



Original: English

No. ICC-01/12-01/15 A

Date: 17 October 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

Public document

**Order on the filing of public versions of documents and on the reclassification of
order ICC-01/12-01/15-240-Conf**

Order 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),

Having before it the “Notice of Appeal ‘*In part and limited*’ against the Reparations Order of 17 August 2017 (paragraphs 81, 83 and 146) pursuant to Appeals Chamber Order ICC-01/12-01/15-240-Conf, paragraphs”, filed originally on 6 October 2017 (ICC-01/12-01/15-242-Conf-Exp-Corr-tENG), with a confidential *ex parte* annex containing documents 1 to 5, filed later as separate annexes (ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx1 to Anx5),

Issues the following

ORDER

1. The Legal Representative of Victims is directed to file, by 16h00 on 20 October 2017, public versions of the following documents, with redactions where necessary in the view of the Legal Representative of Victims:
 - a. ICC-01/12-01/15-238-Conf-Corr
 - b. ICC-01/12-01/15-238-Conf-Corr-Anx
 - c. ICC-01/12-01/15-242-Conf-Exp-Corr
 - d. ICC-01/12-01/15-242-Conf-Exp-Corr-AnxA
 - e. ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx1
 - f. ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx2
 - g. ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx3
 - h. ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx4

- i. ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx5
2. The Registrar is directed to reclassify as public Order ICC-01/12-01/15-240-Conf.

REASONS

1. On 17 August 2017, Trial Chamber VIII issued, publicly, the “Reparations Order”¹ (“Reparations Order”).
2. On 18 September 2017, a legal representative acting on behalf of a group of victims (“Legal Representative of Victims”) filed a notice of appeal² (“Notice of Appeal”). Referring to regulation 23bis of the Regulations of the Court (“Regulations”), the Legal Representative of Victims filed the Notice of Appeal as “confidential”.³
3. On 26 September 2017, the Appeals Chamber issued an “Order in relation to the notice of appeal filed on 18 September 2017”, requiring the Legal Representative of Victims to file an amended notice of appeal by 6 October 2017⁴ (“Order of 26 September 2017”). The Order of 26 September 2017 stated that if the amended notice of appeal was not filed in a public version, “it [should] be accompanied by clear reasons as to why, in the view of the Legal Representative of Victims, it cannot be made public”.⁵
4. On 6 October 2017, the Legal Representative of Victims filed an amended version of the Notice of Appeal⁶ (“Amended Notice of Appeal”) in response to the

¹ [ICC-01/12-01/15-236](#).

² “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*”, ICC-01/12-01/15-238-Conf. The Legal Representative of Victims filed a purported “corrigendum” on 21 September 2017 (ICC-01/12-01/15-238-Conf-Corr); an English version was registered on 25 September 2017 (ICC-01/12-01/15-238-Conf-Corr-tENG).

³ Notice of Appeal, paras 25-28.

⁴ ICC-01/12-01/15-240-Conf.

⁵ Order of 26 September 2017, p. 3.

⁶ “Notice of Appeal ‘*In part and limited*’ against the Reparations Order of 17 August 2017 (paragraphs 81, 83 and 146) pursuant to Appeals Chamber Order ICC-01/12-01/15-240-Conf, paragraphs”, ICC-01/12-01/15-242-Conf-Exp. The Legal Representative of Victims filed a purported “corrigendum” on 9 October 2017 (ICC-01/12-01/15-242-Conf-Exp-Corr); an English version was registered on 13 October 2017 (ICC-01/12-01/15-242-Conf-Exp-Corr-tENG).

Order of 26 September 2017, with a single annex.⁷ The Legal Representative of Victims filed the Amended Notice of Appeal and the annex as “confidential, *ex parte*”, available only to the Appeals Chamber. He asserts that the “justification for maintaining confidentiality is the lack of protective measures for displaced persons making the journey to northern Mali and the region of Timbuktu”.⁸ The Legal Representative of Victims avers that those persons “making this journey do so at great risk, which warrants the requested measure of temporary confidentiality, except where victims consent to the disclosure of confidential information for reparations purposes”.⁹ The Appeals Chamber notes, however, that it is not clear whether this statement is made to justify the filing of the Amended Notice of Appeal as confidential, *ex parte*, or rather as a summary of one of the grounds of appeal which the Legal Representative of Victims intends to bring.

5. The Appeals Chamber recalls the principle that appeals proceedings be held publicly. This principle applies to all written submissions on appeal. Regulation 23*bis* of the Regulations requires that, should a participant wish to file a document as “confidential” or “*ex parte*”, the participant must “state the factual and legal basis for the chosen classification”. These reasons must be cogent, and the participant must justify why the document itself must be so classified in lieu of filing it as “public” and applying redactions only to particular parts of it.

6. The Appeals Chamber considers that while there may indeed be concerns about the security of persons returning to Mali, the Legal Representative of Victims has not given sufficient reasons for filing the Notice of Appeal on a confidential basis or for filing the Amended Notice of Appeal on a confidential, *ex parte* basis. The Appeals Chamber further notes that at the conclusion of his justification for confidentiality of the Amended Notice of Appeal, the Legal Representative of Victims states that he “will, however, produce a redacted version, given the high level of insecurity faced by the persons cited in the annexes who are not parties to the

⁷ ICC-01/12-01/15-242-Conf-Exp-Anx. With the purported “corrigendum” of the Amended Notice of Appeal, the original *ex parte* annex was split into five separate *ex parte* annexes (ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx1; ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx2; ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx3; ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx4; ICC-01/12-01/15-242-Conf-Exp-Anx-Corr-Anx5).

⁸ Amended Notice of Appeal, para. 33.

⁹ Amended Notice of Appeal, para. 33.

proceedings".¹⁰ The Appeals Chamber directs the Legal Representative of Victims to file, by 16h00 on 20 October 2017, public redacted versions of the Notice of Appeal and the Amended Notice of Appeal, including accompanying annexes.

7. Finally, the Appeals Chamber finds that no reason exists for the Order of 26 September 2017 to remain confidential and directs that it be reclassified as public.

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



Judge Howard Morrison
Presiding Judge

Dated this seventeenth day of October 2017

At The Hague, The Netherlands

¹⁰ Amended Notice of Appeal, para. 36.