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

**Date: 12 March 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**

**Decision on the procedure for the admission of victims to participate in  
proceedings for the purposes of trial**

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

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**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
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**States Representatives**

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**REGISTRY**

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**Registrar**

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**TRIAL CHAMBER X** of the International Criminal Court, in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, issues this ‘Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial’.

## **I. Procedural history**

1. On 24 May 2018, the Pre-Trial Chamber I (hereinafter: ‘PTC I’) Single Judge issued a decision setting out, *inter alia*, the transmission and admission procedure for victim participation at the confirmation hearing (respectively the ‘Pre-Trial Decision’ and the ‘PTC Procedure’).<sup>1</sup> Pursuant to this procedure, the Registry, *inter alia*, (i) categorises applicants into: Group A (applicants who clearly qualify as victims), Group B (applicants who clearly do not qualify as victims), and Group C (applicants for whom the Registry could not make a clear determination for any reason);<sup>2</sup> (ii) transmits to the Chamber on a rolling basis and in unredacted form all complete applications, together with supporting documentation;<sup>3</sup> (iii) transmits to the office of the Prosecutor (the ‘Prosecution’) and the Defence the Group C applications, redacted as needed;<sup>4</sup> and (iv) prepares reports.<sup>5</sup> The parties have 10 days to make observations, if any, on the Group C applications,<sup>6</sup> and then these are individually assessed by the Chamber, with the Chamber also ratifying the Registry assessment of Groups A and B, barring a ‘clear and material error’.<sup>7</sup>

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<sup>1</sup> Decision Establishing the Principles Applicable to Victims’ Applications for Participation, ICC-01/12-01/18-37-tENG.

<sup>2</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(i).

<sup>3</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, paras 44, 59(ii).

<sup>4</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(iv).

<sup>5</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, paras 59(iii), (v), (vi). The reports include: ‘regular reports that list the applications for participation and classify them according to the three groups’, ‘assessment reports for the attention of the Chamber and the parties, highlighting the difficulties encountered regarding Group C applications’, and ‘assessment reports for Group B applications exclusively to the Chamber, presenting the reasons for rejection of the applications’.

<sup>6</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(viii).

<sup>7</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(ix).

2. On 8 October 2018 and 20 March 2019,<sup>8</sup> the PTC I Single Judge issued further decisions on, *inter alia*, the principles applicable to victims' applications for participation.
3. Between 17 September 2018 and 24 June 2019, the Registry transmitted 890 applications falling in Groups A, B and C to the Chamber.<sup>9</sup> Of this, 29 Group C applications were also transmitted to the parties, redacted to remove all identifying information.<sup>10</sup>
4. On 1 July 2019, the Single Judge of PTC I issued a decision, *inter alia*, authorising 882 applicants to participate in the proceedings in this case (the 'Participating Victims') and directing the Registry to transmit their applications to the LRVs.<sup>11</sup>
5. On 20 December 2019, following an amended request from the Prosecution<sup>12</sup> and submissions from the Defence<sup>13</sup> and LRVs,<sup>14</sup> the Single Judge of this

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<sup>8</sup> *Respectively* Second Decision on the Principles Applicable to Victims' Applications for Participation, ICC-01/12-01/18-146-tENG (the '8 October 2018 Decision'); Decision on Principles Applicable to Victims' Applications for Participation, to Legal Representation of Victims, and to the Manner of Victim Participation in the Proceedings, ICC-01/12-01/18-289-Conf-Exp-tENG-Corr (confidential, *ex parte*, only available to the Registry; a public redacted version was filed on the same day, ICC-01/12-01/18-289-Red-tENG-Corr) (the '20 March 2019 Decision').

<sup>9</sup> Registry Report on the implementation of Trial Chamber X's Decision of 20 December 2019 (ICC-01/12-01/18-536), ICC-01/12-01/18-563 (with confidential, *ex parte* Annex, only available to the Registry, ICC-01/12-01/18-563-Conf-Exp-Anx; confidential and public redacted versions of the annex were filed on the same day, respectively ICC-01/12-01/18-563-Conf-Anx-Red and ICC-01/12-01/18-563-Anx-Red2), para. 4.

<sup>10</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 (with 14 annexes in both confidential *ex parte* form, only available to the Registry, and confidential redacted form); Registry's Second Transmission of Group C Victims' Applications for Participation in Pre-Trial Proceedings, 25 January 2019, ICC-01/12-01/18-228 (with 15 annexes in both confidential *ex parte* form, only available to the Registry, and confidential redacted form).

<sup>11</sup> Décision relative à la participation des victimes à la procédure, ICC-01/12-01/18-391-Conf-Exp (confidential *ex parte*, only available to the Registry, with confidential Annex A; a public redacted version was filed on the same day, ICC-01/12-01/18-391-Red) (the '1 July 2019 Decision'), para. 38, p. 14.

<sup>12</sup> Prosecution Request for access to the identity and applications of participating victims, 21 November 2019, ICC-01/12-01/18-502 (the '21 November 2019 Prosecution Request'). On 29 November 2019, the Prosecution filed an addendum in which it withdrew the request to receive all identities and applications of participating victims and instead proposed an alternative procedure effectively limiting the scope of the original request to the applications of Dual Status Witnesses only: Addendum to Prosecution Request for access to the identity and applications of participating victims, 21 November 2019, ICC-01/12-01/18-502, ICC-01/12-01/18-510.

<sup>13</sup> Response to "Addendum to Prosecution Request for Access to the Identity of and Applications of Participating Victims, 21 November 2019, ICC-01/12-01/18-502", 11 December 2019, ICC-01/12-

Chamber ordered that the applications of Prosecution witnesses who are also Participating Victims in the case (‘Dual Status Witnesses’) be transmitted, together with any supporting documents, to the Prosecution in unredacted form, and then disclosed to the Defence with necessary redactions.<sup>15</sup> Noting, however, that the submissions of the parties and participants touched on the procedure for victim participation more broadly, the Single Judge requested the Registry to update the Chamber on victims’ applications and provide observations on the procedure for victim participation at trial, and invited submissions on the issue from the parties and participants.<sup>16</sup>

6. The requested report was filed by the Registry on 24 January 2020 (the ‘Registry Observations’).<sup>17</sup> The submissions of the Prosecution,<sup>18</sup> the Defence<sup>19</sup> and LRVs<sup>20</sup> were filed on 3 February 2020 (respectively the ‘Prosecution Observations’, the ‘Defence Observations’, and the ‘LRVs Observations’).

## II. Analysis

7. The Chamber has considered Articles 54(1), 64(2) and (3), 67 and 68 of the Rome Statute, Rules 16(1), 85-87, 89-91, 93-94 of the Rules of Procedure and Evidence, and Regulations 23, 34, 79-81, 86 and 88 of the Regulations of the Court (respectively the ‘Statute’, the ‘Rules’ and the ‘Regulations’).<sup>21</sup>

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01/18-524-Conf (confidential with confidential *ex parte* Annex A, available to the Prosecution and Defence only; a public redacted version was filed the next day, ICC-01/12-01/18-524-Red).

<sup>14</sup> Réponse à la requête du Bureau du Procureur « Prosecution Request for access to the identity and applications of participating victims » et son addendum (ICC-01/12-01/18-502 et ICC-01/12-01/18-510), 2 December 2019, ICC-01/12-01/18-513.

<sup>15</sup> Decision on the Prosecution request for access to the identity and applications of participating victims and inviting report and submissions on victim application procedure, ICC-01/12-01/18-536 (the ‘20 December 2019 Decision’), para. 11. *See also* definition of ‘dual status witness’ in para. 5.

<sup>16</sup> 20 December 2019 Decision, ICC-01/12-01/18-536, paras 12-13.

<sup>17</sup> Registry Report on the implementation of Trial Chamber X’s Decision of 20 December 2019 (ICC-01/12-01/18-536), ICC-01/12-01/18-563 (with confidential, *ex parte* Annex, only available to the Registry, ICC-01/12-01/18-563-Conf-Exp-Anx; confidential and public redacted versions of the annex were filed on the same day, respectively ICC-01/12-01/18-563-Conf-Anx-Red and ICC-01/12-01/18-563-Anx-Red2).

<sup>18</sup> Prosecution’s submissions on the victim participation procedure, ICC-01/12-01/18-573.

<sup>19</sup> Defence submissions on modalities of victims’ participation, ICC-01/12-01/18-574.

<sup>20</sup> Soumissions déposées conformément à la décision du 20 décembre 2019 (ICC-01/12-01/18-536), ICC-01/12-01/18-575.

<sup>21</sup> *See also* Regulations 104-110, 112-117 and 123(1) of the Regulations of the Registry.

8. The present decision will focus on procedural matters regarding the process for admission of victims to participate at trial. On substantive legal issues regarding the definition of victims, the Chamber refers to the consistent jurisprudence on Rule 85 of the Rules, as set out by the PTC I Single Judge.<sup>22</sup>
9. The submissions of the Registry and the parties and participants raise five core issues: (A) proposed admission procedure, (B) cut-off date, (C) redactions, (D) application form, and (E) legal representation. The proposals on each of these issues are briefly set out below, together with the Chamber's determinations.

### **A. Proposed admission procedure**

#### *1. Proposals*

10. The Registry reports that (i) the number of Participating Victims stands at present at 880,<sup>23</sup> (ii) approximately 80 applications for participation received during the confirmation stage of the proceedings were not transmitted,<sup>24</sup> and (iii) a large number of additional applicants may seek to participate at trial, considering the geographical scope of the case.<sup>25</sup> The Registry also reports that it has started a comprehensive review of all applications received to assess whether the Participating Victims remain within the scope of the confirmed case.<sup>26</sup>
11. The Registry proposes two admission procedures for the Chamber's consideration. The first Option ('Option 1')<sup>27</sup> is almost identical to the PTC Procedure, with two apparent differences – namely that the Registry no longer

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<sup>22</sup> See Pre-Trial Decision, ICC-01/12-01/18-37-tENG, paras 46-55.

<sup>23</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 4. The Registry advises that this was revised down from 882 as a result of the death of one Participating Victim, and the correction of a duplication error.

<sup>24</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 5, either because they were received after the deadlines set by PTC I, or because they were assessed by the Registry as being incomplete.

<sup>25</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 7 and n. 14.

<sup>26</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 6. The Registry also reports that in compliance with the 20 December 2019 Decision, ICC-01/12-01/18-536, it transmitted to the Prosecution the unredacted applications of Dual Status Witnesses, together with supporting documents: ICC-01/12-01/18-563, para. 10.

<sup>27</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, paras 11-12.

transmits Group B applications to the Chamber,<sup>28</sup> and that the Chamber no longer ratifies the Registry's assessment of Group B applications.<sup>29</sup>

12. Option 1 departs from the procedure set out in the Chambers Practice Manual.<sup>30</sup> The Registry motivates this departure on the basis of: (i) the number of applications received to date and further expected, which the Registry respectively categorises as 'considerable' and 'potentially high'; (ii) security concerns in the case and the resulting administration of potentially heavy redactions; and (iii) the difficulty to reach out to remote victim communities in a timely manner as a consequence of the volatile security context.<sup>31</sup> With these factors in mind, the Registry submits that Option 1 represents a valuable time saving for the Chamber and the parties, and a resource saving for the Registry in terms of the application of redactions, which it says in turn enables the Registry to process the highest number of victim applications.<sup>32</sup> The Registry highlights that the redaction process is substantial and time-intensive in terms of resources, and requires consultation between multiple stakeholders and a multi-level review.<sup>33</sup> It anticipates that should the Chamber adopt the Chambers Practice Manual approach and require transmission of Group A applications to the parties, then it would take a number of months to process all applications that are currently in the Registry's possession.<sup>34</sup> The Prosecution supports Option 1 in its Observations,<sup>35</sup> except on the issue of redactions (discussed at paragraph 30 below).
13. The Registry's second option ('Option 2'), it submits, is a novel approach whereby the parties would receive 'data derived from the information mentioned in the application forms for participation, together with the Registry's individual assessment, per application' in the form of reports

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<sup>28</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 11, n. 23. *See also* para. 12 (second bullet point).

<sup>29</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 12 (second last bullet point), compared with the Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(ix).

<sup>30</sup> Chambers Practice Manual (2019), <https://www.icccpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>, paras 95-98.

<sup>31</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 14.

<sup>32</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 13.

<sup>33</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, n. 37.

<sup>34</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 16.

<sup>35</sup> Prosecution Observations, ICC-01/12-01/18-573, para. 2.

(redacted as necessary), rather than any application forms themselves; the parties would be invited to make observations on the basis of these reports; and contested applications would be adjudicated by the Chamber.<sup>36</sup> Full applications would still be transmitted to the Chamber on a rolling basis.<sup>37</sup> The Registry submits that this Option is in the spirit of the Chambers Practice Manual, but with the underlying rationale to limit the amount of redactions required.<sup>38</sup>

14. The LRVs support Option 2, with the caveat that they should also be recipients of the reports transmitted to the parties.<sup>39</sup> In addition, the LRVs are critical of both the approach retained in the Chambers Practice Manual and Option 2, noting that victims are precluded from answering the parties' observations.<sup>40</sup>
15. The Defence endorses the approach of the Chambers Practice Manual but suggests that changing procedures at this stage of the case risks creating disparity between confirmation and trial applicants, and diverting judicial time and resources at this critical stage before trial commences.<sup>41</sup> It also takes issue with the definition of 'victim' adopted at confirmation as being overly broad and including individuals who have not suffered harm as a result of the confirmed charges.<sup>42</sup> The Defence avers that an appropriate solution is for the Chamber to distinguish between two types of victims: (i) victims with a general right of participation through the LRVs, who, it submits, should be considered victims under Rule 93 of the Rules (the 'Rule 93 Victims'),<sup>43</sup> and (ii) victims seeking to exercise 'active or direct' forms of participation (the 'Directly Participating Victims'), who, it submits, should be considered as potential victims under Rule 85.<sup>44</sup> A different admission procedure is proposed by the Defence for each category of victims. Participating Victims to date whose application forms have not been submitted to both parties (i.e. Group A) and future applicants who are assessed by the Registry as fulfilling the criteria

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<sup>36</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, paras 17-19.

<sup>37</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 19.

<sup>38</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 19.

<sup>39</sup> LRVs Observations, ICC-01/12-01/18-575, para. 14.

<sup>40</sup> LRVs Observations, ICC-01/12-01/18-575, paras 13-14.

<sup>41</sup> Defence Observations, ICC-01/12-01/18-574, paras 4, 6.

<sup>42</sup> Defence Observations, ICC-01/12-01/18-574, paras 22-28.

<sup>43</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 10, 12, 29-30.

<sup>44</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 12, 29.



established by the Chamber are ‘registered’ as Rule 93 Victims.<sup>45</sup> Directly Participating Victims would have their applications transmitted to the parties for observations and be subject to judicial determination as to their status as a victim under Rule 85.<sup>46</sup> In terms of who constitutes a Directly Participating Victim, the Defence alludes to the concept used in previous cases<sup>47</sup> to refer to victims seeking to present their views and concerns individually by appearing directly before the Chamber.

16. The Defence stresses that the parties should be entitled to receive copies of the applications of all Directly Participating Victims.<sup>48</sup> In addition, it submits that all application forms should be transmitted to the Prosecution in unredacted form so that it can discharge its statutory duties under Article 54(1) of the Statute.<sup>49</sup>

## *2. Determinations of the Chamber*

17. The Chamber has carefully considered each of the proposals from the Registry, the parties and the participants, in light of the statutory framework. As a result, and for the reasons set out below, the Chamber considers that maintaining the PTC Procedure is the most appropriate option in the present circumstances.
18. The Chamber notes that this is almost identical to the Registry’s Option 1. In relation to amendments to the PTC Procedure proposed through the Registry’s Option 1 - namely that the Registry no longer transmits Group B applications to the Chamber,<sup>50</sup> and that the Chamber no longer ratifies the Registry’s assessment of Group B applications<sup>51</sup> - the Chamber considers it preferable to continue to maintain judicial oversight over the Registry’s assessment of the

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<sup>45</sup> Defence Observations, ICC-01/12-01/18-574, paras 10, 12, 29-30.

<sup>46</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 7-9, 11-12, 29.

<sup>47</sup> Defence Observations, ICC-01/12-01/18-574, para. 13, referring to Trial Chamber V, *The Prosecutor v. William Samoei Ruto and Joseph Arap Sang*, Decision on victims' representation and participation, 3 October 2012, ICC-01/09-01/11-460, paras 25-29; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, 6 February 2015, ICC-01/04-02/06-449 (the ‘Ntaganda Decision’), paras 38-39. *See also* Defence Observations, ICC-01/12-01/18-574, para. 31.

<sup>48</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 7-12.

<sup>49</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 5, 15-21.

<sup>50</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 11, n. 23. *See also* para. 12.

<sup>51</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 12 (second last bullet point), compared with the Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(ix).

Group B applications, and therefore does not adopt these proposals.<sup>52</sup> The Chamber emphasises, however, that according to the PTC Procedure, 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<sup>53</sup> and therefore do not constitute Group B applications for the purpose of the PTC Procedure.<sup>54</sup> The PTC Procedure however mandates that the Registry informs the Chamber of any applications rejected on that account.<sup>55</sup>

19. In support of maintaining the PTC Procedure, the Chamber accepts the reasons put forward by the Registry set out in paragraph 12 above. The Chamber notes that very similar reasons were advanced by the Registry at the confirmation stage for the adoption of the PTC Procedure,<sup>56</sup> and were accepted, unopposed by the Prosecution or Defence at that time, by the PTC I Single Judge.<sup>57</sup> The Chamber considers that the factual underpinning of those reasons remains unchanged. In particular, the Chamber finds that the system has the advantage of allowing the parties and the Chamber to concentrate on the limited number of problematic applications, saving time and resources, and is therefore conducive to expeditious proceedings. The Chamber equally considers that this admission procedure is in the interests of the victims, since it enables the greatest number of victims to apply to participate, and it is in the interests of the accused, as it guarantees his right to be tried within a reasonable time. The Chamber also notes that a continuation of the PTC Procedure prevents differential treatment between victims who applied at the confirmation stage and those who apply at the trial stage.

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<sup>52</sup> The Chamber notes in this regard the Registry's statement that it stands ready to continue the approach applied at the confirmation stage of submitting also Group B applications for the Chamber's most comprehensive control over the process: Registry Observations, ICC-01/12-01/18-563-Anx-Red2, n. 23.

<sup>53</sup> See Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 44.

<sup>54</sup> See Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 44, read together with para. 59(vii)(b); contrary to Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 12 (third bullet point). The Chamber notes that there are other reasons why applications may fall within Group B – for example, an applicant fails to demonstrate their identity or kinship.

<sup>55</sup> See footnote immediately above.

<sup>56</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 62.

<sup>57</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, paras 57, 62-63.

20. As to the compatibility of this procedure with the statutory framework and the Defence arguments related to this point,<sup>58</sup> the Chamber concurs with the position of Trial Chamber VI in the *Ntaganda* case:<sup>59</sup>

29. It must be noted that the parties' right to reply to victim applications set out in Rule 89(1) of the Rules is not absolute. Rule 89(1) provides that the transmission of victim applications to the parties, and their right to reply thereto, is "[s]ubject to the provisions in the Statute, in particular article 68, paragraph 1 [...]". In this regard, the Chamber notes: (i) the Court's obligation under Article 68(1) of the Statute to protect the safety, physical and psychological well-being, dignity and privacy of victims; (ii) the right of the accused to not have measures adopted which are prejudicial to or inconsistent with his/her right to be tried with undue delay, as required by Articles 67(1)(c) and 68(1) and (3) of the Statute; and (iii) the Chamber's general obligation under Article 64(2) of the Statute to ensure the fair and expeditious conduct of the proceedings.

21. As noted above, the PTC Procedure departs from the one provided for in the Chambers Practice Manual.<sup>60</sup> The key difference is that in the procedure adopted by the Pre-Trial Chamber, parties only receive and make submissions on a limited number of applications (Group C); which are then subject to individual assessment by the Chamber. In contrast, in the Chambers Practice Manual procedure, the parties receive and can make submissions on all complete applications that fall within the scope of the case;<sup>61</sup> with the contested applications being then individually assessed by the Chamber.<sup>62</sup> In its determinations the Chamber has strived to follow the Chambers Practice Manual, which represents the general recommendations and guidelines reflecting best practices, based on the experience and expertise of judges across divisions at the Court. However, noting that the manual is not binding on the Chamber,<sup>63</sup> in some instances it was considered necessary to depart from its practices for specific reasons related to the circumstances of the case. In this instance, particularly given the security situation in Mali and the challenges

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<sup>58</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 5, 7-12, 15-21.

<sup>59</sup> *Ntaganda* Decision, ICC-01/04-02/06-449, para. 29. *See also* paras 30, 37. *See also* consistently on this point the approach adopted by PTC I in this case, Pre-Trial Decision, ICC-01/12-01/18-37-tENG, paras 60-63, and Pre-Trial Chamber II in the *Yekatom and Ngaïssona* case, Decision Establishing the Principles Applicable to Victims' Applications for Participation, 5 March 2019, ICC-01/14-01/18-141, para. 43.

<sup>60</sup> Chambers Practice Manual, paras 95-98.

<sup>61</sup> Chambers Practice Manual, paras 96(v), (vii).

<sup>62</sup> Chambers Practice Manual, para. 96(viii).

<sup>63</sup> Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled "Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court", 18 December 2015, ICC-02/11-01/15-369, OA7, para. 54.

with respect to gathering information from applicants, the Chamber considered it appropriate to adopt the more streamlined approach.

22. In relation to the Defence proposal to distinguish between Rule 93 and Directly Participating Victims, the Chamber notes that it is premised on the assumption that the Registry and the PTC I Single Judge somehow erred in applying the definition of ‘victim’ provided by Rule 85 of the Rules.<sup>64</sup> In this regard, the Chamber notes that the Registry is in the process of conducting a further assessment to ensure that any and all Participating Victim have indeed suffered harm as a result of the confirmed charges. This therefore provides an additional safeguard in this respect. Further, the Chamber notes that the Defence submissions appear to misrepresent the harm resulting from the confirmed charges, since: (i) while exhaustive lists of direct victims are provided in the decision on the confirmation of charges for some of counts, the Chamber notes that this does not exclude that other individuals may have personally suffered harm as a result of these same crimes; and (ii) for two of the confirmed counts – attack against protected objects, and persecution – the scope of potential victimhood is broader than for the remaining counts. Therefore, having considered that the Defence’s submissions on this point are unsubstantiated, and further noting that the Defence did not seek leave to appeal neither the overall system in place nor the specific rulings of the PTC I Single Judge ratifying the Registry’s assessment of the applicants’ status as victims, the Chamber does not consider it appropriate to reopen this issue now.
23. As to the submissions received regarding the procedure for victims to present their views and concerns by appearing in person before the Chamber (the Defence’s ‘Directly Participating Victims’), the Chamber will regulate this issue if and when it decides to authorise such participation.<sup>65</sup> For the sake of abundant clarity and noting that the Defence submissions also raise issues regarding

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<sup>64</sup> Defence Observations, ICC-01/12-01/18-574, paras 25, 27, 28. *See also* generally paras 22-31.

<sup>65</sup> In this regard, the Chamber emphasises that it is for the Chamber to determine the appropriate stages of the proceedings for presenting views and concerns: Article 68(3) of the Statute. *See also* Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Preliminary Directions for any LRV or Defence Evidence Presentation, 13 October 2017, ICC-02/04-01/15-1021, para. 2(i).

victims appearing as witnesses in this case,<sup>66</sup> the Chamber emphasises that (i) any issues related to the calling of witnesses by the LRVs are not dealt with in this decision and will be dealt with in the Chamber's forthcoming decision on the conduct of proceedings; and (ii) the transmission of victim applications of individuals who are intended to be called to testify by the Prosecution are covered by a separate regime as stated in paragraph 5.

24. Finally, in relation to the submission from the LRVs that it should receive reports transmitted to the parties under Option 2, the Chamber notes that pursuant to the PTC Procedure, the LRVs will receive reports<sup>67</sup> and have access to data which will enable them to know to which groups their clients belong.<sup>68</sup> In addition, in relation to the LRVs criticism of the fact that applicants are precluded from answering parties' observations, the Chamber notes that no such right is contained in the Rules. Further, implementing such a procedure at this stage appears neither necessary nor desirable, noting that unsuccessful applicants have the opportunity to file a new application in any event.<sup>69</sup> Changing the procedure at this stage would result in a disparity between applicants who applied at the confirmation of charges stage, and those who apply for the purposes of trial.

## **B. Cut-off date**

### *1. Proposals*

25. The Registry proposes that the transmission of further applications be continued throughout the trial phase.<sup>70</sup> It submits this would allow for the participation of 'an as inclusive number of victims as possible' and, in support, refers to the exceptionally challenging security environment which impacts Registry outreach activities, and the fact that a number of potential victims are in refugee

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<sup>66</sup> Defence Observations, ICC-01/12-01/18-574, paras 20-21, 34-35, 37. *See also* the issues raised in the Defence observations on the conduct of proceedings, 28 February 2020, ICC-01/12-01/18-618-Conf (with confidential Annexes A, B and C; a public redacted version was filed on 3 March 2020), paras 89-92.

<sup>67</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(iii).

<sup>68</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(x).

<sup>69</sup> *See* Rule 89(2) of the Rules.

<sup>70</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, paras 10, 20-21.

camps in neighbouring countries and have not yet been reached due in part to the Registry's dependency on third party organisations for assistance and support.<sup>71</sup>

26. The Prosecution<sup>72</sup> and the LRVs<sup>73</sup> support the Registry's proposal, and consider that no cut-off date should be set for the transmission of applications before the start of trial. The Defence advocates for a strict cut-off point of no later than 45 days before the commencement of the trial as concerns Directly Participating Victims,<sup>74</sup> submitting that such a cut-off date is of integral importance to Mr Al Hassan's right to be informed promptly of the nature, cause, and content of the charges and his right to adequate time and resources to prepare his defence.<sup>75</sup>

## 2. Determinations of the Chamber

27. The Chamber notes that apart from Regulation 86(3) of the Regulations, which provides that '[v]ictims applying for participation in the trial [...] proceedings shall, to the extent possible, make their application to the Registrar before the start of the stage of the proceedings in which they want to participate', the Court's statutory framework is silent on the issue of deadlines for submission of victims' applications. The Chamber also notes that there has been inconsistent practice on this point,<sup>76</sup> but that the Chambers Practice Manual provides for a

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<sup>71</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 21. *See also* 7-8.

<sup>72</sup> Prosecution Observations, ICC-01/12-01/18-573, para. 4.

<sup>73</sup> LRVs Observations, ICC-01/12-01/18-575, para. 7.

<sup>74</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 32-41.

<sup>75</sup> Defence Observations, ICC-01/12-01/18-574, para. 34.

<sup>76</sup> *See e.g.* Trial Chamber II, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, 26 February 2009, ICC-01/04-01/07-933-tENG, para. 27 (deadline before the start of trial set for submission of applications to the Registry and for transmission to the Chamber); Trial Chamber III, *The Prosecutor v. Jean Pierre Bemba Gombo*, Corrigendum to the Decision on 401 applications by victims to participate in the proceedings and setting a final deadline for the submission of new victims' applications to the Registry, 21 July 2011, ICC-01/05-01/08-1590-Corr, para. 25 (deadline after the start of trial set for submission of applications to the Registry); *Ntaganda* Decision, ICC-01/04-02/06-449, para. 24(v) (deadline before the start of trial set for transmission of applications to the Chamber); Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision Setting the Commencement Date of the Trial, 30 May 2016, ICC-02/04-01/15-449, p. 7; and Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications, 26 September 2016, ICC-02/04-01/15-543 (deadline before the start of trial set for transmission of applications to the Chamber).

final time limit to be set ‘sufficiently before the commencement of the trial’ for the transmission of any further applications.<sup>77</sup>

28. The Chamber has considered the reasons on the one hand in favour of no cut-off date, including the difficulties arising from the security environment, as outlined by the Registry. On the other, the Chamber has weighed the already long confirmation phase of this case, where the PTC Procedure was set almost two years ago, and the potential impact that no-cut-off date would have on the time and resources of both the Chamber and the parties, in reviewing applications throughout the trial. Although sensitive to the Registry’s proposal, ultimately, the Chamber considers that the setting of a deadline for the transmission of victim applications before the commencement of the trial strikes the best balance between the expeditiousness and fairness of the proceedings and the interests of the victims. The Chamber also notes that this reflects the practice outlined in the Chambers Practice Manual.
29. The Chamber accordingly sets the following deadlines for the final transmission of applications: (a) Group C to the Chamber and the parties no later than **45 days** before the trial commencement date; and (b) Groups A and B to the Chamber no later than **15 days** before the trial commencement date. The Registry’s final corresponding reports must be notified within the same time limits.

## **C. Redactions**

### *1. Proposals*

30. The Prosecution submits that it should receive unredacted versions of application forms, ‘given that no security issue would arise from granting it access to the identifying information of applicants’.<sup>78</sup> The Defence supports transmission of all victim applications in unredacted form to the Prosecution,<sup>79</sup> (as noted above, including those which the Registry has assessed as not meeting

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<sup>77</sup> Chambers Practice Manual, para. 98(iv).

<sup>78</sup> Prosecution Observations, ICC-01/12-01/18-573, para. 2.

<sup>79</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 12, 15-21.

the Rule 85 criteria).<sup>80</sup> It also requests disclosure of the identities of the Directly Participating Victims to the Defence in advance of trial.<sup>81</sup> The Chamber notes that, according to the Prosecution, in the context of the request referred to in paragraph 5, the LRVs expressed their consent to the disclosure of unredacted victim applications to the Prosecution.<sup>82</sup>

## 2. *Determinations of the Chamber*

31. The Chamber notes at the outset that the PTC Procedure merely stipulates that redactions should be applied ‘as needed’, and *vis-à-vis* the Defence when they are a necessary protective measure.<sup>83</sup> It is rather the Registry’s *implementation* of this procedure during the confirmation phase which resulted in both parties receiving transmitted applications in redacted form with all identifying information removed. The Chamber further recalls that the Prosecution, pursuant to Articles 54(1)(b) and 68(1) of the Statute, shall ‘respect the interests and personal circumstances of victims’ and protect their safety, physical and psychological well-being, dignity and privacy.
32. The Chamber considers that, in the circumstances outlined in the paragraph above, the Prosecution should receive unredacted versions of the Group C applications. This necessitates no formal change to the PTC Procedure, only a change in Registry practice. Regarding the Defence submission that the Prosecution should receive all application forms unredacted, the Chamber reiterates its conclusion in paragraph 20 above that the PTC Procedure is consistent with the statutory framework.
33. As to the issue of disclosure of Directly Participating Victims’ identities to the Defence, the Chamber will consider this issue if and when it decides to authorise such participation.<sup>84</sup> As noted in paragraph 23, this determination does

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<sup>80</sup> Defence Observations, ICC-01/12-01/18-574, para. 21.

<sup>81</sup> Defence Observations, ICC-01/12-01/18-574, paras 3, 37-38.

<sup>82</sup> 21 November 2019 Prosecution Request, ICC-01/12-01/18-502, paras 11-12.

<sup>83</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 59(iv). *See also*, Chambers Practice Manual, para. 96(vi).

<sup>84</sup> In relation to the Defence’s submission that it should receive these identities in advance of the commencement of trial, the Chamber notes that in the practice of the Court, victims are authorised well after the start of trial to present views and concerns (*see e.g.* Trial Chamber III, *The Prosecutor v. Jean-*



not apply to the calling of witnesses by the LRVs, which will be regulated in the Chamber's forthcoming decision on the conduct of proceedings.

## **D. Application form**

### *1. Proposals*

34. The Registry proposes the use of the most recent template application form adopted and tested in the *Yekatom and Ngaïssona* case (the 'Proposed Template Application Form').<sup>85</sup> The form is a dual purpose participation and reparations form, like the one adopted for the PTC Procedure in this case.<sup>86</sup> The Registry's proposal is motivated by difficulties experienced in during the field using the form adopted for the PTC Procedure, and where the Registry indicates that it has received better quantitative and qualitative results using the *Yekatom and Ngaïssona* form.<sup>87</sup>
35. The Prosecution has no objection to the Proposed Template Application Form.<sup>88</sup> However, the LRVs object to the dual purpose nature of the form, submitting that (i) the section on reparations can create unnecessary victim expectations,<sup>89</sup> (ii) reparations at this stage will be difficult for victims to assess and therefore collected information will not be representative,<sup>90</sup> and (iii) the notion of keeping contact with victims to a minimum is inconsistent with their mandate and applicable ethical principles, as well as contextual social and cultural criteria, whereby victims may not discuss certain harms at the first meeting with the

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*Pierre Bemba Gombo*, Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims, 23 February 2012, ICC-01/05-01/08-2138 (persons were authorised to present views and concerns in February 2012, well after the start of trial); Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Public redacted version of 'Decision on the request by the Legal Representative of the Victims of the Attacks for leave to present evidence and victims' views and concerns', 15 February 2017, ICC-01/04-02/06-1780-Red (persons were authorised to present views and concerns in the *Ntaganda* case in February 2017, well after the start of trial). The issue of disclosure of their identities to the Defence is to be considered on a case by case basis (*see e.g.* ICC-01/04-02/06-1780-Red, paras 11, 51; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Disclosure of Victims' Identities, 17 June 2016, ICC-02/04-01/15-471, paras 13-14).

<sup>85</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, paras 22-23.

<sup>86</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, paras 25, 33-34.

<sup>87</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 23.

<sup>88</sup> Prosecution Observations, ICC-01/12-01/18-573, para. 5.

<sup>89</sup> LRVs Observations, ICC-01/12-01/18-575, para. 17.

<sup>90</sup> LRVs Observations, ICC-01/12-01/18-575, paras 17, 24.

LRVs.<sup>91</sup> The LRVs also consider problematic the change in the structure of the application form proposed by the Registry (*i.e.* the question on harm is placed on the first page, before the reparations section), submitting that there should be no discrimination between victims based on the level of detail of the harm suffered that they are able to provide at this stage,<sup>92</sup> and submitting that the question on the impact of the harm suffered at family and community level is potentially confusing for victims.<sup>93</sup> For these reasons, the LRVs consider that including a reparations section in the application forms is neither in the interest of the victims nor of the proceedings.<sup>94</sup>

## 2. *Determinations of the Chamber*

36. The Chamber notes that the differences between the form previously approved in this case and the Proposed Template Application Form are not significant. As noted by the Registry, the main differences are (i) a slight rearrangement of the form itself, (ii) a slight amendment to the question pertaining to harm, and (iii) a more illustrative formulation of the question pertaining to types of reparations.<sup>95</sup>
37. The Chamber notes that the LRVs objections to the Proposed Template Application Form are mainly focused on its dual purpose. Considerations for and against a dual purpose form were raised at the confirmation stage, with the Single Judge of PTC I emphasising that a tailored and effective message during outreach would lessen any adverse impact that such a process could have on the victims' expectations.<sup>96</sup> The Chamber agrees with the Registry<sup>97</sup> that considerations supporting the adoption of a joint participation and reparation form remain valid, noting that there has been no improvement in the security environment. In line with the guidance of the Single Judge of PTC I, the Chamber emphasises the importance of tailored and effective outreach messages

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<sup>91</sup> LRVs Observations, ICC-01/12-01/18-575, paras 20-23.

<sup>92</sup> LRVs Observations, ICC-01/12-01/18-575, para. 25.

<sup>93</sup> LRVs Observations, ICC-01/12-01/18-575, paras 26-27.

<sup>94</sup> LRVs Observations, ICC-01/12-01/18-575, para. 28.

<sup>95</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 24.

<sup>96</sup> Pre-Trial Decision, ICC-01/12-01/18-37-tENG, para. 24.

<sup>97</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 22.

in this regard. Therefore, the Chamber accepts the Registry's proposal to adopt the Proposed Template Application Form.

## **E. Legal representation**

### *1. Proposal*

38. The Registry recommends that to avoid any gap in legal representation, the Chamber may consider appointing the current LRVs to also represent currently unrepresented and future victim applicants.<sup>98</sup> The LRVs do not comment on this proposal.

### *2. Determinations of the Chamber*

39. The Chamber agrees with the Registry that it is preferable to avoid any gap in legal representation. Accordingly, and in line with the legal representation system already in place,<sup>99</sup> the Chamber directs (i) the Registry to suggest that currently unrepresented and future victim applicants be represented by the single team of LRVs currently representing Participating Victims; and (ii) should any difficulty arise, the Registry to submit a report describing the difficulty and proposing an appropriate way forward.

## **FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**DECIDES** to continue the PTC Procedure for the purposes of trial, with the clarification that the Prosecution should receive unredacted versions of Group C applications;

**SETS** the following deadlines for the final transmission of applications: (a) Group C to the Chamber and the parties no later than **45 days** before the trial commencement date; and (b) Groups A and B to the Chamber no later than **15 days** before the trial commencement date, as set out in paragraph 29;

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<sup>98</sup> Registry Observations, ICC-01/12-01/18-563-Anx-Red2, para. 27.

<sup>99</sup> 20 March 2019 Decision, ICC-01/12-01/18-289-Red-tENG-Corr, paras 38-39.

**DIRECTS** the Registry, at latest with the final transmission of the Group C applications, to report on the result of its review to assess whether the Participating Victims remain within the scope of the confirmed case, as referenced in paragraph 10, and having regard to paragraph 8;

**ACCEPTS** the Registry's proposal to adopt the Proposed Template Application Form;

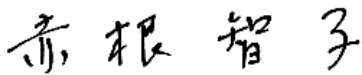
**DIRECTS** the Registry to take steps, in relation to the legal representation of currently unrepresented and future victim applicants, in accordance with paragraph 39; and

**REJECTS** all other requests.

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



**Judge Antoine Kesia-Mbe Mindua**  
**Presiding Judge**



**Judge Tomoko Akane**



**Judge Kimberly Prost**

Dated this 12 March 2020

At The Hague, The Netherlands