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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's Fourth 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:

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I. Introduction

1. For the purpose of organizing victim participation at the trial stage in the case of the *Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Case”), Trial Chamber X (“Chamber”) decided in its Decision on the procedure for the admission of victims to participate in trial proceedings (“12 March 2020 Decision”)¹ to continue the “ABC approach” for victim admission applied at the pre-trial stage in the Case with minor modifications. 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 trial³ set for 14 July 2020,⁴ together with reports thereon.⁵
2. On 12 June 2020, the Chamber decided to extend the deadline set by the 12 March 2020 Decision for the final transmission of newly collected victim applications to the end of the Prosecution case on the basis of the current COVID-19 pandemic (“12 June 2020 Decision”). The Chamber instructed the Registry to file the newly collected applications on a rolling basis in periodic

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.*, at paras 19-21; See also Pre-Trial Chamber I, “Decision Establishing the Principles Applicable to Victims’ Applications for Participation”, 24 May 2018, ICC-01/12-01/18-37, para 59 (i).

³ 12 March 2020 Decision, para. 29.

⁴ Trial Chamber X, “Decision Setting the Commencement Date of the Trial”, 6 January 2020, ICC-01/12-01/18-548, p. 9).

⁵ 12 March 2020 Decision, para. 29. The corresponding reports are transmitted to the parties and the common legal representatives of victims (“CLRs”) (*see id.*, para. 24). 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” (*see para. 18 in fine*).

intervals and as was previously the case, the Registry's final corresponding reports must be notified within the same deadline.⁶

3. From 29 May to 29 June 2020, the Registry transmitted to the Chamber a total of 1,097 Group A applications, 5 Group C applications and informed the Chamber on 47 applications assessed as falling outside the scope of the case and 101 applications assessed as incomplete.⁷
4. The Registry received to date 197 newly collected applications.⁸ Of these, a total of 183 have been assessed as falling within Group A applications and are being transmitted simultaneously to the Chamber under a separate cover.
5. The Registry hereby submits its fourth report on victim applications for participation in the trial proceedings in the Case which includes a report on 183 complete applications falling within Group A with:
 -) a brief description of the assessment criteria applied in relation to the 183 applicants who clearly, in the Registry's assessment, qualify as victims in Group A; and
 -) a list of the 183 applications falling under Group A ("List") which were separately transmitted in original version to the Chamber in accordance with the 12 March 2020 Decision.

II. Procedural History

⁶ Trial Chamber X, "Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial", 12 June 2020, ICC-01/12-01/18-880, paras 10-14 and Disposition, p. 8.

⁷ See Registry, "Registry's Third Assessment Report on Victim Applications for Participation in Trial Proceedings", 29 June 2020, ICC-01/12-01/18-910. This report contains the details on the assessment criteria, the review of the participating victims' applications, an overview of the applications received in the case since the beginning of the proceedings including information on applications assessed as falling outside the scope of the case and/or assessed as incomplete.

⁸ This number does not include one duplicate.

6. 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.⁹
7. 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”).¹⁰
8. 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.¹¹
9. On 6 January 2020, the Chamber set the start of trial on 14 July 2020.¹²
10. On 24 January 2020, the Registry submitted a report informing the Chamber *inter alia* that it had started to review the Participating Victims’ applications in order to assess whether they remain within the scope of the confirmed Case.¹³
11. On 12 March 2020, the Chamber issued its decision establishing the procedure for the participation of victims at trial.¹⁴
12. On 24 April 2020, Pre-Trial Chamber I issued a decision modifying the charges confirmed against the accused.¹⁵

⁹ See *supra*, footnote 2, 24 May 2018 Decision.

¹⁰ 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).

¹¹ 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).

¹² See *supra*, footnote 3.

¹³ 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).

¹⁴ See *supra* footnote 1.

¹⁵ 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).

13. On 29 May 2020, the Registry transmitted 5 Group C applications for participation at trial,¹⁶ and on the same day submitted its first assessment report on complete applications falling under Group C and an overview of the preliminary results of the Registry's Review.¹⁷
14. On 12 June 2020, the Chamber extended the deadline for the final transmission of newly collected victim applications to the end of the Prosecution case.¹⁸
15. On 17 June 2020, the Chamber issued its second decision on the admission of victims to participate at trial and ruled on a number of Group C application forms.¹⁹
16. On 24 June 2020, the Registry transmitted a first batch of 209 Group A applications and submitted its second assessment report on complete applications falling under Group A.²⁰
17. On 29 June 2020, the Registry transmitted a second batch of 888 Group A applications and submitted its third assessment report on complete applications falling under Group A and informed the Chamber that 47 application were assessed as falling outside the scope of the case and 101 applications were assessed as incomplete.²¹

¹⁶ Registry, "Registry Transmission of Group C Victim Applications for Participation at Trial", 29 May 2020, ICC-01/12-01/18-834.

¹⁷ Registry, "Registry First Assessment Report on Victim Applications for Participation in Trial Proceedings", 29 May 2020, ICC-01/12-01/18-835.

¹⁸ *Se supra*, footnote 6.

¹⁹ Trial Chamber X, "Second decision on the admission of victims to participate in trial proceedings", 17 June 2020, ICC-01/12-01/18-886-Conf-Exp ("17 June 2020 Decision"). A public redacted version was filed on 23 June 2020. The Chamber admitted four Group C applicants as participating victims for the purposes of the trial proceedings and deferred its ruling as regard the status of one applicant, see paras. 16, 20-23.

²⁰ Registry, "Registry First Transmission of Group A Victim Applications for Participation in Trial Proceedings", dated 24 June 2020 and notified on 25 June 2020, ICC-01/12-01/18-901, and "Registry's Second Assessment Report on Victim Applications for Participation in Trial Proceedings", 24 June 2020, ICC-01/12-01/18-900.

²¹ "Registry Second Transmission of Group A Victim Applications for Participation in Trial Proceedings", dated 29 June 2020 and notified on 30 June 2020, ICC-01/12-01/18-913, and "Registry's Third Assessment Report on Victim Applications for Participation in Trial Proceedings", 29 June 2020, ICC-01/12-01/18-910.

18. On 10 August 2020, the Chamber issued its third decision on the admission of victims to participate in trial proceedings admitting 1,097 applicants as participating victims for the purposes of the trial proceedings and rejecting 47 applications assessed as falling outside the scope of the case.²²

III. Applicable Law

19. The present report 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, and regulations 107 to 109 of the Regulations of the Registry.

IV. Classification

20. The annex to the present report is classified as confidential in accordance with paragraph 29 of the 12 March 2020 Decision.²³

V. Submissions

21. The Registry received thus far 197 newly collected applications from applicants identified by the common legal representatives of victims or by the Registry as willing and interested in participating at trial but who were unable to apply within the 12 March 2020 Decision deadline, due to the circumstances created by the COVID-19 pandemic.²⁴

²² Trial Chamber X, “Third decision on the admission of victims to participate in trial proceedings”, 10 August 2020, ICC-01/12-01/18-992 (“10 August 2020 Decision”).

²³ See also 24 May 2018 Decision, para. 59(iii).

²⁴ This number does not include one duplicate. Among these 197 applications, 161 are applications transmitted by the CLRs to the Registry after the internal deadline of 15 May 2020 set by the Registry for receiving the applications in order to allow sufficient time for the Registry to conduct its assessment and transmission process in compliance with the deadlines set by the 12 March 2020 Decision (see Registry, “Registry’s Third Assessment Report on Victim Applications for Participation in Trial Proceedings”, 29 June 2020, ICC-01/12-01/18-910, footnote 30). The CLRs informed the Registry that due to the COVID-19 current circumstances and the difficulties to reach out to the

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

22. Applying the criteria set out in the 24 May 2018 Decision²⁵ and the 17 June 2020 Decision,²⁶ among the 197 newly collected applications, the Registry has assessed 183 applications transmitted within Group A as complete.²⁷ In conducting its *prima facie* assessment in accordance with paragraph 48 of the 24 May 2018 Decision,²⁸ the Registry confirms that each of the 183 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;²⁹
- 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.

23. In relation to point (i), the Registry noted that certain applications³⁰ falling under Group A contain minor discrepancies pertaining to *inter alia* the

applicants in the field, they were facing difficulties to complete all the forms within the deadline (Email from the CLRs to the Victims Participation and Reparations Section on 14 May 2020); and 36 are applications from the number of potential applicants identified by the Registry as reported in its “Registry’s Observations on methods of work to minimise the impact of COVID-19 and related measures on the conduct of proceedings (ICC-01/12-01/18-776)”, 20 May 2020, ICC-01/12-01/18-824-Conf-Exp-AnxIV, para. 11 and its confidential redacted version ICC-01/12-01/18-824-Conf-AnxIV-Red, para. 11; See also 12 June 2020 Decision, para. 11.

²⁵ See *supra* footnote 2, 24 May 2018 Decision, para. 46. The Registry notes that in its 12 March 2020 Decision the Chamber highlighted that “[o]n substantive legal issues regarding the definition of victims, [it] refers to the consistent jurisprudence on Rule 85 of the Rules, as set out by the PTC I Single Judge” (12 March 2020 Decision, para. 8).

²⁶ See *supra* footnote 19.

²⁷ The Registry has assessed 14 applications as incomplete and has requested supplementary information.

²⁸ See *supra* footnote 2, 24 May 2018 Decision, para. 46; See also *supra* footnote 19, 17 June 2020 Decision.

²⁹ The Registry notes that one applicant whose application has been filed under Group A (a/50306/20) was under the age of 18 at the time of the submission of his/her application for participation in the proceedings and has submitted the application with a person acting on his/her behalf.

³⁰ The applications with minor discrepancies include: a/50290/20; a/50292/20; a/50294/20; a/50298/20; a/50299/20; a/50300/20; a/50301/20; a/50302/20; a/50303/20; a/50306/20; a/50310/20; a/50311/20; a/50312/20; a/50315/20; a/50322/20; a/50328/20; a/50351/20; a/50352/20; a/50354/20; a/50363/20; a/50365/20; a/50366/20; a/50380/20; a/50404/20; a/50407/20; a/50411/20; a/50438/20; a/50442/20.

spelling of the applicants' names.³¹ In these cases, the Registry took note of Pre-Trial Chamber I's instruction that "a certain degree of flexibility must be shown" and considers that the discrepancies presented in these applications "do not call into question the overall credibility of the information provided by the applicant [...]"³² The Registry notes that among these newly collected applications, 126 applicants mentioned in their form the name(s) of legal representative(s) currently representing the group of participating victims in the proceedings of the case, and 57 are unrepresented applicants.³³

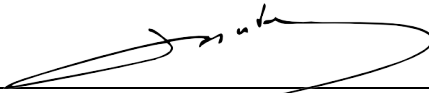
24. The Registry has provided a table in the Annex with the list of the applications that fall within Group A.

³¹ The discrepancies identified include: a spelling mistake in the applicant's first name (or second first name) and/or surname in the application form compared to the identification document; a mix up in the applicant's first name (or second first name) and/or surname in the application form compared to the identification document; the applicant's first name or second first name was not written in the application or in the identification document; the applicant's face is slightly obscured on the ID card due to the poor quality of the picture; the date of birth written on the form differs slightly from that on the applicant or the person acting on behalf's state identity card; information (date, place of signature and link with the victim) appear on the box related to a person acting on behalf the victim however there is no mention and no documentation about the existence of a person acting on behalf. The Registry notes also that certain applications were missing an additional page continuing the description of the events alleged, however the Registry considered that the content of the application was sufficient for conducting its assessment and received CLRs' clarification that the application forms should be considered complete at such and that the missing pages will be transmitted as soon as possible noting that COVID-19-related restrictions particularly in the field have slowed down the process of gathering required additional information from victim applicants. Finally the Registry notes that certain applications contain an additional page not signed by the applicants; however the Registry received the CLRs' confirmation that the additional page belongs to the form to which they were attached and was read to the applicant before he/she signed the application form.

³² See *supra* footnote 2, 24 May 2018 Decision, para. 50. See also *supra* footnote 25, Trial Chamber's 12 March 2020 Decision, para. 8

³³ The Registry notes a discrepancy within the answers provided by the applicants in relation to the legal representation. The Registry received confirmation that the applicants have expressed their willingness to be represented by the single team of LRVs currently representing the victims participating at trial. See also the prior Chamber's rulings on unrepresented applicants in the proceedings, 12 March 2020 Decision, para. 39 and 10 August 2020 Decision, para. 13.

25. Finally, the Registry will continue its activities in accordance with the guidance received from the Chamber in its 12 June 2020 Decision.

A handwritten signature in black ink, appearing to read 'M. Dubuisson', is written over a solid horizontal line.

Marc Dubuisson, Director, Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 13 November 2020

At The Hague, The Netherlands