

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**
Date: **13 October 2026**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
Judge Tomoko Akane
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF
THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD

Public

Defence Request for Leave to Reply to the OPCV Response (ICC-01/12-01/18-2798)

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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I- INTRODUCTION

1. The Defence for Mr Al Hassan (“the Defence”) respectfully seeks leave to submit a limited reply addressing the three issues set out below, drawn from the OPCV Response,¹ pursuant to Regulation 60(1) of the Regulations of the Court (“RoC”). This request is made promptly, given the complexity of submissions on reparations and the amount of information contained in the OPCV Response.

2. At the outset, the Defence notes that the OPCV repeatedly misrepresents the arguments from the Defence Appeal Brief. Such misrepresentations are apparent when read against their corresponding Defence arguments as detailed in the Defence Appeal Brief.² Accordingly, the Defence only seeks leave to reply to three discrete issues raised in the OPCV’s Response.

3. However, in respect of the three limited issues set out below, additional submissions are relevant to, and would assist, the Appeals Chamber’s determination of the Reparations Appeals. Not only some of these arguments were novel and unforeseeable, but leave to reply to these three issues is also warranted and necessary for the full and proper adjudication of the appeal and to ensure the Defence has a fair opportunity to address these matters central to the reparations process.

II- APPLICABLE LAW

4. Pursuant to regulation 60(1) of the RoC, the Appeals Chamber “may order the appellant to file a reply” within a specified time-limit, should it “consider it necessary in the interests of justice”.³ This falls within the Appeals Chamber’s discretion and “is to be decided on a case-

¹ OPCV Consolidated Response to the Defence and LRVs Appeal Briefs against the Reparations Order, [ICC-01/12-01/18-2798](#) (“OPCV Response”).

² For instance, see [OPCV Response](#), para. 17 *contra* Defence Appeal Brief against the Reparations Order (ICC-01/12-01/18-2782), [ICC-01/12-01/18-2797-Conf](#) (“Defence Appeal Brief”), paras 30-41; [OPCV Response](#), para. 18 *contra* [Defence Appeal Brief](#), paras 30-41, 62-65, 67, 69-70; [OPCV Response](#), paras 34-35 *contra* [Defence Appeal Brief](#), paras 119-128; [OPCV Response](#), para. 22 *contra* [Defence Appeal Brief](#), paras 51-52; [OPCV Response](#), para. 31 *contra* [Defence Appeal Brief](#), paras 119-128; [OPCV Response](#), paras 41-43 *contra* [Defence Appeal Brief](#), paras 105-109; [OPCV Response](#), para. 44 *contra* [Defence Appeal Brief](#), paras 42-48; [OPCV Response](#), paras 47-50 *contra* [Defence Appeal Brief](#), paras 147-170.

³ See further, *Ntaganda*, Decision on request for leave to reply, [ICC-01/04-02/06-2530](#), para. 7; *Bemba et al.*, Decision on requests for leave to reply to the Prosecutor’s consolidated response to the appeal briefs, [ICC-01/05-01/13-2259](#) (“*Bemba et al.* 2018 [Decision on Request for leave to reply](#)”), para. 9; *Bemba et al.*, Decision on Mr Jean-Pierre Bemba Gombo’s requests for leave to reply, [ICC-01/05-01/13-2333](#) (“*Bemba et al.* 2019 [Decision on requests for leave to reply](#)”), para. 20; *Bemba*, Decision on Mr Bemba’s request for leave to reply to the Prosecutor’s Response to the Document in Support of the Appeal, [ICC-01/05-01/08-3480](#) (“*Bemba* 2016 [Decision on requests for leave to reply](#)”), para. 8; *Yekatom & Ngaïssona*, Decision on requests for leave to reply, [ICC-01/14-01/18-2917](#), para. 21; *Abd-Al-Rahman*, Decision on Defence’s request for leave to reply, [ICC-02/05-01/20-1350](#), para. 25.

by-case basis”.⁴ The jurisprudence establishes that the Appeals Chamber may order a reply when prompted by a party’s request.⁵ In *Lubanga*, the Appeals Chamber noted that “[a]lthough not specifically mentioned in regulation 60 of the Regulations of the Court, an appellant may request, and accordingly, trigger the powers of the Appeals Chamber to order the filing of a reply under said regulation.”⁶

5. As appeals against conviction, sentence and reparations fall under the same requirement pursuant to Rule 150 Rules of Procedure and Evidence and Regulation 57 of the RoC, this framework shall apply equally to Appeals Brief on Reparations Order.⁷ Regulation 60 prescribes no time limit for the submission of requests for leave to reply, as long as it made promptly, leaving the Appeals Chamber discretion to set a deadline for any such request.⁸

6. In such circumstances, the Appeals Chamber has recognised that an appellant may request leave to reply where: (i) it may assist the Chamber’s determination of the appeal;⁹ (ii) the issues to which the appellant wishes to reply are pertinent to the proper adjudication of the appeal;¹⁰ or (iii) the appellant wishes to correct alleged inaccuracies and provide additional submissions.¹¹

III- SUBMISSIONS

7. The Defence hereby seeks leave to reply to one issue in relation to Ground 1, one issue in relation to Ground 2, and one issue in relation to Ground 3.

A. ISSUE 1 RELATED TO GROUND 1

8. Leave is requested to address the OPCV assertion that the Defence’s position concerning Ground 1 “appears internally inconsistent. On the one hand, it argues that only a limited category of victims, namely those affected by the crimes charged under Counts 1-5 and 14,

⁴ *Ntaganda*, Decision on request for leave to reply, [ICC-01/04-02/06-2530](#), para. 7; *Bemba et al.* 2019 [Decision on requests for leave to reply](#), para. 20; *Bemba* 2016 [Decision on requests for leave to reply](#), para. 8; *Yekatom & Ngaissona*, Decision on requests for leave to reply, [ICC-01/14-01/18-2917](#), para. 21; *Abd-Al-Rahman*, Decision on Defence’s request for leave to reply, [ICC-02/05-01/20-1350](#), para. 25.

⁵ *Lubanga*, Order on the filing of a reply under regulation 60 of the Regulations of the Court, [ICC-01/04-01/06-2982](#) (“*Lubanga Order on the filing of a reply*”), para. 6; *Bemba et al.* 2019 [Decision on requests for leave to reply](#), para. 20; *Bemba et al.* 2018 [Decision on Request for leave to reply](#), para. 9.

⁶ *Lubanga Order on the filing of a reply*, para. 6. See also, *Bemba et al.* 2018 [Decision on Request for leave to reply](#), para. 9.

⁷ By analogy see *Gbagbo & Blé Goudé*, Order scheduling a hearing before the Appeals Chamber and setting a time limit for any request for leave to reply, [ICC-02/11-01/15-1318](#), para. 6.

⁸ *Gbagbo & Blé Goudé*, Order scheduling a hearing before the Appeals Chamber and setting a time limit for any request for leave to reply, [ICC-02/11-01/15-1318](#), paras 5-6; *Abd-Al-Rahman*, Defence Notice of Intent to Reply, [ICC-02/05-01/20-1322](#), para. 3.

⁹ Regulations of the Court, [Regulation](#) 60(1).

¹⁰ *Bemba Decision on requests for leave to reply*, para. 8.

¹¹ *Lubanga Order on the filing of a reply*, para. 7; *Bemba Decision on requests for leave to reply*, para. 8.

should also be recognised as victims of persecution, and that the amount of liability should therefore be substantially reduced. On the other hand, in the alternative, it proposes that the community of Timbuktu be recognised as a victim of persecution. That alternative position necessarily entails a much broader scope of victimisation than that encompassed by the victims of Counts 1-5 and 14 alone. Consequently, if the community of Timbuktu is recognised as a victim of persecution, the amount of liability cannot logically be confined to addressing only the harms suffered by the individual victims of those specific counts.”¹²

9. The OPCV misrepresents the main defence argument and collapses the distinction between these alternative arguments as argued in the Defence’s Appeal Brief.

10. Firstly, the requested reply would address why the OPCV conflates the alternative arguments advanced by the Defence, which fail to account for the concern that adopting the “similarly situated victims” approach will extend the scope of Mr Al Hassan’s conviction for the crime of persecution. This is particularly significant given that the Reparations Chamber has incorporated an individualised component of collective reparations for the 49 victims, as well as for the “similarly situated victims” of the crime of persecution.¹³ If granted leave to reply on this issue, the Defence would show that any departure from this approach would affect the modalities established in the Reparations Order and, consequently, could have a material impact on the extent of Mr Al Hassan’s liability.

11. Secondly, the requested reply would address why, contrary to the OPCV’s arguments, there are fundamental differences between treating the community of Timbuktu as a victim in of itself, and holding Mr Al Hassan responsible for the harm caused to potentially 65,202 eligible individual victims – even if the *type* of reparations does not change. If granted leave to reply on this issue, the Defence would demonstrate that differing determinations of victim eligibility will have a direct flow-on effect of the analysis of the modalities and measures required to repair harm, which may in turn have an impact on the amount of liability.

12. Finally, the OPCV contends that adopting the community of Timbuktu as a victim will conversely broaden the overall scope of victimisation. This position could not have been anticipated, especially given that the Defence has argued the opposite throughout the reparations process. The Defence therefore seeks an opportunity to demonstrate that the OPCV is mistaken to assert that the alternative argument of the Defence would actually expand the

¹² [OPCV Response](#), para. 23 (emphasis added).

¹³ Reparations Order, [ICC-01/12-01/18-2782](#), para. 195.

scope of Mr Al Hassan's liability.

13. In light of the above, additional submissions on this issue may assist the Appeals Chamber in the determination of the Reparations Appeals and are thus in the interests of justice.

B. ISSUE 2 RELATED TO GROUND 2

14. Leave is requested to address the OPCV's contention that, in relation to the determination of specific harm attributable to Mr Al Hassan, "the Defence offers no explanation as to how such an exercise could be carried out in practice. Indeed, such an approach is neither feasible nor consistent with the Court's reparation framework, as it would require an artificial separation of interconnected conduct and harms and, in many cases, would have make the determination of reparations effectively impossible."¹⁴

15. The OPCV mischaracterises the Defence's argument and advances a submission that is not supported by the Defence's actual position. The Defence seeks an opportunity to address this mischaracterisation. While the Defence has already explained how its proposed approach is consistent with the Court's jurisprudence,¹⁵ and the scope of Mr Al Hassan's conviction relating to persecution,¹⁶ it should also be permitted to respond to the OPCV's contention that the argued approach is not "feasible". If granted leave, the Defence would show that the OPCV's argument that the contribution of Mr Al Hassan in the harm caused to the community of victims is an "artificial separation of interconnected conduct and harms" is incorrect, especially considering the leading reparations principle that the convicted person should only be found liable for the harm caused by the crimes for which he/she was found guilty of.

16. Additional submissions on this issue may assist the Appeals Chamber in the determination of the Reparations Appeals and are thus in the interests of justice.

C. ISSUE 3 RELATED TO GROUND 3

17. Leave is sought to address the OPCV's argument that "the presumption that the entire population of Timbuktu present or residing in the city during the charged period is a victim of the crime of persecution has no impact on the modality of reparations and, consequently, on the amount of Mr Al Hassan's liability."¹⁷

18. The submissions of the OPCV are plainly incorrect. The Chamber's determination of

¹⁴ [OPCV Response](#), para. 30.

¹⁵ [Defence appeal Brief](#), paras 92-118, and paras 84-89 specifically acknowledging that "when determining the amount a convicted person is liable to pay for reparations, the primary consideration is the extent of the harm and cost it takes to repair that harm."

¹⁶ [Defence Appeal Brief](#), paras 103-109, 117.

¹⁷ [OPCV Response](#), para. 45.

the appropriate modalities for reparations and the adoption of a presumption of victimhood – which is different than a presumption of harm, as mentioned in the Defence’s Appeal Brief,¹⁸ has legal consequences which will materially affect the appropriate modalities to be adopted and the amount of liability. If granted leave to reply, the Defence would demonstrate how the adoption of a presumption of victimhood for every and each individual that were present during the charged period, which the Reparations Chamber estimated at 65,202 as the total number of “potentially eligible direct and indirect victims”¹⁹ will have an impact on the appropriate modalities and reparative measures in this case. This will logically have a direct impact on the amount of liability. The OPCV further fails to acknowledge that this presumption will also have an impact on the eligibility process that will be developed in this case and trigger a cascade of consequential effects that would extend to the costs of implementation, which could also reasonably be expected to impact on the overall amount of liability.

19. Given that this point is fundamental to the Defence submissions, additional submissions are warranted and necessary for the full and proper adjudication of the appeal and are thus in the interest of justice.

IV- CONCLUSION AND RELIEF SOUGHT

20. This request for leave to reply is directed towards those three issues for which a discrete reply by the Defence would assist in the adjudication of the Appeal on the Reparations Order and is in the interest of justice, and may be submitted promptly following any decision issued by the Appeals Chamber.

21. For those reasons, the Defence respectfully requests that the Appeals Chamber:

GRANT the Defence’s request for leave to reply on the three issues described above.



Mélissa Beaulieu Lussier
Counsel for Mr Al Hassan

Dated this 13th day of October 2026
At The Hague, The Netherlands

¹⁸ [Defence Appeal Brief](#), para. 141.

¹⁹ Reparations Order, [ICC-01/12-01/18-2782](#), p. 107.