

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: **11 June 2018**

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Single Judge

SITUATION IN THE REPUBLIC OF MALI

***IN THE CASE OF
THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED
AG MAHMOUD***

Public

**Prosecution's request for clarification on submission of discrete applications to
seek authorisation for the non-disclosure of witnesses' identities**

Source: Office of the Prosecutor

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

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**Unrepresented Applicants for
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Introduction

1. Pursuant to the Single Judge's "*Décision relative au système de divulgation et à d'autres questions connexes*" ("Decision"),¹ the Prosecution is required to submit a discrete application to seek authorisation for the non-disclosure of witnesses' identities prior to the commencement of trial.²
2. The Prosecution understands the scope of this instruction to include witnesses who provided to the Prosecution formal statements. Other persons who were screened by the Prosecution but did not provide such formal statements would fall outside the scope of this instruction and would be subject to the pre-approved standard redaction categories included in the Decision.³
3. To ensure its proper compliance with the Decision, the Prosecution seeks the Single Judge's further guidance on this point.

Submissions

4. Pursuant to the Decision, the Prosecution is authorised to disclose evidence with certain standard redactions under rule 81(2) and 81(4) without submitting a discrete application to the Chamber ("standard redactions").⁴ This is intended to ensure judicial economy, uniform practice and efficiency in the disclosure preparation.
5. This procedure does not apply to: (1) the non-disclosure of the witnesses' identities prior to the commencement of trial; and (2) the non-disclosure of entire

¹ ICC-01/12-01/18-31.

² ICC-01/12-01/18-31, para. 33.

³ ICC-01/12-01/18-31, para. 29.

⁴ This includes redactions under rule 81(2) for specific information such as locations of witness interviews, identifying information of staff members, and identifying information of intermediaries, leads and sources, and redactions under rule 81(4) for specific information such as recent contact information of witnesses, and identifying and contact information of family members of witnesses or innocent third parties. *See* ICC-01/12-01/18-31, para. 29.

items of evidence. In such cases, the Prosecution is required to submit to the Chamber a discrete application.⁵

6. In its preparation for disclosure, the Prosecution came across documents such as screening notes/investigation reports regarding persons, whom it contacted/screened but from whom it did not proceed to obtain formal statement.
7. Still, the corresponding screening notes/contact notes regarding these persons may sometimes contain few disclosable information, for instance under rule 77.
8. In such cases, the Prosecution considers that these individuals⁶ fall outside the category mentioned in paragraph 33 of the Decision for whom a discrete application should be submitted, because a) the Prosecution's interactions with these persons did not amount to obtaining formal statements, and b), obviously, the Prosecution does not rely on them as witnesses for the purpose of the confirmation hearing.
9. As a result, pre-approved standard redactions should instead be applied to their identifying information pursuant to paragraph 29 of the Decision.
10. Applying standard redactions to this category of persons will ensure judicial economy and efficiency in the disclosure preparation while respecting the rights of the suspect and the protection of innocent third parties. As with all standard redaction categories, the Decision puts in place safeguards regarding the suspect's interests, including by informing him of the type of redactions applied⁷ and by providing him with the possibility to challenge such redactions.⁸
11. Conversely, requiring the Prosecution to submit a discrete application every time a person was contacted without providing a formal statement would, in the

⁵ ICC-01/12-01/18-31, para. 33.

⁶ As a matter of practice, these individuals are internally assigned witness codes in order for the Prosecution to manage their information and their interactions with the Office.

⁷ ICC-01/12-01/18-31, para. 29, 30.

⁸ ICC-01/12-01/18-31, para. 31.

Prosecution's opinion, defeat the purpose of the Redaction Protocol to streamline the disclosure process.

Conclusion

12. The Prosecution seeks the Single Judge's clarification as to whether the persons who were contacted/screened by the Prosecution but did not provide formal statements, should be subject to a discrete application for the non-disclosure of their identities or whether standard redactions should be applied as provided in paragraph 29 of the Decision.
13. The Prosecution will still submit Requests for redactions of identifying information regarding individuals who did provide formal statements, even if the Prosecution will not rely on their evidence at the confirmation hearing, and to the extent the evidence they provided is disclosable for example under rule 77.



Fatou Bensouda, Prosecutor

Dated this 11th day of June 2018
At The Hague, The Netherlands