

**Cour
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**International
Criminal
Court**



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Date: 21 November 2019

TRIAL CHAMBER X

Before: Judge Antoine Kesia-Mbe Mindua
Judge Tomoko Akane
Judge Kimberly Prost

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF
THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD

Public

**Prosecution Request for access to the identity
and applications of participating victims**

Source: Office of the Prosecutor

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

Ms Melinda Taylor

Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Seydou Doumbia

Mr Mayombo Kassongo

Mr Fidel Luvengika Nsita

Legal Representatives of Applicants

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

Deputy Registrar

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Introduction

1. The Prosecution requests the Chamber to direct the Registry to disclose to the Prosecution the identity of the victims authorised to participate in the proceedings in this case ("Participating Victims"), and to provide it with unredacted versions of their applications.
2. To date, due to the lack of disclosure of the identity of the Participating Victims, the Prosecution has not been in a position to establish a list of witnesses who have a dual status of victim/witness. Access to the identity of the Participating Victims and their applications will allow the Prosecution to discharge its obligation related to protection and disclosure, thus responding to the queries by the Defence on this matter, and to liaise with the Legal Representatives of Victims ("LRVs") on issues related to the security and well-being of any identified dual status witness, including with regard to any in court protective measure that would be necessary at trial.
3. No security issues would arise from granting the Prosecution access to the identity of the Participating Victims and to their applications. Furthermore, upon consultation by the Prosecution, none of the three LRVs expressed any objection to the disclosure being sought in the present Request.
4. Should the present Request be granted, the Prosecution intends to inform the Defence of the pseudonyms of any dual status witnesses identified, and to provide the Defence with any disclosable information contained in their applications, with redactions as appropriate.

Procedural history

5. On 24 May 2018, the Single Judge issued his first decision regarding the principles applicable to applications for participation of victims (“Decision on victims’ applications”) in which he decided to categorise the applicants into three categories: Group A (applicants who clearly qualify as victims); Group B (applicants who clearly do not qualify as victims); and Group C (applicants for whom the Registry could not make a clear determination for any reason). The Single Judge ordered the Registry to transmit all applications to the Chamber but to disclose only Group C applications to the Parties.¹ With regard to applications provided to the Defence, the Single Judge specifically ordered the Registry to remove all identifying information when redactions are necessary.² Since then, the Prosecution as well as the Defence have only received redacted versions of Group C victims’ applications from which all identifying information was removed.³

6. On 1 July 2019, the Single Judge issued a decision on the participation of victims in the proceedings (“Decision on victims’ participation”), authorising 882 applicants to participate in the proceedings in this case,⁴ and directing the Registry to transmit to the LRVs the applications submitted by Participating Victims.⁵ The Parties have only been informed of their victim codes, as listed in Annex A to that decision.⁶

¹ ICC-01/12-01/18-37, para. 59 (ii) and (iv).

² ICC-01/12-01/18-37, para. 59 (iv).

³ ICC-01/12-01/18-128 and its annexes; and ICC-01/12-01/18-228 and its annexes.

⁴ ICC-01/12-01/18-391-Red, para. 38.

⁵ ICC-01/12-01/18-391-Red, p. 14.

⁶ ICC-01/12-01/18-391-Conf-AnxA.

Submissions

Disclosure to the Prosecution of the identity of the participating victims, and their applications, is necessary for discharging its obligations

7. As recognised by Chambers in other cases, special considerations apply to dual status witnesses, i.e. persons represented by an LRV who are also called as Prosecution witnesses in the case.⁷ Access to the identity of the Participating Victims and their applications is necessary for the Prosecution to identify such persons, and to discharge its obligations related to disclosure and protection.
8. Disclosure of the applications of Participating Victims will enable the Prosecution to identify and provide the Defence with any disclosable information contained therein⁸, with redactions applied as appropriate (in consultation with the LRVs and pursuant to any applicable decisions by the Single Judge regarding redactions to witness statements).⁹ For example, in the *Ntaganda* case, Trial Chamber VI held that in view of the application of a distinct disclosure regime to witnesses, the Prosecution must “obtain and provide the Defence with all the disclosable information in a dual status witness’s victim application, subject to any applicable disclosure restrictions”.¹⁰
9. Such disclosure will also allow the Prosecution to liaise with LRVs, as necessary, to address issues relating to the security and well-being of dual status witnesses in accordance with article 68(1) of the Statute. This coordination will be required,

⁷ ICC-02/04-01/15-504, para. 31.

⁸ The Defence has indicated its interest in knowing which of the Prosecution witnesses, if any, are dual status witnesses, and obtaining copies of their applications.

⁹ According to the Appeals Chamber, once victims’ applications are in the Prosecution’s possession or control, they may become disclosable under rule 77 of the Rules, *in particular* if the Prosecution decides to call the victims in question as witnesses. See ICC-02/11-01/15-915-Red, para. 56.

¹⁰ ICC-01/04-02/06-449, para. 40. Trial Chamber VI further directed the Registry to provide the Prosecution with access to all complete application forms for dual status victim/witnesses, including supporting documents, and the Prosecution to disclose their copies, redacted as applicable, to the Defence. ICC-01/04-02/06-1060, para. 3.

for example, when assessing the need to apply for protective or special measures under rules 87 and 88 of the Rules of Procedure and Evidence (“Rules”) for their testimony at trial.

No security issue arises from disclosure to the Prosecution of the identity of the participating victims, and their applications

10. When adopting the procedure whereby the transmission of the applications to the Parties was restricted to the Group C category, the Single Judge referred to the challenges presented by the difficult security situation and the extensive redactions anticipated to protect the victims.¹¹ However, no security issues would arise from granting the Prosecution access to the identity of Participating Victims or to unredacted versions of their applications.

11. Furthermore, on 12 November 2019, the Prosecution contacted each LRV in this case to inquire their views on the matter. All of them expressed their consent to the disclosure being sought in the present Request.

12. Should the present Request be granted, the Prosecution intends to inform the Defence of the pseudonym of any dual status witness identified, and to disclose their application with redactions to their identity, unless the identity has already been disclosed to the Defence (in which case the LRVs will be properly informed).

Relief requested

13. For the reasons set forth above, the Prosecution requests the Chamber to direct the Registry to disclose to the Prosecution the identity of the Participating Victims and to provide it with unredacted versions of their applications.

¹¹ ICC-01/12-01/18-37, para. 61.



Fatou Bensouda, Prosecutor

Dated this 21st day of November 2019
At The Hague, The Netherlands