

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/12-01/15 A
Date: 26 September 2017**

THE APPEALS CHAMBER

Before:
Judge Howard Morrison, Presiding Judge
Judge Silvia Fernández de Gurmendi
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Piotr Hofmański

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI

Confidential

Order in relation to the notice of appeal filed on 18 September 2017

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

Legal Representatives of Victims

Mr Mayombo Kassongo

Counsel for the Defence

Mr Mohamed Aouini

REGISTRY

Registrar

Mr Herman von Hebel

The Appeals Chamber of the International Criminal Court,

In the appeal of the Legal Representative of Victims against the order of Trial Chamber VIII entitled “Reparations Order” of 17 August 2017 (ICC-01/12-01/15-236),

Having before it the “Notice of Appeal ‘*In part and limited*’ Against the Reparations Order of 17 August 2017 (ICC-01/12-01/15-236) issued in accordance with article 75 of the Statute; *limited to paragraphs 81, 83 and 146 setting one of the criteria for screening victims eligible for reparations*”, filed originally on 18 September 2017 (ICC-01/12-01/15-238-Conf-Corr-tENG),

Issues the following

ORDER

1. The Legal Representative of Victims shall file, by 16h00 on 6 October 2017, an amended notice of appeal which shall comply with regulation 57 of the Regulations of the Court.
2. If the amended notice of appeal, as filed under paragraph 1 above, is not filed publicly, it shall be accompanied by clear reasons as to why, in the view of the Legal Representative of Victims, it cannot be made public, in addition to, if possible, a public redacted version.

REASONS

1. On 17 August 2017, Trial Chamber VIII issued, publicly, the “Reparations Order”¹ (“Reparations Order”).
2. On 18 September 2017, counsel representing a group of victims (“Legal Representative of Victims”) filed, confidentially, a notice of appeal against the

¹ [ICC-01/12-01/15-236](#).

Reparations Order²; a second version, which was stated to be a corrigendum, was filed on 21 September 2017³ (“Notice of Appeal”).

A. Content of the Notice of Appeal

3. Regulation 57 of the Regulations of the Court (Appeal), as amended on 12 July 2017, and entering into force on 20 July 2017, provides:

For the purposes of rule 150, the appellant shall file a notice of appeal which shall state:

- (a) The name and number of the case;
- (b) The title and date of the decision of conviction or acquittal, sentence or reparation order appealed against;
- (c) Whether the appeal is directed against the whole decision or part thereof;
- (d) The specific provision of the Statute pursuant to which the appeal is filed;
- (e) The grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision;
- (f) The relief sought.

4. The Appeals Chamber notes that it appears from the Notice of Appeal that the Legal Representative of Victims was working off regulation 57 of the Regulations of the Court as it read prior to its amendment in July this year.⁴ Indeed, although the Notice of Appeal does contain information as to the general intended subject-matter of the appeal, currently, it does not properly comply with regulation 57 of the Regulations of the Court, as amended. In particular, the Notice of Appeal does not properly comply with sub-regulation (e) thereof by clearly setting out the grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision.

5. The Appeals Chamber also notes that, although the Legal Representative of Victims seems to request that the Reparations Order be partially amended,⁵ the Notice of Appeal does not specify which aspect of the Reparations Order should be amended, and it does not indicate what the nature of the amendment sought should be.

² ICC-01/12-01/15-238-Conf.

³ ICC-01/12-01/15-238-Conf-Corr-tENG.

⁴ Notice of Appeal, para. XI.

⁵ Notice of Appeal, para. XXIII.

Therefore, the Appeals Chamber also finds that the Notice of Appeal does not properly comply with regulation 57 (f) of the Regulations of the Court, which requires that the appellant also stipulate “[t]he relief sought”.

6. The Appeals Chamber finds it to be in the interests of justice to permit the Legal Representative of Victims, pursuant to regulation 29 of the Regulations of the Court, to file an amended notice of appeal which properly complies with regulation 57 (e) of the Regulations of the Court. In finding as such, the Appeals Chamber also considers it appropriate to permit the Legal Representative of Victims, at the same time, to clarify “[t]he relief sought”, as required by regulation 57 (f) of the Regulations of the Court.

B. Confidential nature of the Notice of Appeal

7. The Notice of Appeal was filed confidentially. The Legal Representative of Victims, referring to regulation 23*bis* of the Regulations of the Court, submits the following in this respect:

VII. [...] The purpose of the present Notice of Appeal is also to respectfully request the Chamber to maintain a high degree of confidentiality for all reparations applications.

[...]

XX. Aside from this ground of appeal, which challenges the above-mentioned paragraphs (i.e. 83 and 146) of the Order, the Legal Representative does not wish to advance any additional arguments other than the preservation of the utmost degree of confidentiality.

[...]

XXIV. III. Preservation of the utmost degree of confidentiality

XXV. *In accordance with regulation 23 bis* of the Regulations of the Court and taking into account the high degree of insecurity that persists in Timbuktu, it is prudent to keep the present document confidential, and future redactions should not be ruled out, should it be made public.

XXVI. This level of confidentiality is to be maintained, not only for the 139 reparations applications transmitted, but also for all other future applications.

XXVII. The Legal Representative intends to request not only confidentiality for the victims' reparations applications but, more importantly, significant redactions of the confidential information contained in them.

XXVIII. The Legal Representative emphasizes the ongoing climate of insecurity in the Timbuktu region, where there are regular attacks on the civilian population, adding that there is good reason to believe security would be jeopardized were the identity of the reparations beneficiaries to be disclosed. [Emphasis in original.]

8. Regulation 23*bis* of the Regulations of the Court requires a participant to "state the factual and legal basis for the chosen classification". The Appeals Chamber considers that the factual basis for filing the Notice of Appeal confidentially is not immediately apparent. In this regard, the Appeals Chamber notes that the Reparations Order was issued publicly. The proceedings which led to that order, as appears from the content of the order itself, also appear to have been largely conducted in public.⁶ To the extent that the Notice of Appeal appears to suggest that, because of the prevailing security situation in Timbuktu, the identities of those who have applied for reparations must be kept confidential, the Appeals Chamber notes that, on its face, none of the information contained in the Notice of Appeal could lead to their identification. In addition, the Legal Representative of Victims had already indicated to the Registry, by virtue of their inclusion on the second page of the Notice of Appeal, that, *inter alia*, various *amicus curiae*, in addition to representatives of the Republic of Mali, should be notified of the Notice of Appeal, despite the fact that he classified it as confidential.

9. The Appeals Chamber recalls the need to ensure that information is protected as necessary. However, it also recalls the need to ensure that its proceedings are, to the extent possible, public. Bearing in mind the implications for the proceedings as a whole should the Notice of Appeal remain confidential, the Appeals Chamber considers that, if the amended notice of appeal is not filed publicly, it shall be accompanied by clear reasons as to why, in the view of the Legal Representative of Victims, it cannot be made public, in addition to, if possible, a public redacted version.

⁶ See [Reparations Order](#), paras 1 – 8 and accompanying footnotes.

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



Judge Howard Morrison
Presiding Judge

Dated this twenty-sixth day of September 2017

At The Hague, The Netherlands