

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: French

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

Date: 20 March 2019

**PRE-TRIAL CHAMBER I**

**Before: Judge Péter Kovács, Single Judge**

**SITUATION IN THE REPUBLIC OF MALI**

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

**PUBLIC REDACTED VERSION**

**Decision on Principles Applicable to Victims' Applications for Participation, to  
Legal Representation of Victims, and to the Manner of Victim Participation in the  
Proceedings**

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

**Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

**Counsel for the Defence**

Mr Yasser Hassan

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**States' Representatives**

**Office of Public Counsel for the  
Defence**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Section**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

**Judge Péter Kovács**, who was designated on 28 March 2018 by Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) as the Single Judge responsible for carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”),<sup>1</sup> rules as follows.

### **I. Procedural history**

1. On 20 March 2018, the Prosecutor filed an application for the issuance of a warrant of arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).<sup>2</sup>
2. On 27 March 2018, pursuant to article 58 of the Rome Statute (“Statute”), the Chamber issued a warrant of arrest for Mr Al Hassan.<sup>3</sup>
3. On 31 March 2018, Mr Al Hassan was surrendered to the Court, and he is currently in custody at the Court’s detention centre in The Hague.<sup>4</sup>
4. On 3 April 2018, the Single Judge set the date of first appearance for 4 April 2018.<sup>5</sup>
5. On 4 April 2018, at the first appearance hearing, the confirmation of charges hearing was scheduled to commence on 24 September 2018.<sup>6</sup>
6. On 24 May 2018, the Single Judge issued the first “Decision Establishing the Principles Applicable to Victims’ Applications for Participation” (“Decision of

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<sup>1</sup> “Decision Designating a Single Judge”, dated 28 March 2018 and reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG.

<sup>2</sup> “*Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*”, 20 March 2018, ICC-01/12-01/18-1-Secret-Exp. A confidential version, *ex parte* Office of the Prosecutor and the Defence Team for Mr Al Hassan (ICC-01/12-01/18-1-Conf-Exp-Red2) and a public redacted version (ICC-01/12-01/18-1-Red) of the application were filed on 31 March 2018.

<sup>3</sup> “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 27 March 2018, reclassified as public on 31 March 2018, ICC-01/12-01/18-2-tENG.

<sup>4</sup> ICC-01/12-01/18-11-US-Exp.

<sup>5</sup> “Order Scheduling the First Appearance of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 3 April 2018, ICC-01/12-01/18-12-tENG.

<sup>6</sup> Transcript of the first appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-CONF-ENG ET.

24 May 2018”),<sup>7</sup> instructing the Registry, *inter alia*, to classify the 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>8</sup> The Single Judge also instructed the Registry to (i) transmit all complete applications to the Chamber, and all Group C applications to the parties, and to submit regular reports listing the applications for participation classified according to the three groups, as well as assessment reports highlighting the difficulties encountered regarding Group C applications;<sup>9</sup> and (ii) submit observations on the implementation of outreach activities,<sup>10</sup> the matter of a form for collective applications and, in particular, the victims’ willingness to form groups<sup>11</sup> and, lastly, on legal representation for victims.<sup>12</sup>

7. On 20 July 2018, the Single Judge postponed the confirmation hearing to 6 May 2019.<sup>13</sup>

8. On 23 July 2018, the Registry filed the first report on the legal representation of victims<sup>14</sup> (“Registry’s First Report on Legal Representation”). The Prosecutor and the Defence did not file any submissions on this report.

9. On 27 July 2018, the Registry submitted a joint report on outreach and other victim-related issues (“Registry’s Joint Report on Outreach”),<sup>15</sup> in which the Victims

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<sup>7</sup> Decision Establishing the Principles Applicable to Victims’ Applications for Participation, 24 May 2018, ICC-01/12-01/18-37-tENG.

<sup>8</sup> Decision of 24 May 2018, para. 59(i).

<sup>9</sup> Decision of 24 May 2018, para. 59.

<sup>10</sup> Decision of 24 May 2018, para. 17.

<sup>11</sup> Decision of 24 May 2018, para. 36.

<sup>12</sup> Decision of 24 May 2018, paras. 69-70.

<sup>13</sup> “Decision Postponing the Date of the Confirmation Hearing”, 20 July 2018, ICC-01/12-01/18-94-Conf-Exp-tENG. On the same day, the Single Judge issued a public redacted version of the decision, ICC-01/12-01/18-94-Red-tENG.

<sup>14</sup> “Registry’s Report on Legal Representation of Victims”, 23 July 2018, ICC-01/12-01/18-98, with two annexes marked Confidential *EX PARTE* Registry, ICC-01/12-01/18-98-Conf-Exp-AnxI and ICC-01/12-01/18-98-Conf-Exp-AnxII. On 9 August 2018, the Registry submitted a public redacted version of Annex I to the Registry’s Report on Legal Representation of Victims, ICC-01/12-01/18-98-AnxI-Red.

<sup>15</sup> “Registry’s Joint Report on Outreach and Other Victim Related Issues”, 27 July 2018, ICC-01/12-01/18-102, and its annex marked “Confidential *EX PARTE*” Registry, ICC-01/12-01/18-102-Conf-

Participation and Reparations Section (“VPRS”) requested additional time to [REDACTED] collect further information for the purpose of submitting an additional report.<sup>16</sup> The Prosecutor and the Defence did not present any submissions in response.

10. On 11 September 2018, the Single Judge issued the “Decision on the Registry’s Reports concerning Victim Participation”,<sup>17</sup> authorizing the Registry to submit an additional report by 19 December 2018 in order for the Single Judge to rule on the adoption of a form for collective applications<sup>18</sup> and on legal representation of victims – while instructing the Registry to submit further information, especially on the benefit of opting for common legal representation of the victims – and on the estimated funds that the Registry could earmark to legal assistance in the instant case<sup>19</sup> (“Decision of 11 September 2018”).

11. On 17 September 2018, the Registry filed the first report on the transmission of Group A applications for victims’ participation<sup>20</sup> and the first report on the transmission of Group C applications for victims’ participation.<sup>21</sup>

12. On the same day, the Registry filed the first assessment report on applications for victims’ participation, containing information on the approach for assessing Group A applications, and on the difficulties encountered when assessing Group C

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Exp-Anx. On 9 August 2018, the Registry submitted a public redacted version of the annex to the Registry’s Joint Report on Outreach, ICC-01/12-01/18-102-Conf-Exp-Anx.

<sup>16</sup> Registry’s Joint Report on Outreach, paras. 39-40.

<sup>17</sup> “Decision on the Registry’s Reports concerning Victim Participation”, 11 September 2018, ICC-01/12-01/18-119-Red-tENG and the confidential version *ex parte* Registry, ICC-01/12-01/18-119-Conf-Exp. (“Decision on the Registry’s Reports concerning Victim Participation”).

<sup>18</sup> “Decision on the Registry’s Reports concerning Victim Participation”, para. 31.

<sup>19</sup> “Decision on the Registry’s Reports concerning Victim Participation”, paras. 21 and 25.

<sup>20</sup> “Registry’s First Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings”, 17 September 2018, ICC-01/12-01/18-127, and 20 annexes marked Confidential *EX PARTE* Registry.

<sup>21</sup> “Registry’s First Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings”, 17 September 2018, ICC-01/12-01/18-128, and 14 annexes marked Confidential *EX PARTE* Registry and redacted versions of the annexes.

applications (“Registry’s First Assessment Report”).<sup>22</sup> The Prosecutor and the Defence did not file any submissions on this report.

13. On 8 October 2018, the Single Judge rendered the “Second Decision on the Principles Applicable to Victims’ Applications for Participation”<sup>23</sup> (i) authorizing the VPRS to consider as falling within the time frame of the present case any application which, if not providing a precise date, contains information about the general context, and on the basis of which it can be inferred that the application falls within the said time frame,<sup>24</sup> (ii) laying down the criteria for considering as admissible applications that describe any form of underlying act constituting the crime of persecution<sup>25</sup> and (iii) authorizing the VPRS to consider as victims who have sustained psychological harm those who witnessed crimes perpetrated against other members of the population of Timbuktu, on condition that they provide a detailed description of the events and proof of residence in Timbuktu<sup>26</sup> (“Decision of 8 October 2018”).

14. On 6 November 2018, the Registry submitted the second transmission of Group A applications for victims’ participation.<sup>27</sup>

15. On the same day, the Registry submitted the second assessment report on applications for victims’ participation<sup>28</sup> (“Registry’s Assessment Report”). The Prosecutor and the Defence did not present any submissions in response.

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<sup>22</sup> “Registry’s First Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings”, 17 September 2018, ICC-01/12-01/18-126, with confidential annex, ICC-01/12-01/18-126-Conf-AnxA.

<sup>23</sup> “Second Decision on the Principles Applicable to Victims’ Applications for Participation”, 8 October 2018, ICC-01/12-01/18-146-tENG.

<sup>24</sup> “Second Decision on the Principles Applicable to Victims’ Applications for Participation” paras. 22, 24.

<sup>25</sup> “Second Decision on the Principles Applicable to Victims’ Applications for Participation”, para. 30.

<sup>26</sup> “Second Decision on the Principles Applicable to Victims’ Applications for Participation” paras. 35-37.

<sup>27</sup> “Registry’s Second Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings”, 6 November 2018, ICC-01/12-01/18-175, with 74 annexes marked Confidential *EX PARTE* Registry.

<sup>28</sup> “Registry’s Second Assessment Report on Applications for Victims’ Participation in Pre-Trial Proceedings”, 6 November 2018, ICC-01/12-01/18-176 with confidential annex, ICC-01/12-01/18-176-Conf-Anx.

16. On 19 December 2018, the Registry submitted the second report on legal representation of victims<sup>29</sup> (“Registry’s Second Report on Legal Representation”). The Prosecutor and the Defence did not file any submissions on this report.

17. On the same day, the Registry submitted the second report on the use of collective application forms<sup>30</sup> (“Second Registry Report on the Use of Collective Application Forms”). The Prosecutor and the Defence did not file any submissions on this report.

18. On 25 January 2019, the Registry submitted the second report on the transmission of Group C applications for victims’ participation<sup>31</sup> and the third report on the transmission of Group A applications for victims’ participation.<sup>32</sup>

19. On the same day, the Registry submitted the third assessment report on victims’ applications for participation<sup>33</sup> (“Registry’s Third Assessment Report”) in which, with a view to deciding on certain applications for victims’ participation, it sought the Single Judge’s guidance on the geographical scope of the instant case<sup>34</sup> and on granting the status of direct victim on the basis of attacks on religious buildings and historical monuments.<sup>35</sup> The Prosecutor and the Defence did not file any submissions on this report.

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<sup>29</sup> “Registry’s Second Report on Legal Representation of Victims”, 19 December 2018, ICC-01/12-01/18-209, with three annexes marked as Confidential *EX PARTE* Registry, ICC-01/12-01/18-209-Conf-Exp-AnxI, ICC-01/12-01/18-209-Conf-Exp-AnxII and ICC-01/12-01/18-209-Conf-Exp-AnxIII. On 25 January 2019, the Registry filed the public redacted version of the annex to the second report on legal representation, ICC-01/12-01/18-209-AnxI-Red.

<sup>30</sup> “Registry’s Second Report on the use of Collective Application Forms”, 19 December 2018, ICC-01/12-01/18-210, with the annex marked Confidential *EX PARTE* Registry, ICC-01/12-01/18-210-Conf-Exp-Anx. On 11 March 2019, the Registry filed a public redacted version of the “[...] Registry’s Second Report on the Use of Collective Application Forms”, ICC-01/12-01/18-210-Anx-Red.

<sup>31</sup> “Registry’s Second Transmission of Group C Applications for Victims’ Participation in Pre-Trial Proceedings”, 25 January 2019, ICC-01/12-01/18-228, with 15 annexes marked Confidential *EX PARTE* Registry, and their redacted versions.

<sup>32</sup> “Registry’s Third Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings”, 25 January 2019, ICC-01/12-01/18-227, with 83 Annexes marked “Confidential *EX PARTE*” Registry.

<sup>33</sup> “Registry’s Third Assessment Report on Victims’ Applications for Participation in Pre-Trial Proceedings”, 25 January 2019, ICC-01/12-01/18-226, with confidential Annex ICC-01/12-01/18-226-Conf-AnxA.

<sup>34</sup> Third Registry Assessment Report, para. 19.

<sup>35</sup> Third Registry Assessment Report, para. 21.

20. On 12 February 2019, the Single Judge issued an order requesting submissions from the Prosecutor on the geographical scope of the instant case (“Order of 12 February 2019”).<sup>36</sup>

21. On the same day, the Registry submitted the fourth report on the transmission of Group A applications for victims’ participation in pre-trial proceedings<sup>37</sup> and the fourth assessment report on victims’ applications for participation.<sup>38</sup>

22. On 19 February 2019, the Prosecutor filed her submission in compliance with the Order of 12 February 2019.<sup>39</sup>

23. On 18 March 2019, the Registry submitted the fifth report on the transmission of Group A applications for victims’ participation in pre-trial proceedings<sup>40</sup> and the fifth assessment report on victims’ applications for participation.<sup>41</sup>

## II. Applicable law

The Single Judge refers to articles 8(2)(e)(iv), 21, 43, 57(3)(c), 68 and 69 of the Statute, rules 16(1), 22, 85-93, 122(9) and 121(10) of the Rules of Procedure and Evidence (“Rules”), regulations 24, 34, 67 and 79-86 of the Regulations of the Court, and regulations 107-109, 112-117 and 123 of the Regulations of the Registry.

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<sup>36</sup> “Ordonnance sollicitant des observations du Procureur sur l’étendue géographique de la présente affaire”, ICC-01/12-01/18-242.

<sup>37</sup> “Registry’s Fourth Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings”, 12 February 2019, ICC-01/12-01/18-244, with 80 annexes marked Confidential *EX PARTE* Registry.

<sup>38</sup> “Registry’s Fourth Assessment Report on Victim’s Applications for Participation in Pre-Trial Proceedings”, 12 February 2019, ICC-01/12-01/18-245, with confidential Annex ICC-01/12-01/18-245-Conf-Anx.

<sup>39</sup> “Observations du Bureau du Procureur suivant l’Ordonnance sollicitant des observations du Procureur sur l’étendue géographique de la présente affaire “ ICC-01/12-01/18-249, para. 2.

<sup>40</sup> “Registry’s Fifth Transmission of Group A Applications for Victims’ Participation in Pre-Trial Proceedings”, 18 March 2019, ICC-01/12-01/18-282, with 163 annexes marked Confidential *EX PARTE* Registry.

<sup>41</sup> “Registry’s Fifth Assessment Report on Victim’s Applications for Participation in Pre-Trial Proceedings”, 18 March 2019, ICC-01/12-01/18-281, with confidential Annex ICC-01/12-01/18-281-Conf-Anx.



### III. The Single Judge's findings

#### A. Collective application forms

24. The Single Judge takes note of the information provided by the VPRS in the Registry's Second Report on the Use of Collective Application Forms, especially its recommendation that a collective application form not be adopted in the present case<sup>42</sup> on the grounds that its implementation is not appropriate in the current context and would add further complexity to an already challenging security environment.<sup>43</sup>

25. Indeed, the VPRS emphasizes that most of the people consulted were against forming groups for the purpose of a collective application form as such an approach would prevent victims from individually telling their story and describing the harm they have suffered and their needs with respect, in particular, to reparations.<sup>44</sup>

26. The Single Judge also notes [REDACTED].<sup>45</sup> [REDACTED].<sup>46</sup> Lastly, the Single Judge notes [REDACTED].<sup>47</sup>

27. The Single Judge reiterates his willingness to adopt the collective application form should the victims choose to have an account of the harm they have suffered be given by a single person authorized by them to do so.<sup>48</sup>

28. Considering the information presented by the VPRS and the reluctance of the people consulted regarding the use of such a form, the Single Judge finds that a collective application form presents no advantages in the present case and accordingly decides not to adopt it.

#### B. Legal representation

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<sup>42</sup> Registry's Second Report on the Use of Collective Application Forms, para. 19.

<sup>43</sup> Registry's Second Report on the Use of Collective Application Forms, para. 2.

<sup>44</sup> Registry's Second Report on the Use of Collective Application Forms, para. 6.

<sup>45</sup> Registry's Second Report on the Use of Collective Application Forms, [REDACTED].

<sup>46</sup> Registry's Second Report on the Use of Collective Application Forms, [REDACTED].

<sup>47</sup> Registry's Second Report on the Use of Collective Application Forms, [REDACTED].

<sup>48</sup> Decision of 24 May 2018, para. 35.

29. The Single Judge takes note of the information provided by the VPRS on the methodology applied and the information received on the victims' choice regarding legal representation.<sup>49</sup>

30. The VPRS states that, thus far, three legal representatives have been chosen by the victims pursuant to rule 90(1) of the Rules, *viz.* Mr Seydou Doumbia, Mr Mayombo Kassongo and Mr Fidel Luvengika Nsita.<sup>50</sup>

31. The Single Judge notes, moreover, that none of the victims can afford the costs of legal representation.<sup>51</sup>

32. In response to the Single Judge's questions regarding the budget allocation for legal assistance,<sup>52</sup> the VPRS indicates that resources budgeted for 2019 are sufficient to cover the cost of only one team of legal representatives in the case at bar.<sup>53</sup> The VPRS further indicates that the budget also includes funding for an investigation, one post of field assistant in Mali,<sup>54</sup> and, from the start of the confirmation of charges hearing, one case manager.<sup>55</sup>

33. The Single Judge notes that, on 26 November 2018, the VPRS received a joint message from the three representatives proposing to form two groups of legal representatives under rule 90(2) of the Rules, noting that the victims could be divided into two groups.<sup>56</sup> In a further message sent on 30 November 2018, the three Legal Representatives consented to come together as a single team during the pre-trial phase on condition that the issue of the number of teams and the resources to be allocated be reopened at trial if necessary, and that the position of Case Manager be made available immediately upon their appointment.<sup>57</sup>

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<sup>49</sup> Registry's Second Report on Legal Representation, paras. 4-9, 15-18.

<sup>50</sup> Registry's Second Report on Legal Representation, paras. 8, 25.

<sup>51</sup> Registry's Second Report on Legal Representation, para. 17.

<sup>52</sup> Decision of 24 May 2018, para. 70; Decision of 11 September 2018, para. 25.

<sup>53</sup> Registry's Second Report on Legal Representation, para. 12.

<sup>54</sup> Registry's Second Report on Legal Representation, para. 12.

<sup>55</sup> Registry's Second Report on Legal Representation, para. 12.

<sup>56</sup> Registry's Second Report on Legal Representation, paras. 8, 24, 29-30.

<sup>57</sup> Registry's Second Report on Legal Representation, paras. 8, 24, 31-32.

34. Moreover, the Single Judge notes the submissions of the VPRS on the distinct interests of the victims that could cause a conflict of interest in the instant case.<sup>58</sup> The VPRS submits that although the interests of the victims are no doubt different<sup>59</sup> they are not irreconcilable and that, at the current stage of proceedings, there is no need to set up two teams of legal representatives.<sup>60</sup>

35. Lastly, the Single Judge takes note of the three options recommended by the Registry: (i) to recognize the victims' choice and appoint the legal representatives of the applicants as a single team pursuant to rule 90(2) of the Rules;<sup>61</sup> (ii) to recognize the victims' choice and appoint two teams of common legal representatives pursuant to rule 90(2) of the Rules;<sup>62</sup> or (iii) to appoint one or two teams of common legal representatives pursuant to rule 90(3) of the Rules.<sup>63</sup>

36. In the light of the foregoing, the Single Judge, striving to bear in mind both the victims' choice and the financial resources budgeted for 2019 for this case, finds it appropriate to choose the first option proposed by the Registry, namely to appoint the three counsel identified by the victims, granting them legal assistance for a single team.

37. Accordingly, pursuant to rule 90(2) of the Rules and regulation 123 of the Regulations of the Registry, the Single Judge orders the Registry to acknowledge the appointment by the victims of the aforementioned three counsel and to notify its acknowledgement to the victims concerned.

38. With regard to victims who have not yet chosen a legal representative, it is incumbent upon the Registry to suggest that they join the others in being represented by one and the same common team.

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<sup>58</sup> Registry's Second Report on Legal Representation, paras. 33-36.

<sup>59</sup> The VPRS highlights, in particular, distinct interests based on the harm suffered, the geographical location and the participation of certain victims in *Al Mahdi*.

<sup>60</sup> Registry's Second Report on Legal Representation, paras. 13, 33-44.

<sup>61</sup> Registry's Second Report on Legal Representation, paras. 47-49.

<sup>62</sup> Registry's Second Report on Legal Representation, para. 50.

<sup>63</sup> Registry's Second Report on Legal Representation, paras. 51-52.

39. Should any difficulty arise (if one or more victims choose not to be represented by one or all of the three identified counsel), the Single Judge will instruct the Registry to submit a report describing the difficulty and to suggest to the victims concerned that they be represented by the Office of Public Counsel for Victims.

40. Lastly, regarding the request made by the Common Legal Representatives for additional resources for the recruitment of a case manager as soon as they are appointed,<sup>64</sup> the Single Judge considers that it is for the Registry, in accordance with regulation 83(3) of the Regulations of the Court, to take a decision on the request, which would have to be made by the counsel after their appointment, should they so desire.

### C. Manner of victim participation

41. In conformity with rule 89(1) of the Rules, the Single Judge stipulates the manner in which victims may participate in the proceedings, having regard to rule 91(2), which states that “[a] legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the ruling of the Chamber and any modification thereof [...]”, and the case law of the Court, in accordance with article 21(2) of the Statute.<sup>65</sup>

42. By this decision, the Single Judge spells out the general rights of the victims and their legal representatives to participate in proceedings. These rights shall apply throughout the pre-trial stage in the instant case, subject to any subsequent modification in accordance with rule 91(1) of the Rules. The Single Judge reserves

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<sup>64</sup> Registry’s Second Report on Legal Representation, paras. 32, 46.

<sup>65</sup> Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights”, 27 November 2015, [ICC-02/04-01/15-350](#) (“Ongwen Decision”); Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeals of the Prosecutor and the Defence against [...] Decision on Victims’ Participation”, 11 July 2008, [ICC-01/04-01/06-1432](#); *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, 13 May 2008, [ICC-01/04-01/07-474](#) (“Katanga Decision”).

the right to grant additional rights to victims during the trial, at their request or *proprio motu*.

43. The Single Judge notes that the applicable law affords the Chamber some discretion in determining whether the victims and their legal representatives may participate in proceedings before the Court. Accordingly, whereas some rights are expressly provided for in the Court's legal texts, others may be granted to victims only pursuant to a decision taken by the Single Judge in application of article 68(3) of the Statute and rule 89(1) of the Rules.<sup>66</sup>

44. In line with the object and purpose of article 68(3) of the Statute and rules 91 and 92 of the Rules, the Single Judge will allow the victims to play a meaningful role that allows them to have a substantial impact on proceedings without violating or conflicting with the rights of the defence or the requirements of a fair and impartial trial.<sup>67</sup>

45. To begin with, in accordance with rule 121(10) of the Rules, the Single Judge grants the Legal Representatives of Victims access to the case file which contains all documents and decisions – including transcripts of hearings – and items of evidence produced by the Prosecutor and the Defence. The Single Judge considers that legal representatives must be allowed to consult all public and confidential documents and decisions in the case file, with the exception of those classified as *ex parte* Prosecutor, Defence, another participant, and/or Registry. This also applies to transcripts of hearings, whether public or held in closed session, with the exception of those held *ex parte* Prosecutor, Defence, another participant, or Registry.

46. Regarding access to evidence, the Single Judge considers that this right is restricted to the version of the evidence – unredacted, redacted or summarized as the case may be – that was disclosed to the party not presenting it.

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<sup>66</sup> *Ongwen* Decision, para. 28.

<sup>67</sup> *Katanga* Decision, para. 157; See also *Ongwen* Decision, para. 28.

47. The Single Judge rules that, if the Legal Representatives of Victims finds it necessary to reveal confidential information to their clients, they must request the Chamber's prior authorization.

48. The Single Judge rules that the victims, via their legal representatives and for the purpose of presenting their views and concerns, shall be entitled to file both written submissions on any matter they consider relevant as well as responses and replies, under regulation 24 of the Regulations of the Court, to any document presented to the Chamber. The Single Judge notes that the written submissions on points of fact and law in accordance with rule 121(9) of the Rules must be lodged no later than three days before the confirmation of charges hearing.

49. The Prosecutor and the Defence have the right to reply to responses made by the Legal Representatives of Victims pursuant to rule 91(2) of the Rules. As previously held by Pre-Trial Chamber II,<sup>68</sup> the Single Judge considers that it is appropriate as well, for the purpose of a diligent and fair conduct of proceedings, to reduce this time limit to three days effective from notification of the relevant responses to the parties, even where the replying party has not filed an initial submission.

50. Furthermore, the Legal Representatives of Victims are entitled to attend all public or closed sessions of hearings in accordance with rule 91(2) of the Rules. However, they may not attend *ex parte* hearings held in the presence of the Prosecutor, Defence, another participant, and/or Registry.

51. In addition, the Legal Representatives of Victims shall have the right to make opening and closing statements at the confirmation hearing in accordance with rule 89(1) of the Rules, and the right to present oral requests, responses and submissions during all hearings in which they participate.

52. The Single Judge also finds it appropriate, in line with the Court's applicable case law,<sup>69</sup> to grant the legal representatives of the victims the right to challenge the

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<sup>68</sup> *Ongwen* Decision, para. 34.

<sup>69</sup> *Lubanga* Judgment para. 101.

admissibility and/or relevance of an item of evidence, in view of the power that article 69(4) of the Statute bestows on the Chambers of the Court – applicable *mutatis mutandis* at the confirmation hearing pursuant to rule 122(9) of the Rules – to rule on that admissibility and/or relevance, together with the right of the victims to participate in the proceedings pursuant to article 68(3) of the Statute.

53. The Single Judge directs the Legal Representatives of Victims who wish to challenge the admissibility or relevance of an item of evidence at the confirmation hearing to submit a separate written request for that purpose.

#### **D. Issues relating to the admission of applications to participate**

##### *i. Geographical scope of the case at bar*

54. The Single Judge notes that, in the Registry’s Third Assessment Report, the VPRS seeks his guidance, considering the relatively close territorial proximity between the *city* of Timbuktu and certain towns/villages in the *region* of Timbuktu, on whether to construe the phrase “committed in Timbuktu, Mali”, which is contained in the Prosecutor’s application seeking the issuance of a warrant of arrest for Mr Al Hassan, as referring solely to the *city* of Timbuktu or as including crimes allegedly committed in the *region* of Timbuktu.<sup>70</sup>

55. The Single Judge cites the Prosecutor’s submissions subsequent to the Order of 12 February 2019, in which it is stated:

[TRANSLATION] criminal offences committed by both Al Hassan and institutions set up by armed groups, such as the Islamic Police and the Islamic Court, took place throughout the region of Timbuktu in particular, for example in Kabara, Alafia and Ber (Timbuktu *cercle*); in Goundam (Goundam *cercle*); in the Gourma-Rharous *cercle*; and as far away as Léré (Niafunké *cercle*). Given these circumstances, the charges must include, for instance, the commission of crimes and related acts that began in towns or villages in the Timbuktu region but outside the city of Timbuktu itself, and spread into the city of Timbuktu or, conversely, acts that started in the city of Timbuktu and spread to the Timbuktu region.<sup>71</sup>

<sup>70</sup> Registry’s Third Assessment Report, paras. 18-19.

<sup>71</sup> “*Observations du Bureau du Procureur suivant l’Ordonnance sollicitant des observations du Procureur sur l’étendue géographique de la présente affaire*”, ICC-01/12-01/18-249, para. 3.

56. The Single Judge notes, therefore, that the Prosecutor has undertaken to provide further clarification in the Document Containing the Charges.<sup>72</sup>

57. The Single Judge refers to regulation 86(2)(d) of the Regulations of the Court, which states that applications for participation must contain a description of the incident that caused the victim to suffer harm, including its location. The Single Judge notes that such information should appear in the form “to the extent possible” and that it follows that this is not an absolute precondition. The Single Judge holds that, when victims find it difficult to give a precise location for the place where the crimes alleged were committed, their personal situation should be taken into account and accommodated to the fullest extent possible.

58. The Single Judge reiterates his finding in the Decision of 8 October 2018 that missing information need not automatically lead to the rejection of an application for participation.<sup>73</sup> This principle is also applicable in all cases where the victim applying to participate does not state the precise location of the alleged acts. Indeed, what the victim must demonstrate *prima facie* is that he or she meets the conditions set forth in rule 85(a) of the Rules.

59. With a view to making a determination in accordance with the “*prima facie*” standard of proof, the applications must be assessed on a case-by-case basis, having regard to their internal consistency and taking into consideration any information suggesting that the acts occurred within the geographical scope of the case before the Chamber and, where applicable, corroboration by information included in other victims’ applications.<sup>74</sup>

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<sup>72</sup> “Observations du Bureau du Procureur suivant l’Ordonnance sollicitant des observations du Procureur sur l’étendue géographique de la présente affaire”, ICC-01/12-01/18-249, para. 3.

<sup>73</sup> Decision of 8 October 2018, para. 20 and references cited.

<sup>74</sup> See, for example, Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, “Decision on victims’ participation status”, 7 January 2016, ICC-02/11-01/15-379, para. 46; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Corrigendum to Decision on the participation of victims in the trial and on 86 applications by victims to participate in the proceedings”, 12 July 2010, ICC-01/05-01/08-807-Corr, para. 96.



60. As with the date of the crime,<sup>75</sup> if the victim presenting an application finds it difficult to give a precise location for the alleged acts, he or she must provide information on the overall context of the alleged acts as a means of substantiating the claim that they occurred within the geographical scope of the present case. The victims must provide information that, when considered in its entirety, is sufficient to support a finding that the application for participation indeed falls within the geographical scope of the case at bar.

61. Accordingly, the Single Judge authorizes the VPRS, when assessing victims' applications for participation, to factor in the clarification made by the Prosecutor on the geographical scope of this case under the conditions described above.

*ii. The notion of direct victim with respect to the crime of attacking buildings dedicated to religion and historic monuments*

62. In the Registry's Third Assessment Report, the VPRS describes the difficulty it faces in assessing victims' applications for participation where applicants who live outside the city of Timbuktu claim to have suffered direct harm as a result of the attack on buildings dedicated to religion and historic monuments<sup>76</sup> ("Protected Buildings").

63. The VPRS seeks the Single Judge's guidance on whether victims who claim to have suffered harm as a result of the destruction of Protected Buildings have to establish "sufficient connection to Timbuktu" at the time of the events in order to qualify as victims in this case or whether they must simply establish that they suffered harm as a result of the attack on Protected Buildings, regardless of their place of residence.<sup>77</sup>

64. For the purpose of interpreting the criteria within the meaning of rule 85 of the Rules, the Single Judge refers to his Decision of 24 May 2018<sup>78</sup> and the Decision on the Trust Fund for Victims' Draft Implementation Plan for Reparation, in the

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<sup>75</sup> Decision of 8 October 2018, para. 22.

<sup>76</sup> Registry's Third Assessment Report, para. 20.

<sup>77</sup> Registry's Third Assessment Report, para. 21.

<sup>78</sup> Decision of 24 May 2018, para. 48.

*Prosecutor v. Ahmad Al Faqi Al Mahdi*,<sup>79</sup> and finds that it is appropriate to apply the same interpretation in the instant case.

65. Accordingly, as regards the causal link between the crime and the harm suffered, and more specifically its geographical scope, a victim claiming to have suffered harm as a result of the destruction of Protected Buildings must establish a sufficient connection with the community of Timbuktu by demonstrating that he or she: (i) ordinarily resided in Timbuktu at the time of the commission of the crimes or (ii) was otherwise so closely linked to the city that he or she can be regarded as belonging to that community at the time of the attack.<sup>80</sup>

66. In order for the victims to prove that they were resident or present in Timbuktu when the crimes were being committed the Single Judge, bearing in mind the fact that the standard of proof is low at this stage of the proceedings, and in view of his previous findings,<sup>81</sup> rules that a detailed description of the events and proof of residence in Timbuktu could be considered sufficient in the instant case.

67. Accordingly, the Single Judge authorizes the VPRS to grant the status of victims to the applicants alleging to have suffered harm as a result of the destruction of Protected Buildings, while limiting its assessment to harm suffered by the community of Timbuktu or within that community in accordance with the criteria outlined above.

### **FOR THESE REASONS, the Single Judge**

**DECIDES** not to adopt a collective application form in the instant case;

**INSTRUCTS** the Registry to acknowledge the victims' appointment of Mr Seydou Doumbia, Mr Mayombo Kassongo and Mr Fidel Luvengika as Common Legal

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<sup>79</sup> Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, "Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations", 12 July 2018, ICC-01/12-01/15-273-Red, paras. 50, 60.

<sup>80</sup> Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Order, 17 August 2017, ICC-01/12-01/15-236, para. 56. See also Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, "Corrected version of Draft Implementation Plan for Reparations", 20 April 2018, ICC-01/12-01/15-265-Corr-Red, paras. 104, 106, 142.

<sup>81</sup> Decision of 8 October 2018, para. 36.

Representatives in the instant case and to give notification thereof to the victims concerned;

**INSTRUCTS** the Registry to suggest to victims who have not yet chosen a legal representative that they join the others in being represented by one and the same team of Common Legal Representatives and, should they choose not to do so, to suggest that they be represented by the Office of Public Counsel for Victims, and to submit a report describing the difficulties the victims face in terms of being represented;

**DECIDES** that the Common Legal Representatives shall enjoy the procedural rights referred to in paragraphs 45 to 53;

**INSTRUCTS** the Registry to notify to the Common Legal Representative all public and confidential documents in the case file, save those classified as “*ex parte*”;

**AUTHORIZES** the VPRS to consider as falling within the geographical scope of this case any application containing the information listed in paragraphs 55 to 61 above;

**AUTHORIZES** the VPRS to consider persons who have sufficient connection to Timbuktu subject to the conditions set out in paragraphs 64 to 67 above as victims who have suffered direct harm as a result of the attacks on Protected Buildings.

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

[signed]

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**Judge Péter Kovács**

**Single Judge**

Dated this 20 March 2019

At The Hague, Netherlands