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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 Fifth 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 as 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 in the Case (“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
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 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.⁵

3. From 29 May to 29 June 2020, the Registry transmitted to the Chamber a total of 1,097 Group A applications and 5 Group C applications; it also informed the Chamber regarding 47 applications assessed as falling outside the scope of the case and 101 applications assessed as incomplete.⁶
4. On 13 November 2020, the Registry transmitted a first set of newly collected applications of victims, together with a report thereon, in compliance with 12 June 2020 Decision.⁷
5. The Registry hereby submits its fifth report on victim applications for participation in the trial proceedings in the Case; this entails a report on 50 complete applications falling within Group A, including:
 - a brief description of the assessment criteria applied in relation to the 50 applicants who clearly, in the Registry's assessment, qualify as victims in Group A; and
 - a list of the 50 applications falling under Group A ("List") which are transmitted in original version to the Chamber under separate cover in accordance with the 12 March 2020 Decision.

II. Procedural History

⁵ 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.

⁶ 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.

⁷ See Registry, "Registry Third Transmission of Group A Victim Applications for Participation in Trial Proceedings", 13 November 2020, ICC-01/12-01/18-1153, and "Registry's Fourth Assessment Report on Victim Applications for Participation in Trial Proceedings", 13 November 2020, ICC-01/12-01/18-1152.

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.⁸
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”).⁹
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.¹⁰
9. On 6 January 2020, the Chamber set the start of trial on 14 July 2020.¹¹
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.¹²
11. On 12 March 2020, the Chamber issued its decision establishing the procedure for the participation of victims at trial.¹³
12. On 24 April 2020, Pre-Trial Chamber I issued a decision modifying the charges confirmed against the accused.¹⁴

⁸ See *supra*, footnote 2, 24 May 2018 Decision.

⁹ 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).

¹⁰ 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).

¹¹ See *supra*, footnote 4.

¹² 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).

¹³ See *supra* footnote 1.

¹⁴ 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,¹⁵ and on the same day submitted its first assessment report on complete applications falling under Group C alongside an overview of the preliminary results of the Registry's Review.¹⁶
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.¹⁷
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.¹⁸
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.¹⁹
17. On 29 June 2020, the Registry transmitted a second batch of 888 Group A applications alongside its third assessment report on complete applications falling under Group A. It also informed the Chamber that 47 applications were assessed as falling outside the scope of the case and 101 applications were assessed as incomplete.²⁰

¹⁵ Registry, "Registry Transmission of Group C Victim Applications for Participation at Trial", 29 May 2020, ICC-01/12-01/18-834.

¹⁶ Registry, "Registry First Assessment Report on Victim Applications for Participation in Trial Proceedings", 29 May 2020, ICC-01/12-01/18-835.

¹⁷ *Se supra*, footnote 6.

¹⁸ 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.

¹⁹ 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.

²⁰ Registry, "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.²¹
19. On 13 November 2020, the Registry transmitted 183 newly collected applications for victims together with a report thereon.²²
20. By email communication of 23 November 2020, the Registry informed the Chamber that following a periodic check and overview exercise recently completed for 127 applications for participation and/or reparations received in relation to the Mali situation (prior to the *Al Hassan* case-specific application process), 81 applications were assessed by the Victims Participation and Reparations Section (“VPRS”) as outside of the scope of the *Al Hassan* case, 39 forms were assessed as unclear and requiring further information, and seven forms were assessed as complete and falling within the scope of the *Al Hassan* case. The Registry thus requested the Chamber’s clarification as to whether these forms, once assessed as complete and clearly inside the scope of the Case, could be transmitted in its future transmissions of Group A applications.²³
21. On 24 November 2020, the Single Judge clarified that these application forms may be transmitted to the Chamber insofar as they are assessed by the Registry as complete and falling within the scope of the *Al Hassan* case (“24 November 2020 clarification”).²⁴

²¹ 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”).

²² Registry, “Registry Third Transmission of Group A Victim Applications for Participation in Trial Proceedings”, 13 November 2020, ICC-01/12-01/18-1153, and “Registry’s Fourth Assessment Report on Victim Applications for Participation in Trial Proceedings”, 13 November 2020, ICC-01/12-01/18-1152.

²³ Email from Chief VPRS to Trial Chamber X communications, on 23 November 2020, at 15:01.

²⁴ Email from Trial Chamber X communications to Chief VPRS, on 24 November 2020, at 10:50.

III. Applicable Law

22. 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

23. The annex to the present report is classified as confidential in accordance with paragraph 29 of the 12 March 2020 Decision.²⁵

V. Submissions

24. From 10 November 2020 until 9 December 2020, the Registry received 165 newly collected applications from applicants identified by the Registry as willing and interested in participating at trial but who were unable to apply within the 12 March 2020 Decision deadline, also due to the circumstances created by the COVID-19 pandemic.²⁶ Among these applications which are currently under review, 43 have already been assessed by the Registry as complete and falling within the scope of the *Al Hassan* case.

25. Also, as mentioned above,²⁷ the Registry has recently conducted an assessment exercise for 127 applications for participation and/or reparations previously registered in relation to the Mali Situation, from which seven applications have been assessed as complete and falling within the scope of the *Al Hassan* case.

26. In light of this, the Registry submits its report on 50 complete applications falling within Group A.

²⁵ See also 24 May 2018 Decision, para. 59(iii).

²⁶ These applications are part of 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.

²⁷ See *supra* paras 20 and 21.

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

27. Applying the criteria set out in the 24 May 2018 Decision²⁸ and the 17 June 2020 Decision²⁹ the Registry has assessed 50 applications transmitted within Group A as complete.³⁰ In conducting its *prima facie* assessment in accordance with paragraph 48 of the 24 May 2018 Decision,³¹ the Registry confirms that each of the 50 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;³²
- 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.

28. In relation to point (i), the Registry noted that certain applications³³ falling under Group A contain minor discrepancies pertaining to *inter alia* the spelling of the applicants' names.³⁴ In these cases, the Registry took note of Pre-Trial

²⁸ 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).

²⁹ See *supra* footnote 19.

³⁰ The Registry notes that among these applications, three contain a transcription of a brief video in local language alongside the written form. When a video is received together with a written application form for participation and/or reparations, the Registry assesses the content of the video to decide whether to transmit it in the record of the Case as supporting material to the form. When the video and/or its transcription displays the exact same content as the victim's written application form, the Registry considers it as a duplicate of the form and does not transmit it to the Chamber and/or parties. When the video and/or its transcription displays additional information and/or contains major discrepancies with the written form, the Registry assesses it as a supporting document and it transmits it to the Chamber and/or parties.

³¹ See *supra* footnote 2, 24 May 2018 Decision, para. 46; See also *supra* footnote 19, 17 June 2020 Decision.

³² The Registry notes that two applicants (a/50657/20 and a/50658/20) have filled in an organisation participation form. However, the Registry notes that the persons acting on behalf of the organisations do not provide all required documents in support of an organisation application form, but provide their identification documents and allege to have suffered personal and direct harm. Therefore, the Registry considers the applications as complete and that the applicants are acting on their own behalf, as natural persons.

³³ The applications with minor discrepancies include: a/25012/14, a/25118/14, a/25122/14, a/50751/20, a/50767/20 and a/50906/20.

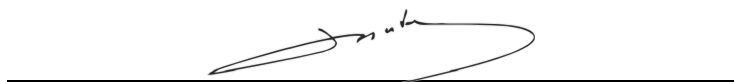
³⁴ The discrepancies identified include: the applicants' first name and surname are in the reverse order in the application form; a spelling mistake of the applicant's name in the transcription of the applicant's

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 [...]"³⁵

29. The Registry also notes that among these 50 applications, 7 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 43 are unrepresented applicants.³⁶

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

31. Finally, the Registry will continue its activities in accordance with the guidance received from the Chamber in its 12 June 2020 Decision and 24 November 2020 clarification.



Marc Dubuisson, Director, Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 18 December 2020

At The Hague, The Netherlands

video joined to the written form; the applicant's face is slightly obscured on the ID card due to the poor quality of the picture; the applicant's year of birth does not appear clearly on the ID card due to the poor quality of the picture; the applicant's gender is either missing in the application form or differs from that on the applicant's state identity card (which is probably due to an inadvertent error as the gender is clearly established in the context of the form and in the identity card).

³⁵ See *supra* footnote 2, 24 May 2018 Decision, para. 50. See also *supra* footnote 29, Trial Chamber's 12 March 2020 Decision, para. 8

³⁶ The Registry confirmed that the unrepresented 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.