

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/15
Date: 30 September 2015

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

**SITUATION IN THE REPUBLIC OF MALI
IN THE CASE OF
*THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI***

Public

Decision on issues related to disclosure and exceptions thereto

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

Mohamed Aouini

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Cuno Tarfusser, Single Judge exercising the functions of the Chamber in the present case, issues this decision on issues related to disclosure and exceptions thereto under articles 61, 67, and 68 of the Statute, rules 15, 76-83, and 121 of the Rules of Procedure and Evidence (the “Rules”), and regulations 26 and 42 of the Regulations of the Court.

1. Taking note of standard procedures adopted in pre-trial proceedings before the Court, disclosure between the parties in the present proceedings shall take place through the Registry. For this purpose, the Registry shall file in the record of the case the currently applicable version of the E-court Protocol. It is for the parties to determine the appropriate level of classification of the items of evidence disclosed on an item-by-item basis. In addition, a procedure concerning exceptions to disclosure by the Prosecutor is further set out below.

2. All material disclosed between the parties in the context of the present proceedings shall be communicated to the Chamber following each batch of disclosure. The Single Judge does not consider it necessary at this stage to establish a calendar for disclosure setting specific time limits. At the same time, the Single Judge emphasises that disclosure of evidence to the Defence should take place without undue delay, and that all disclosure must be completed at the latest by the time limit for submission of the parties’ lists of evidence pursuant to rule 121 of the Rules.

3. The Single Judge recognises that expeditious disclosure is in part contingent on a clear and effective system applicable to exceptions to disclosure under rule 81(2) and (4) of the Rules, in particular as concerns redactions to evidence disclosed. Therefore, the following procedure shall apply for exceptions to disclosure by the Prosecutor, which are subject to judicial control, *i.e.* under rule 81(2) and (4) of the Rules.

4. The Prosecutor shall disclose evidence with redactions under rule 81(2) and (4) of the Rules without discrete application to the Chamber, except as provided in paragraph 7 below. When disclosing redacted evidence, the Prosecutor shall indicate the type of redaction in the redaction box by using the following codes:

Under rule 81(2) of the Rules

- Category A.1: Locations of witness interviews/accommodation, insofar as disclosure would unduly attract attention to the movements of the Prosecutor's staff and witnesses, thereby posing a risk to ongoing or future investigations;
- Category A.2: Identifying and contact information of the Prosecutor's, VWU or other Court staff members who travel frequently to, or are based in, the field, insofar as disclosure of this information could hinder their work in the field and thereby put at risk the ongoing or future investigations of the Prosecutor (to be further specified as A.2.1 for translators, A.2.2 for interpreters, A.2.3 for stenographers, A.2.4 for psycho-social experts, A.2.5 for other medical experts and A.2.6 for other staff members falling within this category);
- Category A.3: Identifying and contact information of translators, interpreters, stenographers and psycho-social experts assisting during interviews who are not members of the Prosecutor's staff but who travel frequently to, or are based in the field, insofar as disclosure of this information could hinder their work so that the Prosecutor could no longer rely on them, and thereby put at risk ongoing or future investigations of the Prosecutor (to be further specified as A.3.1 for translators, A.3.2 for interpreters, A.3.3 for stenographers, A.3.4 for psycho-social experts, A.3.5 for other medical experts and A.3.6 for other persons falling within this category);
- Category A.4: Identifying and contact information of investigators, insofar as disclosure of this information could hinder their work in the field thereby putting at risk the ongoing or future investigations of the Prosecutor;

- Category A.5: Identifying and contact information of intermediaries, insofar as disclosure of this information could hinder their work in the field thereby putting at risk the ongoing or future investigations of the Prosecutor;
- Category A.6: Identifying and contact information of leads and sources, insofar as disclosure of this information could result in the leads and sources being intimidated or interfered with and would thereby put at risk the ongoing or future investigations of the Prosecutor (to be further specified as A.6.1 for individual sources, A.6.2 for NGOs, A.6.3 for international organisations, A.6.4 for national governmental agencies, A.6.5 for academic sources, A.6.6 for private companies and A.6.7 for other sources);
- Category A.7: Means used to communicate with witnesses, insofar as disclosure of this information may compromise investigation techniques or the location of witnesses and would thereby put at risk the ongoing or future investigations of the Prosecutor;
- Category A.8: Other redactions under rule 81(2) of the Rules.

Under rule 81(4) of the Rules

- Category B.1: Recent contact information of witnesses, insofar necessary to protect the safety of the witness;
 - Category B.2: Identifying and contact information of family members of witnesses, insofar necessary to protect their safety;
 - Category B.3: Identifying and contact information of “other persons at risk as a result of the activities of the Court” (“innocent third parties”), insofar necessary to protect their safety;
 - Category B.4: Location of witnesses who are admitted in the International Criminal Court Protection Programme and information revealing the places used for present and future relocation of these witnesses, including before they enter the ICCPP;
 - Category B.5: Other redactions under rule 81(4) of the Rules.
5. When so disclosing evidence with redactions, the Prosecutor shall assign unique pseudonyms to any persons whose identity is redacted. The Prosecutor need not provide the category code and/or a pseudonym when doing so would defeat the purpose of the redaction but shall make clear

which codes/pseudonyms are missing for this reason. The Prosecutor shall also file in the record of the case a report stating which categories of redactions have been applied to particular items of evidence. In this report, the Prosecutor shall also briefly indicate, to the extent possible, the basis for each redaction falling under categories A.8 and B.5.

6. Should the Defence consider that a particular redaction is unwarranted or should be lifted as a result of changed circumstances, it shall approach the Prosecutor directly. The parties shall consult in good faith with a view to resolving the matter. If they are unable to agree, the Defence may apply to the Chamber for a ruling. In such case, the Prosecutor shall have the burden to justify the particular redaction, and shall file her submissions in the record of the case within five days, unless otherwise decided by the Chamber. Thereafter, the Chamber will rule as to whether the particular redaction is to be lifted or maintained.

7. The above procedure shall not apply to the non-disclosure of the witnesses' identities prior to the commencement of trial and to the non-disclosure of entire items of evidence. In such cases, the Prosecutor shall submit to the Chamber a discrete application.

8. The Prosecutor shall monitor the continued necessity of redactions, and shall re-disclose evidence with lesser redactions as soon as reasons justifying them cease to exist, or, if applicable, make an application under regulation 42(3) of the Regulations of the Court.

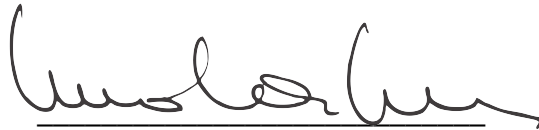
9. If the Prosecutor redacts evidence prior to disclosure on the basis of rule 81(1) of the Rules, she shall mark this in the redaction box as category "E".

FOR THESE REASONS, THE SINGLE JUDGE

ORDERS the Registrar to file the latest version of the E-court Protocol in the record of the case; and

DECIDES to adopt the procedure elaborated above for exceptions to disclosure by the Prosecutor under rule 81(2) and (4) of the Rules.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

Judge Cuno Tarfusser
Single Judge

Dated this 30 September 2015

At The Hague, The Netherlands