

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/12-01/18

Date: 15 May 2020

TRIAL CHAMBER X

Before:

**Judge Antoine Kesia-Mbe Mindua, Presiding Judge
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***

Confidential

**Decision on the request from the legal representatives of victims in relation to the
representation of victims**

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
Marie-Hélène Proulx
Thomas Hannis

Legal Representatives of Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Esteban Peralta

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, issues the present decision.

I. Procedural history and submissions

1. On 20 March 2019, the Single Judge of Pre-Trial Chamber I (hereinafter: 'PTC I') issued a decision regarding *inter alia* the legal representation of victims and appointed the legal representatives of victims (the 'LRVs') as a single team for the purposes of this case (the 'Decision on legal representation of victims').¹
2. On 30 March 2020, the LRVs submitted a request in relation to the organisation of victims' representation, seeking the implementation of measures to prevent potential conflicts of interest in the legal representation of victims (the 'LRVs Request').² The LRVs submit that conflicts of interest might arise if victims participating in the *Al Hassan* case and victims participating in both this case and the *Al Mahdi* case are represented by the same counsels.³ Indeed, the LRVs submit that the counsels representing one group of victims might possess information that should not be shared with their colleagues or might have to act individually on behalf of the victims they represent, while the counsels representing the other group of victims should not be impacted by the potential consequences of these acts.⁴
3. Consequently, the LRVs request that the following measures be implemented by the Registry to preserve the integrity of their mandate and limit the risk of conflicts of interest arising, without however modifying the current system of legal representation of victims: (i) to divide access rights to victims' information between the counsels representing victims participating in the *Al Hassan* case

¹ Decision on Principles Applicable to Victims' Applications for Participation, to Legal Representation of Victims, and to the Manner of Victim Participation in the Proceedings, ICC-01/12-01/18-289-Red-tENG-Corr (English translation notified on 17 June 2019).

² Requête relative à l'organisation de la représentation légale des victimes, ICC-01/12-01/18-700-Conf. Pursuant to the Chamber's instructions, this request was reclassified from confidential *ex parte*, only available to the LRVs and the Victims Participation and Reparations Section, to confidential on 1 April 2020.

³ LRVs Request, ICC-01/12-01/18-700-Conf, para. 7.

⁴ LRVs Request, ICC-01/12-01/18-700-Conf, paras 8-11.

and the counsel representing victims participating in both this case and the *Al Mahdi* case, and (ii) concerning communications with parties and the Chamber, to notify any *ex parte* submissions relating to a victim participating in both cases only to the relevant counsel.⁵

4. On 24 April 2020, pursuant to instructions from the Single Judge,⁶ the Registry submitted observations on the LRVs Request (the 'Registry Observations').⁷ The Registry observes that the LRVs are free to organise the internal structure of their team in any way they deem necessary and that internal mechanisms are already in place to divide access to victims' applications and representational responsibilities, in situations where distinct interests of victims have materialised.⁸ The Registry submits that these arrangements presently cater sufficiently for the potential issues arising from the parallelism between the *Al Hassan* and the *Al Mahdi* proceedings.⁹ Consequently, the Registry considers that a 'formalisation' of this internal system by way of a Chamber's order is not warranted, as there is no demonstrated necessity since the LRVs consider that there is no current or immediately foreseeable conflict of interest among the participating victims.¹⁰ The Registry nonetheless confirms that it is technically in a position to implement the requested measures if so instructed by the Chamber, although it will require close consultation between a number of Registry sections and the LRVs.¹¹

II. Analysis

5. The Chamber refers to Article 68(1) and (3) of the Statute, Rules 90 and 92(5) to (7) of the Rules of Evidence and Procedure (the 'Rules'), as well as to Article 16 of the Code of Professional Conduct for counsel.

⁵ LRVs Request, ICC-01/12-01/18-700-Conf, paras 12-15.

⁶ Email from the Chamber to the parties and participants, 31 March 2020, at 13:38.

⁷ Registry Observations on the "Requête relative à l'organisation de la représentation légale des victimes" (ICC-01/12-01/18-700-Conf), ICC-01/12-01/18-773-Conf.

⁸ Registry Observations, ICC-01/12-01/18-773-Conf, para. 11.

⁹ Registry Observations, ICC-01/12-01/18-773-Conf, para. 11.

¹⁰ Registry Observations, ICC-01/12-01/18-773-Conf, paras 2, 11.

¹¹ Registry Observations, ICC-01/12-01/18-773-Conf, paras 2, 13.

6. In particular, the Chamber notes Rule 90(4) of the Rules, which provides that '[t]he Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.'
7. The Chamber further refers to Trial Chamber II's findings in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, which were that '[t]he common legal representative shall be responsible for both representing the common interests of the victims during the proceedings and for acting on behalf of specific victims when their individual interests are at stake'¹² and, specifically regarding conflicts of interest, that:

'[i]n case the common legal representative receives conflicting instructions from one or more groups of victims, he or she shall endeavour to represent both positions fairly and equally before the Chamber. In case the conflicting instructions are irreconcilable with representation by one common legal representative, and thus amount to a conflict of interest, the common legal representative shall inform the Chamber immediately, who will take appropriate measures.'¹³
8. In the context of the present case, the Chamber takes due note of the challenges that the LRVs have outlined in their submissions, notably concerning the risks of conflicts of interest arising from the commonalities between the present case and the *Al Mahdi* proceedings and the fact that victims who are participating in both proceedings may have distinct interests.
9. In this regard, the Chamber notes that the Registry previously elaborated on these challenges in a report presented before PTC I on the legal representation of victims in this case.¹⁴ The Chamber particularly notes the Registry's assessment, as part of this report, that while distinct interests may arise 'between the victim applicants in the Case who are also (or may become) engaged in the *Al Mahdi* reparations proceedings and those who may only be authorised to engage in the *Al Hassan* proceedings' and give rise to 'certain

¹² *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Order on the organisation of common legal representation of victims, 22 July 2009, ICC-01/04-01/07-1328, para. 13.

¹³ ICC-01/04-01/07-1328, para. 16.

¹⁴ Annex I to Registry's Second Report on Legal Representation of Victims, 19 December 2018, ICC-01/12-01/18-209-AnxI-Red (the 'Second Report on Legal Representation'), paras 33-44.

challenges for a single team of common legal representatives', it considered the distinct interests of the two groups of victims to be reconcilable at that time.¹⁵

The Chamber further notes that, in the Decision on legal representation of victims, the Single Judge of PTC I duly considered these challenges when he decided to appoint a single team of legal representatives.¹⁶

10. The Chamber also notes that, to address and prevent identified potential conflicts of interest from arising, the LRVs have already implemented specific measures to organise the internal structure of their team, in particular by internally dividing access to victims' applications and representation responsibilities among themselves.¹⁷
11. In light of the above, the Chamber finds that the circumstances presented do not warrant a modification of the current system of legal representation. The current internal measures in place within the single team of LRVs are sufficient, at this stage, to limit the risk of conflicts of interest arising. Consequently, the requested measures are unnecessary to preserve the LRVs' mandate or their ability to act effectively and in the interests of the victims they represent.
12. The Chamber nonetheless encourages the LRVs, if and when they consider that new developments give rise to a conflict of interest, where the distinct interests of the groups of victims they represent are viewed as irreconcilable, to immediately inform the Chamber, which will take appropriate action.

¹⁵ Second Report on Legal Representation, ICC-01/12-01/18-209-AnxI-Red, paras 34-35, 42-44.

¹⁶ ICC-01/12-01/18-289-Red-tENG-Corr, paras 34-36.

¹⁷ LRVs Request, ICC-01/12-01/18-700-Conf, paras 10-11, 15.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the LRVs Request.

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



Judge Antoine Kesia-Mbe Mindua

Presiding Judge



Judge Tomoko Akane



Judge Kimberly Prost

Dated this Friday, 15 May 2020

At The Hague, The Netherlands