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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 Sixth 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. So far, the Registry transmitted to the Chamber a total of 1330 Group A applications⁶ and five Group C applications; it also informed the Chamber regarding 47 Group B applications and 101 applications assessed as presently incomplete.⁷
4. The Registry hereby submits its sixth report on victim applications for participation in the trial proceedings in the Case; this entails a report on 70 complete applications falling within Group A, including:
 - a brief description of the assessment criteria applied in relation to the 70 applicants who clearly, in the Registry's assessment, qualify as victims in Group A; and

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 Among the 1330 Group A applications, 826 are applications from victims authorised to participate during pre-trial proceedings and who remain within the scope of the confirmed Case for the purpose of trial (see "Registry's Third Assessment Report on Victim Applications for Participation in Trial Proceedings", 29 June 2020, ICC-01/12-01/18-910, paras 4 and 24).

⁷ Registry, "Registry Transmission of Group C Victim Applications for Participation at Trial", 29 May 2020, ICC-01/12-01/18-834, and "Registry First Assessment Report on Victim Applications for Participation in Trial Proceedings", 29 May 2020, ICC-01/12-01/18-835; "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; "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; "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; "Registry Fourth Transmission of Group A Victim Applications for Participation in Trial Proceedings", 18 December 2020, ICC-01/12-01/18-1216, and "Registry's Fifth Assessment Report on Victim Applications for Participation in Trial Proceedings", 18 December 2020, ICC-01/12-01/18-1214.

- a list of the 70 applications falling under Group A (“List”) which are transmitted in their original version to the Chamber under separate cover, in accordance with the 12 March 2020 Decision.

II. Procedural History

5. 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
6. 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
7. 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
8. On 6 January 2020, the Chamber set the start of trial on 14 July 2020.¹¹
9. 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

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

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).

10. On 12 March 2020, the Chamber issued its decision establishing the procedure for the participation of victims at trial.¹³
11. On 23 April 2020, Pre-Trial Chamber I issued a decision modifying the charges confirmed against the accused.¹⁴
12. On 29 May 2020, the Registry transmitted five 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
13. 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
14. 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
15. 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

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).

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 See *supra*, footnote 5.

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 purpose of trial proceedings and deferred its ruling as regards the status of one applicant, see *id.*, 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.

16. On 29 June 2020, the Registry transmitted a second batch of victim application forms, containing 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
17. 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
18. On 13 November 2020, the Registry transmitted 183 Group A applications for victims together with a report thereon.²²
19. On 24 November 2020, the Chamber clarified to the Registry that applications received prior to the Case-specific application process may be transmitted to the Chamber insofar as they are assessed by the Registry as complete and falling within the scope of the Case (“24 November 2020 clarification”).²³
20. On 14 December 2020, the Chamber issued its fourth decision on the admission of victims to participate in trial proceedings, admitting 183 applicants as participating victims for the purpose of trial proceedings.²⁴

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.

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 Trial Chamber X Communications to Chief of VPRS, on 24 November 2020, at 10:50; see also “Registry Fourth Transmission of Group A Victim Applications for Participation in Trial Proceedings”, 18 December 2020, ICC-01/12-01/18-1216, paras 5-6.

²⁴ Trial Chamber X, “Fourth decision on the admission of victims to participate in trial proceedings”, 14 December 2020, ICC-01/12-01/18-1204 (“14 December 2020 Decision”).

21. On 18 December 2020, the Registry transmitted a further 50 Group A applications for victims together with a report thereon.²⁵

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.²⁶

V. Submissions

24. The Registry continues to receive 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.²⁷ Among these applications which are currently under review, 70 application forms have been assessed by the Registry as complete and falling within the scope of the Case.

²⁵ Registry, “Registry Fourth Transmission of Group A Victim Applications for Participation in Trial Proceedings”, 18 December 2020, ICC-01/12-01/18-1216, and “Registry’s Fifth Assessment Report on Victim Applications for Participation in Trial Proceedings”, 18 December 2020, ICC-01/12-01/18-1214. This transmission includes seven application forms received prior to the Case-specific application process (see *supra* para. 19).

²⁶ See also 24 May 2018 Decision, para. 59(iii).

²⁷ From 10 November until 16 December 2020, the Registry received 171 application forms. 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.

25. Accordingly, the Registry submits this report on 70 complete applications falling within Group A.

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

26. Applying the criteria set out in the 24 May 2018 Decision²⁸ and the 17 June 2020 Decision²⁹ the Registry has assessed 70 applications transmitted within Group A as complete. In conducting its *prima facie* assessment in accordance with paragraph 48 of the 24 May 2018 Decision, the Registry confirms that each of the 70 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;
- 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.

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

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 18.

³⁰ The applications with minor discrepancies include: a/50788/20, a/50791/20, a/50795/20, a/50797/20, a/50809/20, a/50813/20, a/50826/20, a/50833/20, a/50842/20, a/50844/20, a/50857/20, a/50858/20, a/50859/20, a/50860/20 and a/50870/20.

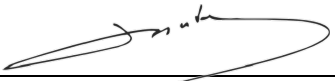
³¹ The discrepancies identified include: the applicant's other first name or *alias* was not written on the application form; a spelling mistake in the applicant's first name or surname in the application form compared to the identification document(s); the applicant's face is slightly obscured on the ID card due to the poor quality of the picture.

into question the overall credibility of the information provided by the applicant [...]"³²

28. The Registry also notes that all of these 70 applications are unrepresented applicants.³³

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

30. 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 22 January 2021

At The Hague, The Netherlands

³² See *supra* footnote 2, 24 May 2018 Decision, para. 50. See also *supra* footnote 28, Trial Chamber's 12 March 2020 Decision, para. 8

³³ The Registry has confirmed that the unrepresented applicants have expressed their willingness to be represented by the single team of LRVs currently representing victims participating at trial. See also the prior Chamber's rulings on unrepresented applicants in the proceedings, 12 March 2020 Decision, para. 39; 10 August 2020 Decision, para. 13; and 14 August 2020 Decision, para. 14.