



**Original: English**

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

**Date: 10 August 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**

**Third decision on the admission of victims to participate in trial proceedings**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart

**Counsel for the Defence**

Melinda Taylor  
Nicoletta Montefusco

**Legal Representatives of Victims**

Seydou Doumbia  
Mayombo Kassongo  
Fidel Luvengika Nsita

**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*, having regard to Article 68(1) and (3) of the Rome Statute, Rules 85, 89, and 91(1) of the Rules of Procedure and Evidence (the ‘Rules’), and Regulation 86 of the Regulations of the Court, issues this ‘Third decision on the admission of victims to participate in trial proceedings’.

## **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 ‘First Decision on Victims’ Participation’).<sup>1</sup> In this decision, the Chamber set a procedure for the admission of victims to participate in the trial proceedings. It relevantly maintained the admission procedure determined by Pre-Trial Chamber I in its decision of 24 May 2018, whereby the Chamber would ratify the Registry’s assessment of Groups A and B application forms, ‘barring a “clear and material error”’.<sup>2</sup>
2. In its First Decision on Victims’ Participation, the Chamber also adopted various deadlines for the transmission of victim applications for participation at trial. It relevantly decided that: (a) Group C applications (applicants for whom the Registry could not make a clear determination) were to be transmitted to the Chamber and the parties no later than 45 days before the commencement of trial; and (b) Group A applications (applicants who clearly qualify as victims) and Group B applications (applicants who clearly do not qualify as victims) were to be transmitted to the Chamber no later than 15 days before the commencement of trial,<sup>3</sup> set for 14 July 2020.<sup>4</sup> This deadline was subsequently extended to the end of the Prosecution case, following a request from the

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<sup>1</sup> [First Decision on Victims’ Participation](#), ICC-01/12-01/18-661.

<sup>2</sup> [First Decision on Victims’ Participation](#), ICC-01/12-01/18-661, para. 1, *referring to* Pre-Trial Chamber I, [Decision Establishing the Principles Applicable to Victims’ Applications for Participation](#) (hereinafter: ‘Pre-Trial Decision’), ICC-01/12-01/18-37-tENG, para. 59(ix).

<sup>3</sup> [First Decision on Victims’ Participation](#), ICC-01/12-01/18-661, para. 29.

<sup>4</sup> [Decision Setting the Commencement Date of the Trial](#), ICC-01/12-01/18-548.

Registry and the Legal Representatives of Victims (the ‘LRVs’) on the basis of the current COVID-19 pandemic.<sup>5</sup>

3. On 17 June 2020, the Chamber rendered its ‘Second decision on the admission of victims to participate in trial proceedings’ (the ‘Second Decision on Victims’ Participation’).<sup>6</sup> In this decision, the Chamber admitted four Group C applicants as participating victims for the purposes of the trial proceedings and deferred its ruling as regard the status of one applicant.<sup>7</sup>
4. On 24 June 2020, the Registry filed the ‘Registry’s Second Assessment Report on Victim Applications for Participation in Trial Proceedings’ (the ‘Second Report’),<sup>8</sup> which contains a brief description of the criteria used by the Registry for its assessment of 209 applications falling within Group A.<sup>9</sup>
5. On 25 June 2020, the Registry transmitted 209 Group A applications to the Chamber (the ‘First Transmission’).<sup>10</sup>
7. On 29 June 2020, the Registry filed the ‘Registry’s Third Assessment Report on Victim Applications for Participation in Trial Proceedings’ (the ‘Third Report’),<sup>11</sup> which contains the details on the assessment criteria, the review of the participating victims’ applications and an overview of the applications received in the case since the beginning of the proceedings,<sup>12</sup> together with a list of 888 applicants who clearly qualify as victims (Group A),<sup>13</sup> a list of 47 applications assessed as falling outside the scope of the case (Group B), and 101 applications assessed as incomplete.<sup>14</sup>

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<sup>5</sup> [Decision on request for extension of deadlines for the final transmission of victim applications for participation at trial](#), ICC-01/12-01/18-880, para. 13.

<sup>6</sup> [Second Decision on Victims’ Participation](#), ICC-01/12-01/18-886-Red2.

<sup>7</sup> [Second Decision on Victims’ Participation](#), ICC-01/12-01/18-886-Red2, paras 16, 20-23.

<sup>8</sup> [Second Report](#), ICC-01/12-01/18-900, with a confidential annex.

<sup>9</sup> [Second Report](#), ICC-01/12-01/18-900, paras. 13-14.

<sup>10</sup> [Registry First Transmission of Group A Victim Applications for Participation in Trial Proceedings](#), ICC-01/12-01/18-901, with 209 confidential *ex parte* annexes.

<sup>11</sup> [Third Report](#), ICC-01/12-01/18-910, with two confidential annexes.

<sup>12</sup> [Third Report](#), ICC-01/12-01/18-910, paras 20-28.

<sup>13</sup> ICC-01/12-01/18-910-Conf-AnxI.

<sup>14</sup> ICC-01/12-01/18-910-Conf-Exp-AnxII.

8. On the same day, the Registry transmitted 888 Group A applications to the Chamber (the ‘Second Transmission’).<sup>15</sup>
9. On 15 July 2020, in accordance with instructions from the Chamber,<sup>16</sup> the Registry corrected its erroneous transmission to the Chamber of eight annexes pertaining to a different case record and filed with its First Transmission,<sup>17</sup> and replaced them by eight correct Group A application forms bearing the title ‘Corrigendum’ along with an explanatory note.<sup>18</sup>

## II. Applicable law

10. The Chamber refers to its previous decisions<sup>19</sup> and the consistent jurisprudence on Rule 85 of the Rules as set out by the Single Judge of Pre-Trial Chamber I. It is recalled, in particular, that individuals seeking to be admitted as participating victims will have to demonstrate *prima facie* that they are victims within the meaning of Rule 85 of the Rules and shall therefore meet the following criteria: i) the applicant has established his/her identity as a natural person; ii) the applicant is alleged to have suffered harm; and iii) the personal harm reported by the applicant resulted from an incident falling within the temporal, geographic and material parameters of the case (the ‘Rule 85(a) Test’).<sup>20</sup>

## III. Analysis

### A. Group A and Group B applications

11. In the First and Second Transmissions, the Registry communicated to the Chamber a total of 1,097 Group A applications and 47 Group B applications. It

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<sup>15</sup> [Registry Second Transmission of Group A Victim Applications for Participation in Trial Proceedings](#), ICC-01/12-01/18-913, with 888 confidential *ex parte* annexes. This transmission was completed on 2 July 2020 ‘due to some technical issues related to the amount of annexes’. See email from the Court Management Section, 2 July 2020, 15:18.

<sup>16</sup> Email from the Chamber, 3 July 2020, at 14:54.

<sup>17</sup> See for example Explanatory Note to Corrigendum to Annex 15 to the Registry’s First Transmission, ICC-01/12-01/18-901-Conf-Exp-Anx15-Corr-Anx, para. 3.

<sup>18</sup> ICC-01/12-01/18-901-Conf-Exp-Anx15-Corr; ICC-01/12-01/18-901-Conf-Exp-Anx41-Corr; ICC-01/12-01/18-901-Conf-Exp-Anx79-Corr; ICC-01/12-01/18-901-Conf-Exp-Anx101-Corr; ICC-01/12-01/18-901-Conf-Exp-Anx102-Corr; ICC-01/12-01/18-901-Conf-Exp-Anx125-Corr; ICC-01/12-01/18-901-Conf-Exp-Anx126-Corr; ICC-01/12-01/18-901-Conf-Exp-Anx141-Corr.

<sup>19</sup> [First Decision on Victims’ Participation](#), ICC-01/12-01/18-661, para. 17; [Second Decision on Victims’ Participation](#), ICC-01/12-01/18-886-Red2, para. 8.

<sup>20</sup> [Pre-Trial Decision](#), ICC-01/12-01/18-37-tENG, para. 48.

carried out an initial assessment of each of these applications and concluded that they clearly meet or do not meet the required conditions for the granting of victim status within the meaning of the Rule 85(a) Test indicated above.

12. The Chamber has not identified any clear and material error in the Registry's Second and Third Reports and therefore: (i) authorises the participation as victims of 1,097 applicants whose applications were transmitted within Group A; and (ii) orders that victim status not be granted to the 47 applicants whose applications were listed within Group B. In particular, the Chamber notes that the facts recounted by these applicants have been assessed as falling outside the territorial and/or temporal scope of the case.<sup>21</sup>

### **B. Legal representation**

13. As recommended by the Registry<sup>22</sup> and pursuant to its prior rulings on this matter,<sup>23</sup> the Chamber found it appropriate for the current common legal representation system to continue representing participating victims for the duration of the trial proceedings. Accordingly, the Chamber hereby appoints the single team of LRVs to represent the 272 currently unrepresented victims. Should any difficulty arise, the Registry is directed to submit a report to the Chamber, describing the difficulty and proposing an appropriate way forward.

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

**DECIDES** to reject the 47 applications listed in Annex B to the present decision for the purpose of the trial proceedings;

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<sup>21</sup> [Third Report](#), ICC-01/12-01/18-910, paras 24, 28.

<sup>22</sup> Registry Report on the implementation of Trial Chamber X's Decision of 20 December 2019, ICC-01/12-01/18-563-Anx-Red2, 27 January 2020, para. 27.

<sup>23</sup> [First Decision on Victims' Participation](#), ICC-01/12-01/18-661, para 39. *See also* Decision on the request from the legal representatives of victims in relation to the representation of victims, 15 May 2020, ICC-01/12-01/18-816; and Email from the Chamber to LRVs, 12 December 2019, at 9:28.

**DECIDES** to admit the 1,097 applicants listed in Annex A to the present decision as participating victims for the purpose of the trial proceedings;

**DECIDES** that the LRVs shall represent the 1,097 victims hereby admitted; and

**INSTRUCTS** the Registry to transmit copies of the victims' applications for participation to the LRVs hereby appointed to represent them.

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 Monday, 10 August 2020

At The Hague, The Netherlands