

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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

Date: **2 August 2016**

Date of submission: **16 December 2016**

**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***

**PUBLIC**

**Public redacted version of "Prosecution's Observations on Six Applications for  
Victims' Participation in the Proceedings", 2 August 2016,  
ICC-01/12-01/15-149-Conf-Exp**

**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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**REGISTRY**

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**Counsel Support Section**

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
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## Introduction

1. On 25 July 2016, the Registry transmitted to the Chamber and the Office of the Prosecutor ("Prosecution") six applications to participate in the proceedings in the case *The Prosecutor v. Ahmad Al Faqi Al Mahdi* pursuant to article 68(3) of the Rome Statute ("the Statute").<sup>1</sup>
2. In its filing, the Registry provided the Prosecution with the unredacted versions of these six applications in accordance with rule 89(1) of the Rules of Procedure and Evidence ("the Rules").
3. Pursuant to rule 89(1) of the Rules, the Prosecution submits the following observations on these applications.
4. For the reasons detailed below, the Prosecution does not object to the participation of the five applicants; a/35003/16, a/35004/16, a/35005/16, a/35006/16 and a/35007/16 as victims in the above-mentioned proceedings, pursuant to article 68(3) of the Statute.
5. For these five applicants, the Prosecution leaves it to the Chamber to determine whether each application meets the necessary requirement for admissibility, specifically in relation to the status of each organisation applying for participation that might qualify as "*association de fait*"<sup>2</sup> provided they can be considered to have existed for some time and have clear identifying features and objectives. However, should the Chamber consider that the provided documents are insufficient; the Prosecution suggests that the applicants be requested to provide additional information.

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<sup>1</sup> See ICC-01/12-01/15-142.

<sup>2</sup> Later called *de facto* organisation in this filing.

6. In relation to the sixth application, the Prosecution submits that the Chamber should invite applicant a/35008/16 to provide further information to establish the link between the harm claimed and the crimes alleged in these proceedings. It is submitted that the remaining requirements to be granted participatory rights at trial under article 68(3) of the Statute are met for this applicant.

### **Classification**

7. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the present observations are filed confidentially *ex parte* due to the sensitivity of the information [REDACTED]  
[REDACTED]  
[REDACTED]. A confidential redacted version will be filed as soon as practicable.

### **Observations**

*a/35003/16*<sup>3</sup>

8. The applicant is acting on behalf of an organisation related to the mausoleum [REDACTED].
9. With the exception of (i) missing identity documents for the two representatives of the said mausoleum providing standing for the applicant to act on behalf of their organisation and (ii) a potential clarification as to the status of the organisation, it is submitted that the application may be deemed to meet the requirements under article 68(3) of the Statute for participation in the proceedings at trial stage.

<sup>3</sup> ICC-01/12-01/15-142-Conf-Exp-Anx 1.

10. This application contains relevant information on the identity of the applicant, supported by his identity card; an identification of the alleged perpetrators; it clearly identifies the material and psychological harm suffered as a result of the crime; and falls under the relevant geographical and temporal scope of the charges.
11. The Prosecution further notes that although documents establishing the identity of the organisation staff who agreed to have the applicant acting on behalf of their organisation are missing, both persons can still be identified by their respective names and both have signed and dated the authorisation for the applicant to act on behalf of their organisation. They have also provided some of their contact details (phone numbers).
12. That being said, the Prosecution notes that the status of the organisation is unclear. No official documentation is provided in order to assess (i) the existence and purpose of the said organisation and (ii) whether the persons who signed the affidavit for the applicant to act on behalf of the organisation are indeed member of this organisation and, if so, have the authority to act on its behalf. The form only states that they are members of the said organisation (page 9).
13. However, the organisation in question might still be seen as a *de facto* organisation without proper registration provided it can be shown that the organisation can be considered to have existed for some time and have clear identifying features and objectives. The prosecution leaves it to the Chamber to determine, possibly subject to additional explanations, whether such an organisation would qualify as victim under article 68(3) of the Statute.

*a/35004/16*<sup>4</sup>

14. The applicant is acting on behalf of an organisation related to the [REDACTED].
15. As for the previous application, with the exception of (i) missing identity documents for the representative of the said mausoleum providing standing for the applicant to act on behalf of the organisation and (ii) a potential clarification as to the status of the organisation, it is submitted that the application may be deemed to meet the requirements under article 68(3) of the Statute for participation in the proceedings at trial stage.
16. Indeed, the application provides relevant information on the identity of the applicant, supported by his identity card; an identification of the alleged perpetrators; it clearly identifies the psychological harm suffered as a result of the crime; and falls under the relevant geographical and temporal scope of the charges.
17. The Prosecutor further notes that although documents establishing the identity of the organisation staff who agreed to have the applicant acting on behalf of the organisation are missing, this person still signed and dated the authorisation for the applicant to act on behalf of his organisation.
18. That being said, the Prosecution notes that the status of the organisation is unclear. No official documentation is provided in order to assess (i) the existence and purpose of the said organisation and (ii) whether the person who signed the affidavit for the applicant to act on behalf of the organisation is indeed member

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<sup>4</sup> ICC-01/12-01/15-142-Conf-Exp-Anx2

of this organisation and, if so, has the authority to act on its behalf. The form only states that he is a member of the said organisation (page 9).

19. Lastly, here again the organisation in question might be seen as a *de facto* organisation without proper registration. The Prosecution leaves it to the Chamber to determine, possibly subject to additional explanations, whether such an organisation would qualify as victim under article 68(3) of the Statute.

*a/35005/16*<sup>5</sup>

20. The applicant is acting on behalf on an organisation related [REDACTED].

21. As for the two previous applications, with the exception of (i) missing identity documents for the two representatives of the said mausoleum providing standing for the applicant to act on behalf of their organisation and (ii) a potential clarification as to the status of the organisation, it is submitted that the application may be deemed to meet the requirements under article 68(3) of the Statute for participation in the proceedings at trial stage.

22. The application contains relevant information on the identity of the applicant, supported by his identity card; an identification of the alleged perpetrators; it clearly identifies the material and psychological harm suffered as a result of the crime; and falls under the relevant geographical and temporal scope of the charges.

23. The Prosecution submits that, as in the previous applications, although documentation establishing the identity of the organisation staff is missing, both

<sup>5</sup> ICC-01/12-01/15-142-Conf-Exp-Anx3

persons can still be identified by their respective names and both have signed and dated the authorisation for the applicant to act on behalf of their organisation. They have provided some of their contact details (phone numbers) as well.

24. That being said, the Prosecution notes that the status of the organisation is unclear. No official documentation is provided in order to assess (i) the existence and purpose of the said organisation and (ii) whether the persons who signed the affidavit for the applicant to act on behalf of the organisation are indeed member of this organisation and, if so, have the authority to act on its behalf. The form only states that they are members of the said organisation (page 9).

25. Here again, the organisation in question might be seen as a *de facto* organisation without proper registration. The Prosecution leaves it to the Chamber to determine, possibly subject to additional explanations, whether such an organisation would qualify as victim under article 68(3) of the Statute.

26. Last, the Prosecution notes that the application is dated [REDACTED]. It is submitted that this discrepancy should not affect the validity of the application. It is mostly certainly a typographical error given that the events mentioned within the application are related to the period of June 2012, [REDACTED]

[REDACTED].

*a/35006/16*<sup>6</sup>

27. The applicant is acting on behalf of an organisation [REDACTED]

[REDACTED].

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<sup>6</sup> ICC-01/12-01/15-142-Conf-Exp-Anx4



28. Once more, as in the previous applications, with the exception of (i) missing identity documents for the two representatives of the said mausoleum providing standing for the applicant to act on behalf of their organisation and (ii) a potential clarification as to the status of the organisation, it is submitted that the application may be deemed to meet the requirements under article 68(3) of the Statute for participation in the proceedings at trial stage.
29. Indeed, it provides relevant information on the identity of the applicant, supported by his identity card; an identification of the alleged perpetrators; it clearly identifies the material and psychological harm suffered as a result of the crime; and falls under the relevant geographical and temporal scope of the charges.
30. The Prosecutor submits that although documentation establishing the identity of the organisation staff is missing, both persons can still be identified by their respective names and both have signed and dated the authorisation for the applicant to act on behalf of their organisation. They have also provided some of their contact details (phone numbers).
31. However, the Prosecution notes that the status of the organisation is unclear. No official documentation is provided in order to assess (i) the existence and purpose of the said organisation and (ii) whether the persons who signed the affidavit for the applicant to act on behalf of the organisation are indeed member of this organisation and, if so, have the authority to act on its behalf. The form only states that they are members of the said organisation (page 9).
32. The organisation in question might be seen as a *de facto* organisation. The prosecution leaves it to the Chamber to determine, possibly subject to additional

explanations, whether such an organisation would qualify as victim under article 68(3) of the Statute.

*a/35007/16*<sup>7</sup>

33. The applicant is acting on behalf of an organisation [REDACTED]

34. With the exception of (i) missing identity documents for the representative of the said mausoleum providing standing for the applicant to act on behalf of the organisation and (ii) a potential clarification as to the status of the organisation, it is submitted that the application may be deemed to meet the requirements under article 68(3) of the Statute for participation in the proceedings at trial stage.

35. Indeed, it contains relevant information on the identity of the applicant, supported by his identity card; an identification of the alleged perpetrators; it clearly identifies the psychological harm suffered as a result of the crime; and falls under the relevant geographical and temporal scope of the charges.

36. The Prosecutor submits that although documentation confirming the identity of the organisation staff is missing, this person did sign and date the authorisation for the applicant to act on behalf of his organisation.

37. The Prosecution further notes that although documents establishing the identity of the organisation staff who agreed to have the applicant acting on behalf of the organisation are missing, this person can still be identified by name and signed and dated the authorisation for the applicant to act on behalf of the organisation. He also provided some of his contact details (phone number).

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<sup>7</sup> ICC-01/12-01/15-142-Conf-Exp-Anx5.

38. The Prosecution also notes that the status of the organisation is unclear. No official documentation is provided in order to assess (i) the existence and purpose of the said organisation and (ii) whether the person who signed the affidavit for the applicant to act on behalf of the organisation is indeed member of this organisation and, if so, have the authority to act on its behalf. The form only states he is a member of the said organisation (page 9).
39. Lastly, here again, the organisation in question might be seen as a *de facto* organisation. The prosecution leaves it to the Chamber to determine, possibly subject to additional explanations, whether such an organisation would qualify as victim under article 68(3) of the Statute.

*a/35008/16*<sup>8</sup>

40. The applicant is [REDACTED].
41. The application contains relevant information on the identity of the applicant, supported by his identity card; clear documentation establishing the link between the organisation and the applicant; an identification of the alleged perpetrators; and falls under the relevant geographical and temporal scope of the charges.
42. The Prosecutor submits that although the form appears complete, it is unclear whether the harm suffered falls strictly within the scope of the charges.

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<sup>8</sup> ICC-01/12-01/15-142-Conf-Exp-Anx6.

43. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

44. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

45. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

46. [REDACTED]  
[REDACTED]  
[REDACTED] the Prosecution submits that  
the admission of this application should be deferred until further clarification is  
obtained from the applicant.

47. [REDACTED]  
[REDACTED]  
[REDACTED].

### Conclusion

48. The Prosecution does not object to the participation in the current proceedings of the abovementioned applicants.

49. Should the Chamber consider that the provided documents are insufficient in relation to either the status of the said organisations or the suffered harm being a result of an incident falling within the parameters of the confirmed charges, the Prosecution suggests that the applicants be requested to provide additional information.



**Fatou Bensouda, Prosecutor**

Dated this 2<sup>nd</sup> day of August 2016

At The Hague, The Netherlands