



**Original: English**

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

**Date: 12 June 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 request for extension of deadlines for the final transmission of victim  
applications for participation at trial**

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

**The Office of the Prosecutor**

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**Legal Representatives of Victims**

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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  
Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

Philipp Ambach

**Other**

**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 request for extension of deadlines for the final transmission of victim applications for participation at trial’.

### **I. Procedural history and submissions**

1. On 12 March 2020, the Chamber issued its Decision on the procedure for the admission of victims to participate in proceedings for the purposes of trial (the ‘12 March 2020 Decision’).<sup>1</sup> In this decision, having declined to retain the Registry’s proposal for the transmission of victim applications to be continued throughout the trial phrase, the Chamber relevantly set the following deadlines for the final transmission of victim applications for participation at trial: (a) Group C applications to the Chamber and the parties no later than 45 days before the trial commencement date; and (b) Groups A and B applications to the Chamber no later than 15 days before the trial commencement date (the ‘Existing Deadlines’).<sup>2</sup> The trial is due to commence on 14 July 2020.<sup>3</sup>
2. On 20 May 2020, following a request from the Chamber,<sup>4</sup> the Registry filed observations on methods of work to minimise the impact of the COVID-19 pandemic and related measures on the conduct of proceedings.<sup>5</sup> This filing includes submissions requested by the Chamber on what measures could be employed to facilitate applications for participation from victims in light of the situation (the ‘Registry Submissions’).<sup>6</sup> The Registry Submissions contain a joint request from the Registry and the LRVs pursuant to Regulation 35 of the Regulations of the Court (the ‘Regulations’) to extend the Existing Deadlines, based on the inability of the Registry and LRVs to effectively carry out the

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<sup>1</sup> ICC-01/12-01/18-661.

<sup>2</sup> 12 March 2020 Decision, ICC-01/12-01/18-661, paras 28-29.

<sup>3</sup> Decision Setting the Commencement Date of the Trial, 6 January 2020, ICC-01/12-01/18-548.

<sup>4</sup> Order to provide information on methods of work to minimise the impact of COVID-19 and related measures on the conduct of proceedings, 29 April 2020, ICC-01/12-01/18-776.

<sup>5</sup> ICC-01/12-01/18-824 (with confidential Annexes I, II, III and V, and confidential *ex parte* Annex IV, available only to the Registry and the LRVs, ICC-01/12-01/18-824-Conf-Exp-AnxIV; confidential and public redacted versions of Annex IV were notified on 22 May 2020, ICC-01/12-01/18-824-Conf-AnxIV-Red and ICC-01/12-01/18-824-AnxIV-Red2 respectively).

<sup>6</sup> ICC-01/12-01/18-824-Conf-Exp-AnxIV.

required activities in light of the COVID-19 restrictions.<sup>7</sup> Specifically, the Registry requests a new deadline be set for a minimum of five months after the following three conditions are met: (i) the lifting of travel restrictions; (ii) the lifting of prohibitions on gatherings in Mali; and (iii) the lifting of relevant restrictions put in place by MINUSMA.<sup>8</sup>

3. The LRVs also filed separate submissions on the same date (the ‘LRVs Submissions’),<sup>9</sup> in which they confirm their agreement with the Registry’s extension request,<sup>10</sup> and explain practical difficulties they have faced due to the COVID-19 situation,<sup>11</sup> including difficulties faced in reaching out to particular groups of victims.<sup>12</sup> The LRVs also repeat objections to the inclusion of a reparations section in the victim application forms, and note that the dual purpose nature of the forms extends the time needed to complete them, a factor weighing in favour of an extension to the Existing Deadlines.<sup>13</sup>
4. Neither the Office of the Prosecutor (the ‘Prosecution’) nor the Defence filed responses to the Registry Submissions or the LRVs Submissions.

## **II. Analysis**

5. At the outset, the Chamber takes note of the LRVs’ renewed objections to the dual purpose nature of the victim application forms.<sup>14</sup> Related objections were adjudicated as part of the 12 March 2020 Decision.<sup>15</sup> Noting that, in the LRVs Submissions, these objections are expressed in support of extending the Existing Deadlines,<sup>16</sup> the Chamber has considered them only in that context for the purpose of this decision.
6. For context, the Chamber recalls that in its 12 March 2020 Decision, it rejected a proposal from the Registry that there be no deadline for the transmission of

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<sup>7</sup> Registry Submissions, ICC-01/12-01/18-824-AnxIV-Red2, paras 4, 14.

<sup>8</sup> Registry Submissions, ICC-01/12-01/18-824-AnxIV-Red2, para. 15.

<sup>9</sup> Observations en application de l’Ordonnance ICC-01/12-01/18-776, ICC-01/12-01/18-821-Conf.

<sup>10</sup> LRVs Submissions, ICC-01/12-01/18-821-Conf, para. 9.

<sup>11</sup> LRVs Submissions, ICC-01/12-01/18-821-Conf, paras 6-8, 14.

<sup>12</sup> LRVs Submissions, ICC-01/12-01/18-821-Conf, paras 10-15.

<sup>13</sup> LRVs Submissions, ICC-01/12-01/18-821-Conf, paras 16-26.

<sup>14</sup> LRVs Submissions, ICC-01/12-01/18-821-Conf, paras 16-26.

<sup>15</sup> 12 March 2020 Decision, ICC-01/12-01/18-661, paras 34-37.

<sup>16</sup> LRVs Submissions, ICC-01/12-01/18-821-Conf, para. 25.

victim applications before the start of trial.<sup>17</sup> Relevantly, the Chamber considered, on that occasion, that the setting of a final deadline before the start of the trial for the transmission of victim applications struck ‘the best balance between the expeditiousness and fairness of the proceedings and the interests of the victims’.<sup>18</sup> However, following that decision and in the context of other trial preparation matters, the Chamber noted the exceptional circumstances and uncertainty arising out of the COVID-19 pandemic, and said that it would examine discrete requests in relation to the deadlines leading to the start of trial, including the deadlines set in the 12 March 2020 Decision, on a case-by-case basis, if and when it became clear that they cannot be met.<sup>19</sup>

7. Pursuant to Regulation 35 of the Regulations, the Chamber will now assess whether good cause has been shown to extend the Existing Deadlines.
8. The Chamber first notes that the requested extension is limited to the new potential applicants.<sup>20</sup> The Registry confirms that it has been, and is able to transmit all applications received thus far within the Existing Deadlines.<sup>21</sup>
9. Moreover, the Chamber notes that various steps have been taken by the Registry to minimise the impact of the COVID-19 crisis on its activities and submit as many applications as possible in light of the current situation. In particular, the Registry reports having adopted a range of measures to attempt to continue key activities related to collecting victim applications in the field in light of the security situation in Mali and the unprecedented COVID-19 circumstances.<sup>22</sup> These include activities related to dissemination of information, training of intermediaries, and the filling and collection of application forms - focussing in

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<sup>17</sup> 12 March 2020 Decision, ICC-01/12-01/18-661, para. 28. This proposal was supported by the Prosecution and the LRVs.

<sup>18</sup> 12 March 2020 Decision, ICC-01/12-01/18-661, para. 28.

<sup>19</sup> Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial, 20 March 2020, ICC-01/12-01/18-677, paras 6, 17.

<sup>20</sup> Registry Submissions, ICC-01/12-01/18-824-AnxIV-Red2, para. 18.

<sup>21</sup> Registry Submissions, ICC-01/12-01/18-824-AnxIV-Red2, para. 5. On 29 May 2020, in line with the Existing Deadlines, the Registry transmitted five Group C applications: Registry First Assessment Report on Victim Applications for Participation in Trial Proceedings, ICC-01/12-01/18-835 (with confidential Annex); Registry Transmission of Group C Victim Applications for Participation at Trial, ICC-01/12-01/18-834, (with Annexes 1 to 5 filed in both confidential *ex parte* and redacted versions).

<sup>22</sup> Registry Submissions, ICC-01/12-01/18-824-Conf-Exp-AnxIV, paras 2-3, 6-9.

particular on maximising the effectiveness of electronic forms of communication.<sup>23</sup> Despite these efforts however, in light of the prohibitive COVID-19 situation in terms of travel, direct physical contact (e.g. meetings), and the very limited access to information technology by victims, intermediaries and other Court interlocutors in the field, the Registry and the LRVs report having been severely hampered in performing core activities to safely and securely assist victims to complete application forms.<sup>24</sup>

10. Noting the Registry's information on the number of potential applicants that have already been identified as willing and interested in participating at trial, or whose forms were not yet transmitted to the Registry,<sup>25</sup> the Chamber agrees with the Registry that, due to the circumstances created by the COVID-19 situation and for reasons completely outside the control of the Registry and the LRVs, a large number of potential victims have been unable to apply to participate within the Existing Deadlines.<sup>26</sup>
11. Accordingly, the Chamber finds that there are objective reasons justifying the inability of the Registry to transmit victim applications within the Existing Deadlines. This constitutes good cause within the meaning of Regulation 35 of the Regulations.
12. In making this determination, the Chamber has taken into account that although in previous submissions, the Defence had advocated for a strict deadline for the transmission of victim applications before the start of the trial,<sup>27</sup> it has not opposed the current Request. The Chamber has nevertheless considered the potential impact on Mr Al Hassan's rights, in particular the potential impact on the time and resources of both the Chamber and the parties of having to review victim applications during the course of trial, if the Existing Deadlines are

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<sup>23</sup> Registry Submissions, ICC-01/12-01/18-824-Conf-Exp-AnxIV, paras 2-3, 6-9.

<sup>24</sup> Registry Submissions, ICC-01/12-01/18-824-Conf-Exp-AnxIV, paras, 10-11; LRV Submissions, ICC-01/12-01/18-821-Conf, paras 6-8.

<sup>25</sup> Registry Submissions, ICC-01/12-01/18-824-Conf-AnxIV-Red, paras 9, 11.

<sup>26</sup> Registry Submissions, ICC-01/12-01/18-824-AnxIV-Red2, para. 12.

<sup>27</sup> Defence submissions on modalities of victims' participation, 24 January 2020, ICC-01/12-01/18-574, paras 3, 32-41, in particular 34, arguing that this was integral to Mr Al Hassan's rights to be informed promptly of the nature, cause, and content of the charges and to adequate time and resources to prepare his defence.

extended. However, the Chamber notes that, so far, it appears that many applications are being assessed by the Registry in accordance with the guidance already in place, with little litigation required on Group C.<sup>28</sup> In light of this, together with the reasons stated above, the Chamber considers that the circumstances have fundamentally changed such that the balance between the expeditiousness and fairness of the proceedings and the interests of the victims is now better served by extending the Existing Deadlines beyond the start of trial.

13. As to the new deadline, the Chamber has taken note of the Registry's proposal - five months after the lifting of specific restrictions - including its submission that this reflects the time required for it to sufficiently resume activities in order to provide tangible results.<sup>29</sup> However, given the current uncertainty surrounding the global pandemic and therefore the impossibility to determine when the Registry's proposed conditions would be met, the Chamber considers it preferable to set a more concrete deadline. Therefore, the Chamber extends the deadline for the final transmission of victim applications to the end of the Prosecution case. As was previously the case, the Registry's final corresponding reports must be notified within the same deadline. The Existing Deadlines should be maintained for any applications received thus far. Mindful of the considerations in paragraph 12, the Chamber also instructs the Registry to endeavour to file all of the newly collected applications on a rolling basis in periodic intervals, and in a manner focused on minimising disruptions to the proceedings, to the extent possible.<sup>30</sup>
14. The Registry is instructed to provide an update towards the end of the Prosecution case, including on whether any further extension appears necessary, based on the prevailing circumstances.

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<sup>28</sup> As noted in footnote 21 above, within the Existing Deadlines only 5 Group C applications were transmitted by the Registry.

<sup>29</sup> Registry Submissions, ICC-01/12-01/18-824-AnxIV-Red2, paras 15-16.

<sup>30</sup> See Registry Submissions, ICC-01/12-01/18-824-AnxIV-Red2, para. 18. The Registry proposes to endeavour in particular to file all Group C applications, if any, as soon as possible so as to limit the later Registry transmissions to Group A applications (which do not involve litigation from the parties and participants).

15. After the expiry of the deadline, the Registry is encouraged to continue collecting (but not to file or transmit) application forms for the purposes of any future reparations proceedings.

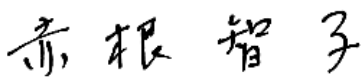
**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**AMENDS** the Existing Deadlines in accordance with paragraph 13 and **SETS** the deadline for final transmission of victim applications to the end of the Prosecution case.

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 June 2020

At The Hague, The Netherlands