

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **11 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 the
"Supplementary Observations on Four Applications for Victims'
Participation in the Proceedings", 11 August 2016,
ICC-01/12-01/15-155-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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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”).¹
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. On 2 August 2016, the Prosecution filed its observations on these six applications for participation in the proceedings.²
4. On 9 August 2016, the Registry transmitted to the Chamber and the Prosecution, in unredacted form, supplementary information pertaining to four applications for participation in the proceedings.³
5. Pursuant to rule 89(1) of the Rules, the Prosecution submits the following observations on these applications, with a specific focus on the additional information provided.
6. For the reasons detailed below, the Prosecution does not object to the participation of the four applicants – a/35003/16, a/35004/16, a/35005/16 and a/35006/16 – as victims in the above-mentioned proceedings.

¹ See ICC-01/12-01/15-142.

² ICC-01/12-01/15-149-Conf-Exp.

³ ICC-01/12-01/15-153.

7. The Prosecution submits that should these four applications be considered as applications for individuals, the requirements to be granted participatory rights at trial under article 68(3) of the Statute are met.
8. Should the applications be considered as being submitted on behalf of an organisation, the Prosecution reiterates its observations related to the status of each organisation applying for participation that might potentially qualify as an "*association de fait*" or *de facto* organisation.⁴

Classification

9. Pursuant to regulation 23bis (2) of the Regulations of the Court, the present observations are filed confidentially *ex parte* due to the sensitivity of the information contained herein regarding the persons submitting the four applications, which could affect their safety and security. A confidential redacted version will be filed as soon as practicable.

Observations

*a/35003/16*⁵

10. The Prosecution notes that the supplemental information provided by the applicant from pages 11 to 13 now pertains to an application as an individual, as opposed to the initial application⁶ where the applicant was only using a form for participation as an organisation and was acting on behalf of an organisation

[REDACTED]

⁴ See ICC-01/12-01/15-149-Conf-Exp.

⁵ ICC-01/12-01/15-153-Conf-Exp-Anx1.

⁶ See ICC-01/12-01/15-142-Conf-Exp-Anx1.

11. The Prosecution further submits that the supplemental information provided by the applicant makes it unclear as to whether he is applying on behalf of an organisation or as an individual. Both forms are used⁷ and the additional information suggests that the applicant is now claiming personal psychological harm as a result of the destruction of the mausoleum.⁸

*a/35004/16*⁹

12. The Prosecution notes that the supplemental information provided by the applicant from pages 10 to 12 now pertains to an application as an individual and relates to [REDACTED], i.e. [REDACTED] [REDACTED]¹⁰ as opposed to the initial application¹¹ where the applicant was only using a form for participation as an organisation and was acting on behalf of an organisation related to [REDACTED], [REDACTED] [REDACTED].

13. It further submits that the supplemental information provided by the applicant makes it unclear as to whether he is applying on behalf of an organisation or as an individual. Both forms are used¹² and the additional information suggests that the applicant is now claiming an ongoing personal psychological harm as a result of the destruction of the mausoleum.¹³

⁷ The form related to participation as an organisation is used from pages 1 to 10 and the form for participation as an individual is used from pages 11 to 13.

⁸ See page 13, section 30 [REDACTED].

ICC-01/12-01/15-153-Conf-Exp-Anx2

¹⁰ See Section H.

¹¹ See ICC-01/12-01/15-142-Conf-Exp-Anx2.

¹² The form related to participation as an organisation is used from pages 1 to 9 and the form for participation as an individual is used from pages 10 to 12.

¹³ See page 12, section 30 [REDACTED].

*a/35005/16*¹⁴

14. The Prosecution notes that the supplemental information provided by the applicant from pages 11 to 13 on the form for application as an individual seems to relate to [REDACTED]¹⁵ as opposed to the initial application¹⁶ where the applicant was only using a form for participation as an organisation and was acting solely on behalf of an organisation related to [REDACTED].

15. [REDACTED]
[REDACTED]
[REDACTED]¹⁷

16. As opposed to the two previous applications, the Prosecution notes that the additional information provided by the applicant clarifies the applicant's standing to act on behalf of the organisation he seeks to represent, as well as the personal harm suffered as a consequence of the destruction of the [REDACTED]
[REDACTED]¹⁸.

17. For these reasons, the Prosecution submits that this application might be considered as having been made on behalf of an organisation.

¹⁴ ICC-01/12-01/15-153-Conf-Exp-Anx3.

¹⁵ See page 11, section H.

¹⁶ See ICC-01/12-01/15-142-Conf-Exp-Anx3.

¹⁷ [REDACTED]

¹⁸ See page 13, section 30, [REDACTED].

*a/35006/16*¹⁹

18. The Prosecution notes that the supplemental information provided by the applicant from pages 11 to 13 appears on a form for application as an individual and seems to relate to [REDACTED], i.e. [REDACTED] [REDACTED]²⁰ as opposed to the initial application²¹ where the applicant was only using a form for participation as an organisation and was acting solely on behalf of an organisation related to the [REDACTED] [REDACTED].

19. The Prosecution further notes that the additional information provided by the applicant clarifies the applicant's standing to act on behalf of the organisation he seeks to represent, as well as the harm suffered as a consequence of the destruction of the [REDACTED]²² The description of events given appears to relate only to the [REDACTED], and not to [REDACTED] mausoleum.²³

20. For these reasons, the Prosecution submits that this application might be considered as having been made on behalf of an organisation.

Conclusion

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

¹⁹ ICC-01/12-01/15-153-Conf-Exp-Anx4

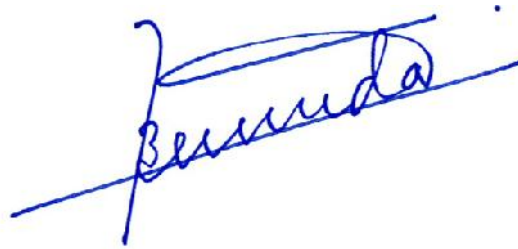
²⁰ See page 11, section H.

²¹ See ICC-01/12-01/15-142-Conf-Exp-Anx3.

²² See page 13, Section 30.

²³ [REDACTED]

22. The Prosecution leaves it to the Chamber to determine firstly whether the applicants are acting as individuals or on behalf of an organisation, and secondly whether the identified organisations would qualify as victims under article 68(3) of the Statute.



Fatou Bensouda, Prosecutor

Dated this 11th day of August 2016

At The Hague, The Netherlands