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No. ICC-01/12-01/18

Date: 12 March 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

Sixth 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:

The Office of the Prosecutor

Fatou Bensouda
James Stewart

Counsel for the Defence

Melinda Taylor
Kirsty Sutherland
Antoine Vey

Legal Representatives of Victims

Seydou Doumbia
Mayombo Kassongo
Fidel Luvengika Nsita

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Other

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 (the ‘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 ‘Sixth 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 notably setting deadlines for the transmission of victim applications for participation at trial. Group A applications (applicants who clearly qualify as victims) and Group B applications (applicants who clearly do not qualify as victims) were to be transmitted to the Chamber no later than 15 days before the commencement of trial,² set for 14 July 2020.³
2. On 12 June 2020, on the basis of the ongoing COVID-19 pandemic, the Chamber issued a decision extending the deadline for the final transmission of victim applications until the end of the Prosecution case, except for applications already received, for which the initial deadline remained.⁴ The Chamber instructed the Registry to file the newly collected applications on a rolling basis in periodic intervals.⁵
3. 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’),⁶ notably rejecting 47 Group B applications – one of which was

¹ ICC-01/12-01/18-661.

² First Decision on Victims’ Participation, ICC-01/12-01/18-661, para. 29.

³ Decision Setting the Commencement Date of the Trial, ICC-01/12-01/18-548.

⁴ Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial (hereinafter: ‘Decision Extending the Deadline’), ICC-01/12-01/18-880, paras 9-14.

⁵ Decision Extending the Deadline, ICC-01/12-01/18-880, para. 13.

⁶ ICC-01/12-01/18-992.

an application from Prosecution Witness P-0641 dated 2018 (the ‘2018 Application’).⁷

4. On 19 February 2021, the Legal Representatives of Victims (the ‘LRVs’) filed a request seeking that the Chamber reconsiders the Third Decision on Victims’ Participation so as to grant participating victim’s status to P-0641 (the ‘LRVs Request’).⁸ The LRVs argue that the Chamber should make a new determination on the 2018 Application referring to the content of P-0641’s witness statement and the existence of factual allegations specifically related to him which were confirmed by Pre-Trial Chamber I under Count 13.⁹
5. On 5 March 2021, the Defence sent a request via email seeking that the deadline for its response to the LRVs Request be suspended until three days after being provided with a copy of another victim application from P-0641 dated 2014 (the ‘2014 Application’ and the ‘Defence Request’, respectively).¹⁰ The Defence informs that it has sought disclosure of this document but that the Prosecution confirmed it is not in its possession. On the same day, the LRVs sent an email in response opposing the Defence Request.¹¹
6. On 8 March 2021, the Chamber informed via email that it dismissed the Defence Request (the ‘8 March 2021 Decision’), with reasons to follow, but exceptionally authorised the Defence to file its response to the LRVs Request before the filing deadline on that day.¹²
7. The Defence’s response was filed as per the Chamber’s instruction on that day.¹³ The Defence argues that the LRVs Request should be rejected as it does not meet the reconsideration threshold. Notably, the Defence submits that the remedy

⁷ Witness P-0641 is applicant a/45535/18.

⁸ Demande en reconsideration de la décision ICC-01/12-01/18-992 rejetant la qualité de victime participante à a/45535/18, ICC-01/12-01/18-1310-Conf.

⁹ Referring to Décision portant modification des charges confirmées le 30 septembre 2019 à l’encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, 23 avril 2020, ICC-01/12-01/18-767-Conf, ICC-01/12-01/18-767-Conf-Corr (the ‘PTC I Amendment Decision’).

¹⁰ Email from the Defence to the Chamber at 10:18.

¹¹ Email from the LRVs to the Chamber at 11:32.

¹² Email from the Chamber to the parties and participants at 8:24.

¹³ Defence response to ‘Demande en reconsideration de la décision ICC-01/12-01/18-992 rejetant la qualité de victime participante à a/45535/18’, ICC-01/12-01/18-1345-Conf (the ‘Response’).

sought in the LRVs Request is inconsistent with the procedure adopted in the case, whereby the Chamber does not make individual assessments of Group B applications or overrule the Registry's findings.¹⁴ The Defence also argues that, if the Chamber undertakes the assessment sought to be conducted by the LRVs, it would 'affect the impartiality of the Chamber, as it would require the Chamber to make determinations concerning the veracity and reliability of the applicant's witness statement before the witness testifies'.¹⁵

8. Also on 8 March 2021, the Registry filed a seventh assessment report on victim applications for participation (the 'Registry's Seventh Report'),¹⁶ together with a transmission of 40 Group A applications to the Chamber.¹⁷ The Registry informs that the 40 applications were assessed as complete and met the relevant criteria.¹⁸ Finally, the Registry also reports that these 40 applicants are unrepresented but have all expressed their willingness to be represented by the single team of LRVs currently representing victims participating at trial.¹⁹
9. On 9 March 2021, and in response to a request from the Registry,²⁰ the Single Judge rendered an email decision allowing the Registry to transmit the unredacted version of the 2014 Application to the Prosecution,²¹ who had sought to be provided with the document following a request from the Defence.

II. Applicable law

10. The Chamber refers to the legal framework set out in its previous decisions on the participation of victims.²²

¹⁴ Response, ICC-01/12-01/18-1345-Conf, para. 18.

¹⁵ Response, ICC-01/12-01/18-1345-Conf, para. 18.

¹⁶ Registry's Seventh Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-01/12-01/18-1342 (with one confidential annex).

¹⁷ Registry's Sixth Transmission of Group A Victim Applications for Participation in Trial Proceedings, ICC-01/12-01/18-1343 (with 43 confidential *ex parte* annexes available only to the Registry and the LRVs).

¹⁸ Registry's Seventh Report, ICC-01/12-01/18-1342, para. 20.

¹⁹ Registry's Seventh Report, ICC-01/12-01/18-1342, para. 22 and fn 33.

²⁰ Email from the Registry to the Chamber on 8 March 2021 at 13:28.

²¹ Email from the Single Judge to the parties and participants at 11:12.

²² First Decision on Victims' Participation, ICC-01/12-01/18-661, para. 8; and Second Decision on Victims' Participation, ICC-01/12-01/18-886-Red2, para. 8.

III. Analysis

A. Group A applications

11. The Chamber notes that the Registry's Seventh Report refers to 40 applications²³ which, based on the Registry's assessment, fall within Group A as they meet the required conditions for the granting of victim status under Rule 85 of the Rules.²⁴ The Chamber has not identified any clear and material error in the Registry assessment and, in line with the system for admission of victims for participation in trial proceedings, authorises the participation as victims of these 40 applicants.
12. Moreover, the Chamber notes that the Registry reports that all these applicants have expressed their willingness to be represented by the single team of LRVs currently representing victims participating at trial.²⁵ Accordingly, as recommended by the Registry,²⁶ and further to its prior rulings on this matter,²⁷ the Chamber appoints the single team of LRVs to represent the 40 victims hereby admitted.

B. LRVs Request regarding the status of P-0641

13. The Chamber notes that the LRVs are seeking that the Chamber reconsiders its prior decision on victim participation so as to grant a participating victim's status to Witness P-0641.
14. The Chamber recalls that it has the power to reconsider its decisions upon request of the parties or *proprio motu*, particularly in light of Articles 64(2) and 67 of the

²³ These are a/50784/20, a/50801/20, a/50811/20, a/50849/20, a/50851/20, a/50852/20, a/50854/20, a/50879/20, a/50880/20, a/50881/20, a/50882/20, a/50883/20, a/50884/20, a/50885/20, a/50886/20, a/50887/20, a/50888/20, a/50889/20, a/50890/20, a/50891/20, a/50892/20, a/50893/20, a/50894/20, a/50895/20, a/50896/20, a/50897/20, a/50898/20, a/50899/20, a/50900/20, a/50901/20, a/50902/20, a/50903/20, a/50904/20, a/50905/20, a/50907/20, a/50908/20, a/50909/20, a/50910/20, a/50911/20, a/50912/20.

²⁴ Registry's Seventh Report, ICC-01/12-01/18-1342, para. 20.

²⁵ Registry's Seventh Report, ICC-01/12-01/18-1342, para. 22 and fn 33.

²⁶ 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.

²⁷ 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 on 12 December 2019 at 9:28.

Statute. Nevertheless, reconsideration is exceptional and should only take place if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice. New facts and arguments arising since the decision was rendered may be relevant to this assessment.²⁸

15. On a preliminary note, the Chamber recalls that the Defence requested that the deadline for its response to the LRVs Request be suspended until three days after provision of the 2014 Application. The Chamber notes that, as set out below, the present decision contains no assessment of P-0641's victim application nor a finding regarding his status. Accordingly, the Chamber finds that the material identified in the Defence Request has no bearing on its determination of the issue at stake and, therefore, that the provision thereof does not warrant a suspension of the deadline for its response to the LRVs Request. The Chamber however notes that, acting upon a request from the Defence, the Prosecution obtained a copy of the 2014 Application from the Registry²⁹ which the Chamber understands will be disclosed to the Defence prior to P-0641's testimony.
16. Turning to the LRVs Request, the Chamber recalls that, in its Decision Extending the Deadlines, the cut-off date for the transmission of victim applications was postponed and set to the end of the Prosecution case, except for applications already within the possession of the Registry.³⁰ These applications were to be processed by the Registry and transmitted to the Chamber before the commencement of the trial. The Chamber notes that its decision on the first transmission of Group A and B applicants was issued after the commencement of trial,³¹ thereby preventing unsuccessful applicants, including P-0641, from complementing their respective applications by the transmission deadline.

²⁸ See Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and familiarisation', 9 April 2020, ICC-01/12-01/18-734, para. 11; Decision on the Prosecution's request for reconsideration regarding the presentation of opening statements, 9 June 2020, ICC-01/12-01/18-867, para. 5.

²⁹ See instruction contained in an email from the Single Judge to the parties and participants on 9 March at 11:12.

³⁰ ICC-01/12-01/18-880, paras 9-14.

³¹ The Third Decision on Victims' Participation (ICC-01/12-01/18-992) was issued on 10 August 2020.

17. The Chamber is of the view that individuals whose applications were received and assessed by the Registry as incomplete before the initial cut-off deadline, as well as applicants who had their initial application rejected, may come forward with complementary information by the extended deadline which was set to the end of the Prosecution case. The Chamber notes that this is fully consistent with its prior decisions and, in this regard, refers back to a remark made in the context of the First Decision on Victims' Participation, where it was clearly stated that 'unsuccessful applicants have the opportunity to file a new application'.³² The Chamber also finds that this is a requirement of fairness, since those applicants who came forward earlier in the case ought to also have an opportunity to supplement their victim application, where warranted.
18. In light of the above, the Chamber finds that reconsideration of its decision denying a victim status to P-0641 is not necessary to prevent an injustice since P-0641 can make use of the extended deadline in order to put forward complementary or new allegations in the context of a new application for victim participation. The LRVs Request, as framed and litigated, is therefore dismissed.
19. In the circumstances, and in line with similar requests received on behalf of other crime-base witnesses who did not have a status as participating victims before their scheduled testimony,³³ the Chamber directs the Registry to assist P-0641, as appropriate, and in collaboration with the LRVs, in completing a victim application regarding alleged sufferings which were apparently left out of victim applications he previously submitted.³⁴ The Chamber direct that this be done after completion of this testimony.

³² ICC-01/12-01/18-661, para. 24.

³³ Email from the Single Judge to the parties and participants on 4 March 2021 at 13:57; and Email from the Chamber to the parties and participants on 29 November 2020 at 12:38.

³⁴ See PTC I Amendment Decision, ICC-01/12-01/18-767-Conf-Corr, paras 77 and 79.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

PUTS ON THE RECORD the reasons for its 8 March 2021 Decision;

DISMISSES the LRVs Request;

ORDERS the LRVs to file a public redacted version of the LRVs Request within two weeks of notification of the present decision;

ORDERS the Defence to file a public redacted version of its Response within one week of notification of the public redacted version of the LRVs Request;

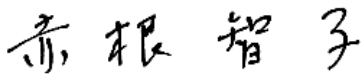
DECIDES to admit the 40 abovementioned applicants as participating victims for the purpose of the trial proceedings; and

DECIDES that the LRVs shall represent the 40 victims hereby admitted.

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 Friday, 12 March 2021

At The Hague, The Netherlands