



Original: **English**

No.: **ICC-01/12-01/18**

Date: **24 June 2020**

**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 Second 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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**REGISTRY**

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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”) in its Decision on the procedure for the admission of victims to participate in trial proceedings (“12 March 2020 Decision”)<sup>1</sup> decided 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”).<sup>2</sup> 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,<sup>3</sup> together with reports thereon.<sup>4</sup>
2. The Registry hereby submits its second report on victim applications for participation in the trial proceedings in the Case which includes a report on a first batch of 209 complete applications falling within Group A with:
  - ) A brief description of the assessment criteria applied in relation to the 209 applicants who clearly, in the Registry’s assessment, qualify as victims in Group A; and

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<sup>1</sup> 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.

<sup>2</sup> *Id.*, p. 19. The Chamber also ordered the Registry to disclose Group C applications in unredacted form to the Prosecution and to apply redactions “as needed” vis-à-vis the Defence. *See* also Pre-Trial Chamber I, “Décision fixant les principes applicables aux demandes de participation des victimes”, 24 May 2018, ICC-01/12-01/18-37, (“24 May 2018 Decision”), para. 59 (i).

<sup>3</sup> 12 March 2020 Decision, para. 29. 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” (12 March 2020 Decision, para. 18). Finally, the Registry notes that the date for the commencement of trial is set for 14 July 2020 (see Trial Chamber X, “Decision Setting the Commencement Date of the Trial”, 6 January 2020, ICC-01/12-01/18-548, p. 9).

<sup>4</sup> 12 March 2020 Decision, para. 29. The corresponding reports are transmitted to the parties and the common legal representatives of victims (*see id.*, para. 24).

J) A list of the 209 applications falling under Group A (“List”) which were separately transmitted in unredacted version to the Chamber in accordance with the 12 March 2020 Decision.

## II. Procedural History

3. 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.<sup>5</sup>
4. 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”).<sup>6</sup>
5. 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.<sup>7</sup>
6. On 6 January 2020, the Chamber set the start of trial on 14 July 2020.<sup>8</sup>
7. 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.<sup>9</sup>
8. On 12 March 2020, the Chamber issued its decision establishing the procedure for the participation of victims at trial.<sup>10</sup>

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<sup>5</sup> See *supra*, footnote 2, 24 May 2018 Decision.

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> See *supra*, footnote 3.

<sup>9</sup> 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). The Registry also informed the Chamber that the number of Participating Victims stands at present at 880, as a result of the death of one Participating Victim, and the identification of a duplicate application (*id.*, at para. 4).

9. On 24 April 2020, Pre-Trial Chamber I issued a decision modifying the charges confirmed against the accused.<sup>11</sup>
10. 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.<sup>12</sup>
11. On 17 June 2020, the Chamber issued its decision on a number of Group C application forms.<sup>13</sup>

### III. Applicable Law

12. 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 (“RoC”), and regulations 107 to 109 of the Regulations of the Registry.

### IV. Submissions

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

13. Applying the criteria set out in paragraph 46 of the 24 May 2018 Decision<sup>14</sup> and the 17 June 2020 Decision,<sup>15</sup> the Registry has assessed as complete each of the 209 applications transmitted within Group A. In conducting its *prima facie*

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<sup>10</sup> See *supra* footnote 1.

<sup>11</sup> 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).

<sup>12</sup> 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 (“12 June 2020 Decision”), para. 13 and Disposition, p. 8.

<sup>13</sup> 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”) and its public redacted version ICC-01/12-01/18-886-Red2 of 23 June 2020.

<sup>14</sup> 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).

<sup>15</sup> See *supra* footnote 13.

assessment in accordance with paragraph 48 of the 24 May 2018 Decision,<sup>16</sup> the Registry confirms that each of the 209 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;<sup>17</sup>
- 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.

14. In relation to point (i), the Registry noted that certain applications<sup>18</sup> falling under Group A contain minor discrepancies pertaining to *inter alia* the

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<sup>16</sup> *Id.*

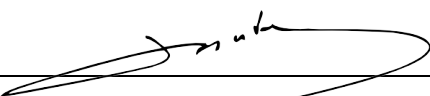
<sup>17</sup> The Registry notes that two applicants whose applications have been filed under Group A (a/45269/18 and a/20334/19) were under the age of 18 at the time of the submission of their application for participation in the proceedings. Noting the ICC's applicable Rules and Regulations, the prevailing jurisprudence of the Court [cited below], the relevant international conventions including the Convention on the Rights of the Child (particularly art. 12 of the latter, UNGA Resolution 44/25 of 20 November 1989) and the clarification received from the victims' legal representative on the demonstrated maturity of the applicants and the contextual circumstances surrounding their decision to participate individually and not with a person acting on their behalf, the Registry considers that these applicants qualify as victims in Group A. The Registry considers the following jurisprudence to be relevant to this assessment: i) *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Trial Chamber I, Decision on victims' participation status, 7 January 2016, ICC-02/11-01/15-379, para. 60) *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Trial Chamber II, Grounds for the Decision on the 345 Applications for Participation in the Proceedings Submitted by Victims, 23 September 2009, ICC-01/04-01/07-1491-Conf-tENG, para. 98) *The Prosecutor v. Thomas Lubanga Dyilo*, Trial Chamber I, Annex 1 to the Corrigendum to "Decision on the applications by victims to participate in the proceedings", 13 January 2009, ICC-01/04-01/06-1556-Corr-Anx1, paras. 91-97.

<sup>18</sup> The applications with minor discrepancies include: a/45171/18; a/45173/18; a/45192/18; a/45205/18; a/45248/18; a/45257/18; a/45269/18; a/45281/18; a/45305/18; a/45310/18; a/45316/18; a/45321/18; a/45322/18; a/45331/18; a/45335/18; a/45342/18; a/45343/18; a/45347/18; a/45348/18; a/45349/18; a/45351/18; a/45352/18; a/45353/18; a/45359/18; a/45362/18; a/45364/18; a/45366/18; a/45374/18; a/45375/18; a/45376/18; a/45377/18; a/45378/18; a/45379/18; a/45380/18; a/45381/18; a/45385/18; a/45390/18; a/45396/18; a/45397/18; a/45400/18; a/45402/18; a/45403/18; a/45405/18; a/45411/18; a/45412/18; a/45414/18; a/45416/18; a/45417/18; a/45419/18; a/45421/18; a/45422/18; a/45425/18; a/45426/18; a/45427/18; a/45430/18; a/45431/18; a/45433/18; a/45438/18; a/45445/18; a/45462/18; a/45470/18; a/45472/18; a/45478/18; a/45480/18; a/45482/18; a/45483/18; a/45486/18; a/45487/18; a/45512/18; a/45518/18; a/45521/18; a/45544/18; a/45597/18; a/45598/18; a/45600/18; a/45602/18; a/45603/18; a/45604/18; a/45614/18; a/45616/18; a/45639/18; a/45642/18; a/20037/19; a/20039/19; a/20072/19; a/20105/19; a/20106/19; a/20132/19; a/20161/19; a/20165/19; a/20182/19; a/20212/19; a/20295/19; a/20318/19; a/20334/19; a/20335/19; a/20336/19; a/20338/19; a/20339/19; a/20383/19; a/20443/19 and a/20448/19.

spelling of the applicants' names.<sup>19</sup> 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 [...]"<sup>20</sup>

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

16. The Registry will continue to assess all applications received, and transmit all complete applications falling within Group A in accordance with the relevant deadline currently set by the Chamber in its 12 March 2020 Decision, and to inform the Chamber on the applications assessed as incomplete and/or falling outside the scope of the Case.<sup>21</sup>



Marc Dubuisson, Director, Division of Judicial Services

On behalf of Peter Lewis, Registrar

Dated this 24 June 2020

At The Hague, The Netherlands

<sup>19</sup> 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 and/or surname in the application form compared to the identification document; the applicants' first name and surname are in the reverse order in the application form; 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 applicant's date of birth does not appear in the application form; the date of birth written on the form differs slightly from that on the applicant's state identity card; the applicant's gender-when mentioned at the applicant's gender question in the application form- 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); the date of signature differs slightly from the date in which the application was actually filled by the applicant.

<sup>20</sup> 24 May 2018 Decision, para. 50.

<sup>21</sup> 12 March 2020 Decision, para. 29 and p. 19 (setting the transmission of "Groups A and B to the Chamber no later than 15 days before the trial commencement date"). After the subsequent transmission foreseen for 29 June 2020, the Registry will continue its activities within the regime as delineated by the Chamber in its 12 June 2020 Decision.