been listed and classified in the Annex to the present submission and separately transmitted to the

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 *Id.* at para. 59(i).

³ First Decision, para. 59(iii).

⁴ First Decision, para. 59(v).

Chamber and the parties respectively, in accordance with paragraph 59(ii) and (iv) of the First Decision.

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”).⁵
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.⁶
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 2019.⁷
9. On 17 September 2018, the Victims Participation and Reparations Section (“VPRS”) submitted the first assessment report which included 20 applications categorized as Group A and 14 applications categorized as Group C.⁸
10. On 8 October 2018, the Single Judge issued the “Deuxième décision relative aux principes applicables aux demandes de participation des victimes”⁹ (“Second Decision”) providing guidance to the VPRS on issues arising from certain applications falling under Group C.¹⁰

⁵ 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.

⁶ See *supra*, footnote 1.

⁷ 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.

⁸ Registry, “Registry’s First Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings”, 17 September 2018, ICC-01/12-01/18-126.

⁹ 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.

¹⁰ 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).

11. On 6 November 2018, the VPRS submitted the second assessment report which included 74 applications categorized as Group A.¹¹

III. Applicable Law

12. 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.

IV. Submissions

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

13. Applying the criteria set out in paragraph 46 of the First Decision, the VPRS has assessed each of the 83 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 83 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.

14. In relation to point (i), the VPRS noted that certain applications¹² falling under Group A contain minor discrepancies pertaining to *inter alia* the spelling of

¹¹ Registry, "Registry's Second Assessment Report on Applications for Victims' Participation in Pre-Trial Proceedings", 7 November 2018, ICC-01/12-01/18-176.

¹² The applications with minor discrepancies include: a/45155/18; a/45177/18; a/45181/18; a/45182/18; a/45183/18 ; a/45189/18; a/45191/18; a/45195/18; a/45204/18; a/45211/18; a/45216/18; a/45217/18 ; a/45233/18; a/45242/18; a/45247/18; a/45257/18; a/45262/18; a/45265/18; a/45266/18;

the applicants' names.¹³ In these cases, the VPRS took note of the Single Judge's instruction that "a certain degree of flexibility must be shown"¹⁴ and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]"¹⁵

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

15. The VPRS notes that the 15 applications listed in Group C have each satisfied the first two criteria set out by the Single Judge in paragraph 48 of the First Decision¹⁶ 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 reported by the applicants resulted from "an incident falling within the temporal, geographic and material parameters of the *Al Hassan* case."¹⁷
16. Furthermore, the VPRS notes that the issues raised by these applications pertain to 1) the territorial scope of the Case and, 2) who can qualify as a direct victim in relation to the destruction of mausoleums.
17. Clear guidance on the two issues presented in greater detail below will greatly facilitate the legal processing of the victim application forms and the training of intermediaries and victims' legal representatives in the field.

a/45267/18; a/45270/18; a/45271/18; a/45272/18; a/45274/18; a/45276/18; a/45277/18; a/45289/18; a/45291/18; a/45294/18; a/45297/18; a/45298/18; a/45299/18; a/45300/18; a/45319/18; a/45325/18; a/45348/18; a/45350/18; a/45351/18; a/45352/18; a/45353/18; a/45354/18; a/45356/18; a/45357/18; a/45359/18; a/45362/18; a/45364/18; a/45366/18; a/45374/18; a/45375/18; a/45490/18; a/45500/18.

¹³ The discrepancies identified include: a spelling mistake in the applicant's first name and/or surname in the application form; the applicants' faces are obscured on the ID card due to the poor picture quality; the applicant's first name and surname are in the reverse order in the application form; the applicant's date of birth does not appear in the application form.

¹⁴ First Decision, para. 50.

¹⁵ *Ibid.*

¹⁶ The applicants have established their identities as natural persons and the applicants alleged to have suffered harm.

¹⁷ First Decision, para. 48(iii).

Issue 1: Territorial Scope

18. In assessing the applications received thus far, the VPRS has encountered difficulties on an issue pertaining to the territorial scope of the Case. Namely, how to interpret “committed in Timbuktu, Mali”.¹⁸ In conducting its field activities, the VPRS has noted the relatively close territorial proximity between Timbuktu city and certain cities/villages in the Timbuktu region.¹⁹ The VPRS also notes that the alleged acts and alleged perpetrators appear to be substantially similar to those applications received from Timbuktu city.²⁰
19. Therefore the VPRS is seeking guidance on whether, in the warrant of arrest, “Timbuktu, Mali” is limited to Timbuktu city or includes crimes allegedly committed in the Timbuktu region. The VPRS has provided a table in the Annex to the present submission with an extract from the unclear applications received thus far that fall under this category. The VPRS has also transmitted the redacted versions of the applications themselves to the Parties in accordance with paragraph 59(iv) of the First Decision.

¹⁸ Pre-Trial Chamber I, “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohammed Ag Mahmoud”, 27 March 2018, ICC-01/12-01/18-2-tENG; The Registry also notes the language used by the Prosecution in the warrant of arrest application “la ville (et ses environs)”, Office of the Prosecutor, “Version publique expurgée de la 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 mars 2018, ICC-01/12-54-Secret-Exp”, (“Warrant of Arrest Request”), 31 March 2018, ICC-01/12-01/18-1-Red, see for example para. 234.

¹⁹ However, the VPRS notes that certain villages in the Timbuktu region are quite spread out owing to the vastness of the north of Mali and the sparseness of the population.

²⁰ The Registry notes from the unredacted information submitted by the Prosecutor in the Warrant of Arrest Request that crimes, factually similar to those charged in the Case, were allegedly committed throughout the Timbuktu region. See for example: 1) para. 6 “AL HASSAN a été durant toute cette période le commissaire de facto de la Police islamique mise en place par lesdits groupes pour tenir sous leur coupe réglée la ville et la région alentour”; 2) para. 190 “Le champ d’action d’AL HASSAN était large [REDACTED]. (...) Il s’occupait aussi d’affaires dans toute la région de Tombouctou, par exemple à Léré ou Goundam”; 3) para. 222 “AL HASSAN a été impliqué dans l’affaire ayant abouti à l’amputation de [REDACTED]. (...) La population les a retrouvés et a contacté la Police islamique. L’Emirat avait donné une rançon pour leur capture. Ils ont été arrêtés près de la région de Bambara Modi et ont été condamnés”; 4) para. 284 “L’Accusation renvoie aussi aux sections 5.2.3 et 5.3 supra dont il résulte que les crimes ont été commis par des membres d’Ansar Dine et d’AQMI agissant de concert pour assurer leur emprise totale sur la région de Tombouctou et y imposer leur vision religieuse.”

Issue 2: Direct Victims in Relation to the Destruction of Mausoleums

20. In assessing the applications in accordance with the First and Second Decisions, the VPRS is unable to make a clear determination on applications where victims, residing outside of Timbuktu city, allege to have suffered a direct harm as a result of the attack against buildings dedicated to religion and historic monuments.
21. In light of the current developments in the reparations proceedings in the case of the *Prosecutor v. Ahmad Al Faqi Al Mahdi* in relation to the destruction of mausoleums²¹, the VPRS is seeking the Chamber's guidance on whether victims who claim to have suffered harm as a result of the destruction of mausoleums and/or mosques need to have had a "sufficient connection to Timbuktu"²² at the time of the events in order to qualify as victims for the purpose of participation in the Case or whether victims simply need to express that they have suffered harm, regardless of their location, as a result of the attack against buildings dedicated to religion and historic monuments.²³
22. The VPRS has provided a table in the attached Annex with an extract from the relevant application that falls under this category. The VPRS has also provided the application itself to the Chamber and Parties (in unredacted and

²¹ See Registry, "Fifth Registry Report on Applications for Individual Reparations", 20 December 2018, ICC-01/12-01/15-308 ; Trial Chamber VIII, "Version publique expurgée de la Décision relative au projet de plan de mise en œuvre des réparations présenté par le Fonds au profit des victimes rendue le 12 juillet 2018", 1 August 2018 », ICC-01/12-01/15-273-Red ; and Trust Fund for Victims, "Public redacted version of Corrected version of Draft Implementation Plan for Reparations, with public redacted Annex I, 20 April 2018, ICC-01/12-01/15-265-Conf, 30 April 2018 ICC-01/12-01/15-265-Conf-Corr+Corr-Anx", 18 May 2018, ICC-01/12-01/15-265-Corr-Red (see for example, para. par. 142).

²² The VPRS notes that this standard was proposed by the TFV and adopted by the Trial Chamber in the reparations proceedings in the *Al Mahdi* case. Trial Chamber VIII, "Public redacted version of 'Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations', 12 July 2018", 12 July 2018, ICC-01/12-01/15-273-Red, pp. 50-67.

²³ The VPRS also notes that the standard of proof adopted at the reparations phase in the *Al Mahdi* case (balance or probabilities) is considerably higher than the standard of proof that is typically applied at the participation phase (*prima facie*).

redacted form respectively) in accordance with paragraph 59(iv) of the First Decision.

23. The VPRS 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 25 January 2019

At The Hague, The Netherlands