



Original: **English**

No.: **ICC-01/12-01/18**

Date: **29 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**

**Public
With Confidential Annex**

**Registry First Assessment Report on Victim Applications for Participation in 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

Ms Melinda Taylor

Ms Marie-Hélène Proulx

Mr Thomas Hannis

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

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. Introduction

1. For the purpose of organizing victim participation at trial in the case of the *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Case”), Trial Chamber X (“Chamber”) in its Decision on the procedure for the admission of victims to participate in trial proceedings (“12 March 2020 Decision”)¹ decided to continue the “ABC approach” for victim admission applied at the pre-trial stage. Following this procedure, the Registry classifies victim 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 The Chamber ordered the Registry to submit Group C application forms no later than 45 days before the start of trial, and Group A forms no later than 15 days before the start of trial,³ together with reports thereon.⁴ Additionally, the Chamber ordered the Registry to report on the result of its review whether the participating victims remain within the scope of the confirmed Case (“Participating Victims’ Review”).⁵
2. The Registry hereby submits its first report on victim applications for participation at trial which includes:

¹ Trial Chamber X, “Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial”, 12 March 2020, ICC-01/12-01/18-661.

² *Id.*, p. 19. The Chamber also ordered the Registry to disclose Group C applications in unredacted form to the Prosecution and to apply redactions “as needed” vis-à-vis the Defence. *See also* Pre-Trial Chamber I, “Décision fixant les principes applicables aux demandes de participation des victimes”, 24 May 2018, ICC-01/12-01/18-37, (“24 May 2018 Decision”), para. 59 (i).

³ 12 March 2020 Decision, para. 29. The Registry also notes the Chamber’s instruction with respect to Group B applications that “applications assessed by the Registry as being incomplete and/or falling outside the scope of the concerned case need not be transmitted to the Chamber”, and that “the Registry should inform the Chamber of any applications rejected on that account” (12 March 2020 Decision, para. 18). Finally, the Registry notes that the date for the commencement of trial is set for 14 July 2020 (see Trial Chamber X, “Decision Setting the Commencement Date of the Trial”, 6 January 2020, ICC-01/12-01/18-548, p. 9).

⁴ 12 March 2020 Decision, para. 29. The corresponding reports are transmitted to the parties and the common legal representatives of victims (*see id.*, para. 24).

⁵ *Id.*, p. 20.

- (i) A report on complete applications falling under Group C with:
 - A brief overview of the reasons why the Registry was not in a position to make a clear determination on these applications; and
 - A list of applications falling under Group C which were separately transmitted in unredacted version to the Chamber and the Prosecution, and in redacted version to the Defence, in accordance with the 12 March 2020 Decision; and
- (ii) An overview of the preliminary results of the ongoing Participating Victims' Review.

II. Procedural History

3. On 24 May 2018, Pre-Trial Chamber I issued a decision setting out, *inter alia*, the transmission and admission procedure for victim participation at the confirmation hearing in the Case.⁶
4. On 1 July 2019, Pre-Trial Chamber I issued a further decision, authorising 882 victims to participate at the confirmation hearing in the Case ("Participating Victims").⁷
5. On 30 September 2019, Pre-trial Chamber I confirmed the charges of war crimes and crimes against humanity brought against the accused and committed him to trial.⁸
6. On 6 January 2020, the Chamber set the start of trial on 14 July 2020.⁹

⁶ See *supra*, footnote 2, 24 May 2018 Decision.

⁷ Pre-Trial Chamber I, « Décision relative à la participation des victimes à la procédure », 1 July 2019, ICC-01/12-01/18-391-Conf-Exp ("1 July 2019 Decision"). A public redacted version was filed on the same day (ICC-01/12-01/18-391-Red).

⁸ Pre-Trial Chamber I, "Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", 8 November 2019, ICC-01/12-01/18-461-Conf-Corr ("Decision on Confirmation of Charges"). A public redacted version was filed on 13 November 2019 (ICC-01/12-01/18-461-Corr-Red).

⁹ See *supra*, footnote 3.

7. On 24 January 2020, the Registry submitted a report informing the Chamber *inter alia* that it had started the Participating Victims' Review to assess whether they remain within the scope of the confirmed Case.¹⁰
8. On 12 March 2020, the Chamber issued its decision establishing the procedure for the participation of victims at trial.¹¹
9. On 24 April 2020, Pre-Trial Chamber I issued a decision modifying the charges confirmed against the accused.¹²

III. Applicable Law

10. The present transmission is submitted in accordance with 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

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

11. The Registry notes that the 5 applications listed in Group C have each satisfied the first two criteria set out by Pre-Trial Chamber I in paragraph 48

¹⁰ Registry, "Registry Report on the implementation of Trial Chamber X's Decision of 20 December 2019 (ICC-01/12-01/18-536)", 24 January 2020, ICC-01/12-01/18-563-Conf-Exp-Anx, para. 6. A confidential redacted version was filed on the same day (ICC-01/12-01/18-563-Conf-Anx-Red) as well as a public redacted version (ICC-01/12-01/18-563-Anx-Red2). The Registry also informed the Chamber that the number of Participating Victims stands at present at 880, as a result of the death of one Participating Victim, and the identification of a duplicate application (*id.*, at para. 4).

¹¹ See *supra* footnote 1.

¹² Pre-Trial Chamber I, "Rectificatif à la Décision portant modification des charges confirmées le 30 septembre 2019 à l'encontre d'Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", 1 May 2020, ICC-01/12-01/18-767-Conf-Corr ("Second Decision on Confirmation of Charges"). A public redacted version was filed on 8 May 2020 (ICC-01/12-01/18-767-Corr-Red).

of the 24 May 2018 Decision, *ie* (i) the applicant has established his/her identity as a natural person; and (ii) the applicant alleged to have suffered harm.¹³ The Registry is not in a position to make a clear determination because it remains unclear whether or not the personal harm reported by the applicants resulted from “an incident falling within the temporal, geographic and material parameters of the of the *Al Hassan* case”.¹⁴

12. The Registry notes that the issues raised by these applications can be divided into two main categories:

- i. Victims that witnessed crimes (Category 1); and
- ii. Victims that indicated alleged perpetrators (Category 2).

13. The Chamber’s guidance on the issues presented below will greatly facilitate the processing of the victim application forms, and relevant training of intermediaries and victims’ legal representatives in the field.

Category 1: Victims that witnessed crimes

14. The Registry notes that some applicants mentioned to have witnessed crimes perpetrated against other members of the population of Timbuktu who are, however, not members of their family.

15. The Registry recalls that, at the pre-trial stage, it requested Pre-Trial Chamber I’s guidance on an identical issue.¹⁵ According to Pre-Trial Chamber I, these applicants could not be considered as indirect victims as far as they were unable to establish a family relationship with the direct victims.¹⁶ Pre-Trial

¹³See 24 May 2018 Decision, para. 48(i) and (ii). The Registry notes the Chamber’s clarification that on substantive legal issues regarding the definition of victims, it refers to the consistent jurisprudence on Rule 85 of the Rules, as set out by Pre-Trial Chamber I (see 12 March 2020 Decision, para. 8).

¹⁴ 24 May 2018 Decision, para. 48(iii).

¹⁵ Registry, “Registry’s First Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings”, 17 September 2018, ICC-01/12-01/18-126, para. 23 and “Registry’s First Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings”, 17 September 2018, ICC-01/12-01/18-128 and its annexes 11 (application a/45230/18) and 14 (application a/45245/18), transmitted respectively in unredacted version to Pre-Trial Chamber I and in redacted version to the parties.

¹⁶ 24 May Decision, para. 51.

Chamber I decided instead that the Registry is authorized to consider those applicants who witnessed crimes that were perpetrated against other members of the population of Timbuktu as (direct) victims of relevant psychological harm, as long as these victims proved their presence in Timbuktu at the time when the crimes were committed against others. Pre-Trial Chamber I indicated that for victims to prove their presence in Timbuktu at the relevant time, a detailed description of the events and proof of residence in Timbuktu was sufficient.¹⁷

16. The Registry respectfully requests guidance on whether it should continue to apply Pre-Trial Chamber I's approach and assess applications under the conditions as outlined *supra* as falling within the scope of the Case.
17. The Registry has provided a table in Annex with an extract from unclear applications that fall under this category.

Category 2: Victims that indicated alleged perpetrators

18. In assessing victim applications, the Registry has encountered difficulties on an issue pertaining to the factual scope of the charges confirmed, namely regarding unclear identification of alleged perpetrators of crimes falling within the temporal, geographic and material parameters of the Case.
19. Firstly, the Registry notes that the identification of alleged perpetrators by victims is not a mandatory piece of information for participation in the proceedings. It is only required "to the extent possible" under regulation 86(2)(d) RoC.
20. Secondly, pertaining to the temporal and geographic parameters of the Case, the Decision on the Confirmation of Charges established the individual

¹⁷ 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, ("8 October 2018 Decision"), paras 36-37. The Registry notes that the confirmed geographic scope of the Case encompasses Timbuktu city and the Timbuktu region, *see* Decision on Confirmation of Charges, p. 466; *see also*, Second Decision on Confirmation of Charges, paras 193, 195.

responsibility of the accused for a period between 7 May 2012 and 28 January 2013 in Timbuktu and its region.¹⁸ It found the following: the *Mouvement National pour la Libération de l'Azawad* ("MNLA") entered Timbuktu city on 1 April 2012 while Ansar Dine and *Al-Qaïda au Maghreb islamique* ("AQMI") entered Timbuktu on 1 or 2 April 2012 and took control of the city. They chased out the MNLA and held Timbuktu and its region until 28 January 2013.¹⁹ The *Mouvement pour l'unicité et le jihad en Afrique de l'ouest* ("MUJAO") was not, or only sporadically, present in Timbuktu during the period in which the incidents of the present case occurred.²⁰ Other fights occurred in the north of Mali, and for example in Timbuktu city on 13 June 2012, between MNLA on one side, and AQMI, Ansar Dine and MUJAO on the other,²¹ after an initial alliance between MNLA and (some of) the other armed groups.²²

21. The Registry notes that some applicants mentioned as alleged perpetrators "jihadists", "rebels", "armed people", "islamists", and/or "Ansar Dine, AQMI". They also sometimes indicated specific clothes (e.g. alleged perpetrators wearing turbans, cut pants), physical appearance (e.g. long beards, light skin), languages spoken (e.g. Tamasheq, Arab), groups of people (e.g. "touareg", "tamasheq", "arab" people) or even named alleged members of the Ansar Dine/AQMI group, or do not provide any indication. However, in light of the very dynamic situation as recalled in the Decision on Confirmation of Charges, it is conceivable that some victims may have confused the affiliation of the alleged perpetrators with specific armed groups.

22. On this issue, at the pre-trial stage, Pre-Trial Chamber I decided that the granting of victim status is distinct from the evaluation of facts and

¹⁸ Decision on Confirmation of Charges, p. 466; see also Second Decision on Confirmation of Charges, paras 189, 193, 195.

¹⁹ Decision on Confirmation of Charges, para. 70, see also paras 214, 217-218.

²⁰ *Id.*, para. 212.

²¹ *Id.*, para. 218.

²² *Id.*, para. 211.

circumstances described in the charges, and that the assessment of victims' applications should be made in accordance with the *prima facie* standard of proof. According to Pre-Trial Chamber I, applications were to be assessed on the basis of their intrinsic coherence, taking into consideration any and all information suggesting that the acts occurred within the temporal, geographic and material parameters of the Case.²³ In light of this, the Registry considered that confusion of the affiliation of an alleged perpetrator with a specific armed group, as well as the use of rather general descriptors not distinguishing between the different armed groups would not render an application form unclear, or even outside the scope, as long as the place and the date of crimes alleged by the applicant would fall within the scope of the Case.

23. The Registry respectfully requests guidance on whether it should continue to apply Pre-Trial Chamber I's approach and assess applications as falling within the scope of the Case when the place and the date of crimes alleged by the applicant fall within the scope of the Case, even if these applications contain confused information on the identity and/or affiliation or only very general descriptors of the alleged perpetrators.
24. The Registry has provided a table in Annex with an extract from the unclear applications that fall under this category.

ii. *Preliminary Results of the Registry Participating Victims' Review*

25. Since the Decision of Confirmation of Charges, the Registry has carried out a comprehensive review of the 880 applications of Participating Victims to assess whether they remain within the scope of the confirmed Case. A first preliminary analysis has been completed and is presently in the process of

²³ 1 July 2019 Decision, paras 34-35 and 40.

being quality-checked. Furthermore, whilst being mindful of the Chamber's direction to report on the result of its review at the present juncture,²⁴ the current circumstances and restrictions have prevented the Registry from fully concluding the review despite its best efforts. A final conclusion is expected in the next weeks.²⁵

26. It results from this preliminary review that:

- 572 applications have been assessed as remaining within the confirmed scope of the Case;
- 26 applications have been assessed as outside of the scope, due to the fact that the victims mentioned that the alleged incidents occurred either in April 2012, or in May 2012 but at a specific date *before* 7 May 2012, and therefore before the relevant period of responsibility of the accused as established in the present Case;²⁶
- 282 applications remain unclear pending the determination of the Chamber on Group C applications.

27. The Registry will continue to assess all applications received thus far, to transmit all complete applications falling under Group A in accordance with the relevant deadline currently set by the Chamber in its 12 March 2020 Decision, and to inform the Chamber on the applications assessed as incomplete and/or falling outside the scope of the Case.²⁷ Unless otherwise instructed, the Registry will also provide the Chamber at that occasion with

²⁴ 12 March 2020 Decision, p. 20.

²⁵ COVID-19-related restrictions particularly in the field have slowed down the process of gathering required additional information from victim applicants.

²⁶ Confirmation of Charges Decision, p. 466. The Registry notes that also the other elements reported in the applications did not allow the Registry to establish *prima facie* and in consideration of the intrinsic coherence of the information provided by the victims, that the personal harm reported by the victims resulted from an incident falling within the temporal, geographic and material parameters of the Case. The Registry informed the Common Legal Representatives of Victims accordingly by e-mail correspondence of 8 May 2020 at 15:35 and 26 May 2020 at 11:41.

²⁷ 12 March 2020 Decision, para. 29 and p. 19 (setting the transmission of "Groups A and B to the Chamber no later than 15 days before the trial commencement date").

the final result of its review to assess whether the Participating Victims remain within the scope of the confirmed case.



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

Dated this 29 May 2020

At The Hague, The Netherlands