

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **12 January 2016**

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Single Judge

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

Public

Public redacted version of "Prosecution's response to the Defence's request to postpone the date of the confirmation hearing", 8 January 2016

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and Reparations
Section**

Other

Introduction

1. On 7 January 2016, the Defence of Ahmad AL FAQI AL MAHDI (“Defence”) filed its *Requête de la Défense en vue de solliciter le report de la date de l’audience de confirmation des charges fixée par la Chambre Préliminaire au 18 janvier 2016*¹ (the “Defence Request”), requesting that the date of the article 61 hearing to confirm the charge against Ahmad AL FAQI AL MAHDI (“confirmation hearing”) be postponed to a date no earlier than 21 March 2016.

2. The Office of the Prosecutor (“Prosecution”) supports the Defence’s request for a postponement of the confirmation hearing, for the following reasons:
 - First, [REDACTED].² [REDACTED]. A postponement will allow [REDACTED] to directly contribute to the expeditious conduct of the confirmation proceedings and subsequent phases.

 - Second, an appropriate postponement of the confirmation hearing will allow the mitigation of security risks [REDACTED] and, as a result, will permit more transparent and public confirmation proceedings. As noted by the Prosecution in previous filings, the security situation in Mali and the neighbouring region is tense and deteriorated in 2015.³ Armed groups including Al Qaeda in the Islamic Maghreb (AQIM) and Ansar Dine have been associated with attacks against individuals suspected of cooperating with international organisations.⁴ [REDACTED]⁵, [REDACTED] a) first, [REDACTED], and b) limit the

¹ [REDACTED].

² [REDACTED].

³ See, e.g., ICC-01/12-01/15-59-Conf-Red, para.18.

⁴ See ICC-01/12-01/15-55-Conf-Red, paras.24-25.

⁵ [REDACTED].

need for closed sessions [REDACTED] which would otherwise be significant, potentially extending to the totality of the confirmation hearing. The Prosecution would therefore support a reasonable postponement [REDACTED] with the aim of facilitating more transparent and effective proceedings. [REDACTED].

3. Finally, the Prosecution notes the various technical and logistical difficulties described in the Defence Request, and the alleged impact which such difficulties have had on the Defence's ability to prepare for the confirmation hearing. The Prosecution confirms that 11,498 items in total have been disclosed to the Defence. In this context, mindful of its disclosure obligations under the Statute and Rules of Procedure and Evidence as well as the deadline set by the Single Judge, the Prosecution – in coordination with the Defence – has worked continuously to facilitate the Defence's work:
 - a. The Prosecution began disclosure on 9 October 2015, as soon as the Defence had hired a case manager and expressed its readiness to accept the first disclosure package;
 - b. The Prosecution provided the first disclosure packages to the Defence on DVD to permit the Defence to review the disclosed items directly, without the need for eCourt, TRIM, or other access;
 - c. The Prosecution thereafter provided disclosure to the Defence on a rolling basis, with a new package disclosed almost every week, such that all but 451 items were disclosed before December 2015;⁶
 - d. The Prosecution provided with each disclosure package a table specifying the items by, *inter alia*, type⁷ and title, to allow easier and more effective review by the Defence;

⁶ Of the incriminating items disclosed, 1,348 out of the total 1,810 were disclosed before the end of October 2015. The majority of Rule 77 items were also disclosed by the end of October 2015.

⁷ For example, 1,282 items were press articles and 7,007 were photographs.

- e. The Prosecution disclosed Arabic translations of the statements of all witnesses upon whom it intends to rely at the confirmation hearing, in compliance with Rule 76(3), although it is correct that most of these translations were disclosed in December 2015 (the original statements having been disclosed earlier);⁸ and
 - f. The Prosecution consciously limited the number of items disclosed as incriminating evidence to 1,810, only 593 of which were ultimately cited in the written submissions in support of the charge and included on the Prosecution's list of evidence for the confirmation hearing.
4. In short, the Prosecution has complied fully with its disclosure obligations under the Statute and Rules. However, it does recognize (a) the diligence and good faith in which the Defence team has worked since its appointment; (b) that a substantial amount of information has been disclosed to the Defence since the initial appearance; and (c) that the Defence has indeed faced technical and material challenges.
 5. For the reasons set forth above, the Prosecution supports the Defence's request for an appropriate postponement of the confirmation hearing.
 6. This response is filed [REDACTED] available only to the Prosecution and the Defence [REDACTED]. A public redacted version will be filed as soon as practicable.

⁸ With regard to translations, the Prosecution has complied with its obligations under the Statute and Rules of Procedure and Evidence. First, all statements of witnesses to be relied upon at the confirmation hearing have been translated into Arabic in compliance with Rule 76(3). [REDACTED]. In addition to the document containing the charge, which was translated into Arabic in its entirety and filed on 17 December 2015, the Prosecution also provided the Defence on 24 December 2015, on a courtesy basis, an Arabic translation of most of the written submissions in support of the charge.



Fatou Bensouda, Prosecutor

Dated this 12th day of January 2016

At The Hague, The Netherlands