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No. ICC-01/12-01/18

Date: 29 January 2021

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

Fifth decision on the admission of victims to participate in trial proceedings

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

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**Unrepresented Applicants for
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The Office of Public Counsel for Victims

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TRIAL CHAMBER X of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, having regard to Article 68(1) and (3) of the Rome Statute, Rules 85, 86 and 89 to 92 of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 86 of the Regulations of the Court, issues this ‘Fifth decision on the admission of victims to participate in trial proceedings’.

I. Procedural history and submissions

1. On 12 March 2020, the Chamber issued its ‘Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial’ (the ‘First Decision on Victims’ Participation’).¹ In this decision, the Chamber set a procedure for the admission of victims to participate in the trial proceedings. It relevantly maintained the admission procedure determined by Pre-Trial Chamber I in its decision of 24 May 2018, whereby the Chamber would ratify the Registry’s assessment of Groups A and B application forms, ‘barring a “clear and material error”’.²
2. In its First Decision on Victims’ Participation, the Chamber also adopted various deadlines for the transmission of victim applications for participation at trial. It relevantly decided that Group A applications (applicants who clearly qualify as victims) were to be transmitted to the Chamber no later than 15 days before the commencement of trial,³ set for 14 July 2020.⁴ This deadline was subsequently extended to the end of the Prosecution case, following a request from the Registry and the Legal Representatives of Victims (the ‘LRVs’) on the basis of the current COVID-19 pandemic.⁵ The Chamber instructed the Registry to file the newly

¹ First Decision on Victims’ Participation, ICC-01/12-01/18-661.

² First Decision on Victims’ Participation, ICC-01/12-01/18-661, para. 1, *referring to* Pre-Trial Chamber I, Decision Establishing the Principles Applicable to Victims’ Applications for Participation (hereinafter: ‘Pre-Trial Decision’), ICC-01/12-01/18-37-tENG, para. 59(ix).

³ First Decision on Victims’ Participation, ICC-01/12-01/18-661, para. 29.

⁴ Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548.

⁵ Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial (hereinafter: ‘Decision Extending the Deadline’), 12 June 2020, ICC-01/12-01/18-880, paras 9-14.

collected applications ‘on a rolling basis in periodic intervals’, and to notify its corresponding Assessment Reports within the same deadline.⁶

3. On 17 June 2020, the Chamber rendered its ‘Second decision on the admission of victims to participate in trial proceedings’ (the ‘Second Decision on Victims’ Participation’), where it decided that four Group C applicants could retain their status as participating victims for the purposes of the trial proceedings and deferred its ruling as regard the status of one applicant.⁷
7. On 10 August 2020, the Chamber rendered its ‘Third decision on the admission of victims to participate in trial proceedings’ (the ‘Third Decision on Victims’ Participation’), admitting 1,097 Group A applicants as participating victims for the purposes of the trial proceedings and rejecting 47 Group B applicants.⁸
8. On 14 December 2020, the Chamber rendered its ‘Fourth decision on the admission of victims to participate in trial proceedings’ (the ‘Fourth Decision on Victims’ Participation’), admitting 183 Group A applicants as participating victims for the purposes of the trial proceedings.⁹
9. On 18 December 2020, the Registry filed its ‘Registry Fourth Transmission of Group A Victim Applications for Participation in Trial Proceedings’ (the ‘Fourth Transmission’), annexing 50 Group A applications to its filing.¹⁰
10. On that same day, the Registry filed the ‘Registry’s Fifth Assessment Report on Victim Applications for Participation in Trial Proceedings’ (the ‘Registry Fifth Assessment’).¹¹

⁶ Decision Extending the Deadline, ICC-01/12-01/18-880, para. 13.

⁷ Second Decision on Victims’ Participation, ICC-01/12-01/18-886-Red2, paras 16, 20-23.

⁸ Third Decision on Victims’ Participation, ICC-01/12-01/18-992.

⁹ Fourth Decision on Victims’ Participation, ICC-01/12-01/18-1204.

¹⁰ Fourth Transmission, ICC-01/12-01/18-1216 (with 50 confidential *ex parte* annexes available only to the Registry and the LRVs).

¹¹ Registry Fifth Assessment, ICC-01/12-01/18-1214 (with confidential annex).

11. On 22 January 2021, the Registry filed its ‘Registry Fifth Transmission of Group A Victim Applications for Participation in Trial Proceedings’ (the ‘Fifth Transmission’), annexing 70 Group A applications to its filing.¹²
12. On that same day, the Registry filed the ‘Registry’s Sixth Assessment Report on Victim Applications for Participation in Trial Proceedings’ (the ‘Registry Sixth Assessment’).¹³

II. Applicable law

13. The Chamber refers to its previous decisions and the consistent jurisprudence on Rule 85 of the Rules as set out by the Single Judge of Pre-Trial Chamber I.¹⁴ It is recalled, in particular, that individuals seeking to be admitted as participating victims will have to demonstrate *prima facie* that they are victims within the meaning of Rule 85 of the Rules and shall therefore meet the following criteria: i) the applicant has established his/her identity as a natural person; ii) the applicant is alleged to have suffered harm; and iii) the personal harm reported by the applicant resulted from an incident falling within the temporal, geographic and material parameters of the case (the ‘Rule 85(a) Test’).¹⁵

III. Analysis

A. Group A applications

14. In the Fourth Transmission and the Fifth Transmission, the Registry communicated to the Chamber a total of 120 Group A applications. It carried out an assessment of these applications and concluded that they fall within Group A as they meet the required conditions for the granting of victim status under the Rule 85(a) Test indicated above.

¹² Fifth Transmission, ICC-01/12-01/18-1259 (with 70 confidential *ex parte* annexes available only to the Registry and the LRVs).

¹³ Registry Sixth Assessment, ICC-01/12-01/18-1260 (with confidential annex).

¹⁴ First Decision on Victims’ Participation, ICC-01/12-01/18-661, para. 8; Second Decision on Victims’ Participation, ICC-01/12-01/18-886-Red2, para. 8; Third Decision on Victims’ Participation, ICC-01/12-01/18-992, para. 10.

¹⁵ Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 48.

15. The Chamber has not identified any clear and material error in the Registry Assessment and therefore authorises the participation as victims of 120 applicants transmitted as Group A.¹⁶

B. Legal representation

16. In the Fifth Assessment, the Registry notes that among the 50 applications, 7 applicants appears to be already represented by the LRVs, while 43 applicants are unrepresented.¹⁷ Accordingly, as recommended by the Registry,¹⁸ and further to its prior rulings on this matter,¹⁹ the Chamber hereby appoints the single team of LRVs to represent the 43 currently unrepresented victims.
17. In its Sixth Assessment, the Registry notes that all 70 applicants are currently unrepresented.²⁰
18. The Chamber notes that in its Sixth Assessment, the Registry informs that so far, it has transmitted to the Chamber a total of 1330 Group A applications and five Group C applications. It has also informed the Chamber regarding 47 Group B applications and 101 applications assessed as presently incomplete.²¹
19. The Chamber considers that such statistics are useful and instructs the Registry to continue providing such statistics in future assessments, particularly noting how many participating victims in the case are represented by the LRVs.

¹⁶ The applicants are those included in Registry Fifth Assessment, ICC-01/12-01/18-1214-Conf-Anx and the Registry Sixth Assessment, ICC-01/12-01/18-1260-Conf-Anx.

¹⁷ Registry Fifth Assessment, ICC-01/12-01/18-1214, para. 29.

¹⁸ Registry Report on the implementation of Trial Chamber X's Decision of 20 December 2019, ICC-01/12-01/18-563-Anx-Red2, 27 January 2020, para. 27.

¹⁹ First Decision on Victims' Participation, ICC-01/12-01/18-661, para 39; Third Decision on Victims' Participation, ICC-01/12-01/18-992, para. 13; Fourth Decision on Victims' Participation, ICC-01/12-01/18-1204, para. 14. *See also* Decision on the request from the legal representatives of victims in relation to the representation of victims, 15 May 2020, ICC-01/12-01/18-816; and Email from the Chamber to LRVs, 12 December 2019, at 9:28.

²⁰ Registry Sixth Assessment, ICC-01/12-01/18-1260, para. 28.

²¹ Registry Sixth Assessment, ICC-01/12-01/18-1260, para. 3.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DECIDES to admit the 120 abovementioned applicants as participating victims for the purpose of the trial proceedings;

DECIDES that the LRVs shall represent the 120 victims hereby admitted;

INSTRUCTS the Registry to transmit copies of the victims' applications for participation to the LRVs hereby appointed to represent them; and

INSTRUCTS the Registry to continue indicate in its next assessments the number of participating victims in the case represented by the LRVs.

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 29 January 2021

At The Hague, The Netherlands