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No.: ICC-01/12-01/18

Date: 31 May 2019

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

***With Confidential Ex Parte Annex
Available to Registry, Prosecution and Defence only***

Defence request for lifting of redactions

**Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
Mahmoud**

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

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**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and
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Other

1. Introduction

1. In line with paragraph 31 of the Redaction Protocol,¹ the Defence for Mr. Al Hassan respectfully requests the Honourable Pre-Trial Chamber to order the Prosecution to lift the redactions to the dates of interviews with Prosecution witnesses.
2. It is neither necessary nor proportionate to redact this specific information. The non-disclosure of interview dates is also unduly prejudicial insofar as it prevents the Defence from conducting any analysis as to the manner in which the Prosecution conducted its investigations, including as concerns:
 - the extent to which the Prosecution relied on information received from some witnesses to frame further investigations and interviews; and
 - whether the Prosecution conducted any appropriate follow inquiries or investigations as soon as exculpatory or contradictory information was brought to its attention.
3. The burden for maintaining the redactions, which falls exclusively on the Prosecution, is not met. The information should therefore be provided to the Defence forthwith.

2. Submissions

4. In the summarised versions of ICC Prosecution witness statements, the Prosecution has either omitted or redacted the dates on which the original statements were taken.² For cases where this information is simply omitted, the Prosecution has not supplied any justification, by way of a redaction code.³

¹ ICC-01/12-01/18-31-tEng-Corr, para. 31.

² See for example, MLI-OTP-0031-0050 and MLI-OTP-0060-9414-R01.

³ MLI-OTP-0031-0050; MLI-OTP-0031-0056; MLI-OTP-0031-0061; MLI-OTP-0031-0078; MLI-OTP-0031-0080; MLI-OTP-0031-0084-R01; MLI-OTP-0031-0086; MLI-OTP-0060-2019; MLI-OTP-0062-3317; MLI-OTP-0070-0749; MLI-OTP-0070-0917; MLI-OTP-0070-0929.

Where the information is redacted, the Prosecution has either used the code A.1, A.8, or the code 'F',⁴ which is not a code used in this case.

5. Given the extent to which these redactions impede Defence analysis, on 7 May 2019, the Defence requested the Prosecution to lift the redactions to the dates of witness interviews.
6. Seventeen days later, the Prosecution responded that “the mentioned redactions are applied in compliance with the redaction protocol (Decision ICC-01/12-01/18-31) and/or the Chamber’s authorization”;⁵ the Prosecution did not specify which redaction code applied nor did it otherwise refer to specific decisions of the Chamber.
7. Given the very discrete nature of the requested information (the dates of interviews) it is also impossible to ascertain any objective basis for maintaining these redactions or for otherwise withholding the requested information.
8. The Appeals Chamber has underscored that “the overriding principle is that full disclosure should be made. It must always be borne in mind that the authorisation of non-disclosure of information is the exception to this general rule.”⁶ This ‘general rule’ may only be departed from to the extent necessary to protect against an “objectively justifiable risk”, and, where “the information may be of assistance to the case of the suspect or may affect the credibility of the case of the Prosecutor, the Pre-Trial Chamber will need to take particular care when balancing the interests at stake”.⁷
9. The non-disclosure of interview dates in witness summaries fails to clear these hurdles. Interview dates do not reveal the location or identities of witnesses.

⁴ MLI-OTP-0059-0361; MLI-OTP-0060-9414-R01, MLI-OTP-0019-0296-R01

⁵ Annex.

⁶ ICC-01/04-01/07-475, para. 70.

⁷ ICC-01/04-01/07-475, para. 72.

Prosecution investigations should largely be completed at this juncture,⁸ and hypothetical operational security concerns cannot trump the right of the Defence to conduct a meaningful analysis of the credibility and consistency of allegations made at different points in time. The rationale for maintaining redactions in a case where the defendant pled guilty (*Al Mahdi*) has less resonance in a case where the defendant has not done so, and reserves the right to challenge the veracity and credibility of the Prosecution case.

3. Conclusion

10. For the reasons set out above, the Defence for Mr. Al Hassan respectfully requests the Honourable Pre-Trial Chamber to order the Prosecution to provide to the Defence the dates of all witness interviews, irrespective of the format in which the statement has been submitted for the purposes of the confirmation hearing.



Melinda Taylor
Lead Counsel for Mr Al Hassan

Dated this 31st Day of May 2019
At The Hague, The Netherlands

⁸ “As previously indicated by the Appeals Chamber, the investigation should largely be completed at the stage of the confirmation of charges hearing.” ICC-01/04-01/10-514, para. 44.