

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 10 August 2017

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Single Judge

SITUATION IN THE REPUBLIC OF MALI

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

Confidential

Decision on Registry's submissions on Order on Publicity of Case Record

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

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Gilles Dutertre

Counsel for the Defence

Mohamed Aouini

Legal Representative of Victims

Mayombo Kassongo

Legal Representatives of 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

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Raul C. Pangalangan, acting as Single Judge on behalf of Trial Chamber VIII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court issues the following 'Decision on Registry's submissions on Order on Publicity of Case Record', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 64(7) of the Rome Statute and Regulation 23 *bis* of the Regulations of the Court.

I. Procedural History

1. On 19 January 2017, the Chamber appointed four experts to assist in the determination of reparations.¹ Their respective reports were transmitted to the Chamber on 28 April 2017.²
2. On 11 July 2017, the Single Judge issued the Order on Publicity of Case Record, directing, *inter alia*, 'the Appointed Experts to file public redacted versions of their reports, in consultation with the Registry, by 4 August 2017' and leaving 'at their discretion to decide whether they wish to have their identity made public'.³
3. On 4 August 2017, the Registry filed a submission recommending that the Chamber accepts its suggestions to (i) reconsider its decision to leave it at the discretion of the experts to decide on the disclosure of their names and to instruct Karima Bennouna and Marina Lostal to keep their identity confidential; and (ii) maintain certain redactions to the expert report ('First

¹ Decision Appointing Reparations Experts and Partly Amending Reparations Calendar, 19 January 2017, ICC-01/12-01/15-203-Red (confidential version notified same day).

² Transmission of Experts' Reports pursuant to Trial Chamber Decision ICC-01/12-01/15-203-Red of 19 January 2017, 1 May 2017, ICC-01/12-01/15-214 (with three annexes; confidential redacted versions of annexes notified to the parties on 3 May 2017 and to the TFV on 4 May 2017; corrigendum of annexes II and III notified on 4 May 2017).

³ ICC-01/12-01/15-228, in particular para. 4 and disposition.

Expert Report') on information that its author – Karima Bennoune – wishes to make public ('Registry Submission').⁴

4. Both experts informed the Chamber of the reasons for their position by way of emails transmitted via the Registry.⁵

II. Submissions and analysis

5. In respect of the disclosure of the experts' names, the Registry submits that the volatile and tensed security situation in Mali would create a risk to the two experts themselves if their names were publically disclosed and that it may additionally lead to the identification of the two other experts who wish to have their names kept confidential.⁶ Further, making their names public would enable anyone to find their photograph on the internet and to investigate in the field with said photographs. Any interlocutors of the experts in Timbuktu may then be identified as having interacted with the experts and thus be perceived as collaborating with the ICC and may thus be subject to threats, pressure or retaliation.⁷
6. In respect of the redactions to the First Expert Report, the VWU recommends that any references to women, in particular those affected by the violence in 2012 in Timbuktu, be redacted as they would otherwise risk being stigmatised as 'potential beneficiaries of reparations' and thus expose them to an unacceptable risk level.⁸

⁴ Registry submission in relation to the Chamber's Order on Publicity of Case Record, ICC-01/12-01/15-232-Conf-Exp (notified on 7 August 2017). It is noted that on 3 August 2017, by way of email sent at 20:12, the Registry had informed the Chamber that an issue in this respect will arise. A courtesy copy was also received on 3 August 2017.

⁵ Email from Karima Bennoune transmitted to the Chamber on 3 August 2017 at 16:12 and Email from Marina Lostal transmitted to the Chamber on 4 August 2017 at 13:46.

⁶ Registry Submissions, ICC-01/12-01/15-232-Conf-Exp, paras 10-11.

⁷ Registry Submissions, ICC-01/12-01/15-232-Conf-Exp, paras 13-18.

⁸ Registry Submissions, ICC-01/12-01/15-232-Conf-Exp, paras 19-24.

7. The Single Judge recalls that publicity of the proceedings is the rule and that any exception thereof should be duly justified. In the present case, the Single Judge does not find that the Registry's arguments are persuasive and warrant reconsideration of the Chamber's ruling.
8. In respect of the disclosure of the experts' names, the Registry is not advancing any new information in relation to the dire security situation in Timbuktu, which the Single Judge – and the experts, it appears⁹ – are well-aware of.¹⁰ The Registry's speculative argument that disclosing the names of the experts will enable finding photographs of them on the internet, which in turn may be used to investigate on individuals who may have communicated with them, is not persuasive either. If that was to be the case, the identity of all individuals having ever worked for or in connection with the Court at any point should be kept confidential for an indefinite period of time. Furthermore, the Chamber notes that, as an additional protective measure, the identifying information of the individuals with whom the experts interacted will remain redacted even if the Registry's relief sought is rejected. Lastly, the experts' mission was very short, has been completed many months ago and one of the experts did not even go on said mission for medical reasons. Accordingly, the Single Judge does not find that the Registry's arguments warrant a reconsideration of its decision of 11 July 2017 to leave at the discretion of the experts to decide whether their names should be made public or not.
9. In respect of the disputed redactions on information pertaining to women, the Registry's submission that 'women' in general (*i.e.* approximately 50% of the population) are to be treated as a vulnerable group for the purpose of redactions is rejected as overly broad.

⁹ Registry Submissions, ICC-01/12-01/15-232-Conf-Exp, para. 7.

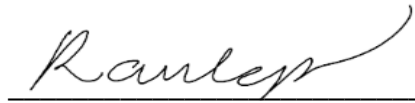
¹⁰ See for example, Registry's observations pursuant to Trial Chamber VIII's Decision ICC-01/12-01/15-172 of 29 September 2016, ICC-01/12-01/15-193 (with two annexes).

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

DIRECTS the Registry to file Karima Bennoune's and Marina Lostal's reports in accordance with paragraphs 8-9 above forthwith; and

DIRECTS the Registry to notify them of the present decision.

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

A handwritten signature in black ink, appearing to read 'Raul C. Pangalangan', is written over a horizontal line.

Judge Raul C. Pangalangan, Single Judge

Dated 10 August 2017

At The Hague, The Netherlands