

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/12-01/15**
Date: **28 February 2020**

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Single Judge

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF *THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI*

Public

**Decision on Prosecution's Request for Provision of Certain Individual Reparations
Applications**

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

The Office of the Prosecutor

Fatou Bensouda
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Counsel for the Defence

Mohamed Aouini

Legal Representative of Victims

Mayombo Kassongo

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

The Office of Public Counsel for the Defence

States Representatives

Others

Trust Fund for Victims
Trial Chamber X
Al Hassan Defence

REGISTRY

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Counsel Support Section

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Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Others

Judge Raul C. Pangalangan, acting as Single Judge on behalf of Trial Chamber VIII of the International Criminal Court, issues the following ‘Decision on Prosecution’s Request for Provision of Certain Individual Reparations Applications’, in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 64(6)(c) and 68(1) of the Rome Statute (the ‘Statute’) and Regulations 23, 23 *bis* and 29 of the Regulations of the Court (the ‘Regulations’).

1. On 20 February 2020, the Office of the Prosecutor (the ‘Prosecution’) requested that the Single Judge issue directions on a proposal for it to be provided with certain individual reparations applications in this case (the ‘Proposal’).¹ The Proposal relates to the Prosecution’s disclosure obligations in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (the ‘*Al Hassan* case’). The terms of the Proposal are as follows:

- The Prosecution will liaise with the Victims Participation and Reparations Section (the ‘VPRS’) to verify the existence of any applicants for individual reparations in this case who are also Prosecution witnesses in the *Al Hassan* case, and to obtain information regarding the status of their applications;
- If any such applicants are identified, the VPRS will transmit to the Prosecution unredacted versions of their applications, together with any supporting documents and information regarding the status of their applications; and
- The Prosecution will apply redactions, as necessary and in consultation with the VPRS and the LRV, before disclosing the applications and supporting documents to the Defence in the *Al Hassan* case. The Prosecution will ensure that redactions applied are consistent with the applicable framework in that case.²

2. On 25 February 2020,³ the LRV responded to the Proposal via email and proposed certain further safeguards (the ‘LRV Response’).⁴ The LRV makes no submission as to

¹ Prosecution’s Request regarding applications for individual reparations, ICC-01/12-01/15-345.

² Proposal, ICC-01/12-01/15-345, para. 3.

³ The response deadline was shortened to this date. Email from Trial Chamber VIII, 20 February 2020 at 14:13.

⁴ Email from the LRV, 25 February 2020, at 12:54 (full text as follows : *Le Représentant légal des victimes dans l’affaire Al Mahdi, également membre de l’équipe des représentants légaux des victimes dans l’affaire Al Hassan, entend apporter des observations à la Chambre de Première Instance VIII en ce qui concerne la demande déposée par le Bureau du Procureur le 20 février 2020 intitulée « Prosecution’s Request regarding applications for individual reparations », et qui concerne les victimes à double statut qui seraient témoins potentiels dans l’affaire Al Hassan. Le Représentant légal entend soulever devant votre Chambre que le Bureau*

why it could not file its response formally in accordance with Regulation 23 of the Regulations.⁵ The Single Judge reminds the LRV that responses to formal requests must be filed in accordance with the Regulations. However, noting the victims' interest in the confidentiality of their reparations applications, the Single Judge exceptionally accepts an email response on this occasion in the interests of justice.⁶

3. Also on 25 February 2020, the Trust Fund for Victims responded to the Proposal (the 'TFV Response').⁷ The TFV does not oppose the Proposal, so long as the applicant is informed and given the opportunity to react to any upcoming disclosure. Noting that the Proposal itself is public, the Single Judge considers that a public version of the TFV Response must be filed within the timeline specified in the disposition below.
4. The Single Judge recalls that 'a trial chamber can clearly no longer be "seized of the proceedings" [because] the trial judgment, sentence and reparations order are all final. [Accordingly,] this Chamber's current responsibilities are limited to oversight of its reparations order implementation'.⁸ Noting that the Proposal implicates unscreened reparations applications, the Single Judge will rule on it only to this extent.
5. As outlined in the Proposal, the Single Judge directs the VPRS to provide the Prosecution with unredacted reparations applications (together with any supporting documents and information regarding application status) of any Prosecution witnesses in the *Al Hassan* case. This act only reveals the identities of those already known to the recipient - the Prosecution is, self-evidently, aware of the identities of its witnesses in

du Procureur doit procéder au préalable à une demande adressée au Représentant légal afin d'obtenir le consentement de la victime, et afin de prendre toutes les mesures nécessaires à la communication des demandes de réparation concernées. Le Représentant légal entend solliciter que toute demande en ce sens soit transmise à la VPRS, afin que la Section puisse assurer les éventuelles expurgations nécessaires, au besoin, sous contrôle du Représentant légal. Enfin, le Représentant légal tient à ce que soit appliquée la jurisprudence Al Mahdi en ce qui concerne les mesures de confidentialité dont bénéficient les victimes à double statut (Chambre d'appel, Arrêt relatif à l'appel interjeté par les victimes contre l'Ordonnance de réparation, ICC-01/12-01/15-259-Red2-tFRA, 8 mars 2018).

⁵ *In contrast to* ICC-01/12-01/15-348-Conf, para. 3 (Chamber accepting an explanation provided as to why a request had to be filed via email). *See also* Email from the Prosecution, 25 February 2020, at 14:09 (correctly noting the LRV Response should have been a formal filing).

⁶ Regulation 29(1) of the Regulations.

⁷ Trust Fund's response to the "Prosecution's Request regarding applications for individual reparations" (ICC-01/12-01/15-345), ICC-01/12-01/15-349-Conf.

⁸ Decision on Prosecution's Requests for Variation of Protective Measures, 10 February 2020, ICC-01/12-01/15-344, para. 9.

the *Al Hassan* case.⁹ The Single Judge also recalls that the Prosecution has the same statutory obligations as the Chamber to protect victims and witnesses.¹⁰

6. For these reasons, the Single Judge sees no need to require the applicant's consent as a pre-requisite to the Prosecution obtaining the reparations applications of its witnesses in the *Al Hassan* case.¹¹ However, the LRV and TFV must be informed in advance of any such disclosure to ensure that the applicant is informed and his/her rights are preserved.¹²
7. As for questions of the subsequent disclosability or redaction of these applications, the Single Judge again recalls that the Chamber is no longer seized of the proceedings beyond the implementation of the reparations order.¹³ Any matters concerning disclosure of these applications in the *Al Hassan* case must be litigated before Trial Chamber X, which is responsible for that case.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

PROVIDES directions on the Proposal in paragraphs 5-7 above; and

DIRECTS the TFV to provide a public redacted version of the TFV Response, or request its reclassification, within 10 days of notification of the present decision.

Done in both English and French, the English version being authoritative.



Judge Raul C. Pangalangan, Single Judge

Dated 28 February 2020

At The Hague, The Netherlands

⁹ For at least this reason, the Appeals Chamber judgment raised by the LRV and TFV – which concerns revealing reparations applicants' identities unknown to the Defence – is inapposite. Public redacted Judgment on the appeal of the victims against the “Reparations Order”, 8 March 2018, ICC-01/12-01/15-259-Red2, A, paras 80-95, 99.

¹⁰ Articles 34 and 68(1) of the Statute.

¹¹ *Contra* LRV Response, footnote 4 above.

¹² *As argued in* TFV Response, ICC-01/12-01/15-349-Conf, paras 7, 13-14.

¹³ ICC-01/12-01/15-344, para. 9.