

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **15 November 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

CONFIDENTIAL

Request filed pursuant to the Fifth Decision on the Conduct of Proceedings (ICC-01/12-01/18-1756)

Source: Legal Representatives of Victims

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

Office of the Prosecutor

Mr Karim A.A. Khan

Mr James Stewart

Counsel for the Defence

Ms Melinda Taylor

Ms Kirsty Sutherland

Mr Antoine Vey

Mr Alka Pradhan

Mr Iain Edwards

Legal Representatives of Victims

Mr Seydou Doumbia

Mr Mayombo Kassongo

Mr Fidel Nsita Luvengika

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

Office of Public Counsel for the Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL HISTORY

1. On 6 May 2020, Trial Chamber X ("Chamber") issued the "Decision on the conduct of proceedings"¹ with, *inter alia*, a public annex containing its directions on this matter ("First Decision on the Conduct of Proceedings").²
2. The decision intimated that the Legal Representatives should proceed as follows: "file any request for leave to present evidence no later than three days after the Prosecution concludes its presentation of evidence"³ and "file any request for victims to present their views and concerns in person no later than three days after the Prosecution concludes its presentation of evidence."⁴
3. On 22 September 2021, the Chamber issued its "Fifth decision on matters related to the conduct of proceedings: presentation of evidence by the LRVs and Defence" ("Fifth Decision on the Conduct of Proceedings").⁵ Noting that the Prosecution had completed the testimony of more than half of its *viva voce* witnesses and might be expected to complete its presentation of evidence in the first few weeks of 2022, the decision amended to 15 November 2021 the deadline previously set for the Legal Representatives in the annex to the decision on the conduct of proceedings.

II. PRELIMINARY REMARKS AND PURPOSE OF THIS REQUEST

4. The Legal Representatives currently representing a total of 1,827 victims hereby submit their request to present evidence and for the victims to present their views and concerns.
5. The Legal Representatives set out hereunder the topics on which they intend to call victims and experts to testify and present their views and concerns, and an

¹ ICC-01/12-01/18-789.

² ICC-01/12-01/18-789-AnxA.

³ *Ibid.*, para. 24.

⁴ *Ibid.*, para. 93.

⁵ ICC-01/12-01/18-1756.

estimate of the number of victims they wish to call and of the time required for examination and for presentation of views and concerns.

6. The Legal Representatives note that the annex to the decision on the conduct of proceedings referenced in the Fifth Decision on the Conduct of Proceedings states that the Legal Representatives are expected to provide a summary of the testimonies of the witnesses they wish to call.⁶ This requirement seems premature, however, bearing in mind the stage of the proceedings, the early deadline of 15 November and the impossibility for the Legal Representatives to provide a definitive list of the victims and experts they wish to call to testify. The Legal Representatives refer in this regard to the procedure followed in other cases concerning the degree of information requested of the Legal Representatives at this stage of the proceedings.⁷
7. Moreover, the Legal Representatives emphasize that they are making every effort to comply with the Fifth Decision on the Conduct of Proceedings requiring their diligence with respect to all the steps to be taken in order for victims to appear. They are mindful of the Chamber's concerns regarding the conduct of the proceedings but are also under an obligation to discharge their mandate by giving due consideration to the interests of the victims they represent. The organizational difficulties linked to the health crisis; the accelerated pace of the hearings which leaves very little time to undertake other tasks besides following the hearings and managing applications for participation; and the limited resources available to the team have had a major impact on the preparation and presentation of their evidence.

⁶ ICC-01/12-01/18-789-AnxA, para. 24.

⁷ ICC-02/04-01/15-1021.

III. CONFIDENTIALITY

8. This request is filed as confidential pursuant to regulation 23 *bis*(1) of the Regulations of the Court inasmuch as it refers to information which should not be revealed to the public at this stage of the proceedings given its preliminary and provisional nature.

IV. THE REQUEST

A) The presentation of evidence

9. The Legal Representatives will take care not to present evidence covering subjects that would repeat or duplicate the evidence presented by the Office of the Prosecutor or which does not have a sufficient nexus with the crimes charged.
10. Bearing these points in mind, and in view of the evidence presented by the Office of the Prosecutor to date, the Legal Representatives propose to present evidence on facts connected to the specific circumstances of certain categories of victims:
 - The distinctive nature of crimes committed against women – broadly described as the most widespread and characteristic of the occupation period – and the specific consequences of these crimes, in particular in terms of the stigmatization of women and of the children born out of rape and forced marriage on account of their particular vulnerability as well as the more long-term impact on their families. The Legal Representatives will address these issues by presenting factual and expert evidence which is not repetitive but is complementary to the evidence presented by the Office of the Prosecutor.
 - The multiple aspects of the violations of fundamental rights as acts underlying the crimes of persecution specifically pertaining to children.

11. The Legal Representatives wish to call four victims and one expert on the aforementioned points. Each victim would be examined for three hours. The expert would be examined for four hours.
12. The Legal Representatives wish to call one victim on the effect of the crimes on teaching and education and their long-term impact on the situation of children and teachers who are victims. It is envisaged that this witness's examination will last for two hours.
13. The cross-cutting, cumulative and multifaceted (racial, ethnic, religious and social) nature of the crimes committed, and the effects of the regime of terror inflicted on the inhabitants of Timbuktu, particularly the collective aspect of the trauma caused, are key to understanding the situation experienced by the people of Timbuktu during the occupation and to determining the truth. The Legal Representatives wish to call three victims on the aforementioned points with each witness being examined for three hours.
14. The names of the expert and the victims who would appear have yet to be clarified, and the Legal Representatives are currently on mission to determine this issue.
15. With a view to presenting victims' evidence as diligently as possible, it is contemplated that some of the victims' evidence will be presented under rule 68.

B) Victims' presentation of their views and concerns

16. A number of victims have expressed their desire to present their views and concerns to the Chamber. The Legal Representatives are not, however, in a position, at this juncture, to give a clear indication of the topics that will be addressed by these victims, and they are currently on mission with a view to clarifying these issues. They contend that it is impossible to predict whether the Office of the Prosecutor would at this point truncate the presentation of its case,

and they highlight the obstacles listed above. They reiterate their commitment to exercising due diligence in the performance of the tasks required of them for the presentation of evidence and the appearance of victims pursuant to article 68(3). In this connection, they seek the Chamber's authorization for the appearance of at least two victims as witnesses.

17. The Legal Representatives would be grateful to the Chamber if it could indicate, insofar as it is possible, the timetable for the presentation of their evidence. This would enable them to best organize themselves, given the limited size of their team. Specifying a time-frame for the presentation of evidence, insofar as it is possible and, naturally, bearing in mind the status of the proceedings, would be extremely useful to enable the Legal Representatives to best organize themselves given the scale of tasks to be accomplished, to coordinate with the field and to work diligently in the interests of all the parties and the proceedings as a whole.

FOR THESE REASONS,

May it please the Chamber to entertain and grant this request.

[signed]

[signed]

Mr Seydou Doumbia

Mr Fidel Nsita Luvengika

Legal Representatives of Victims

Dated this 15 November 2021,

At Bamako, Mali