

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/15
Date: 2 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 with two public annexes

Decision on Publicity of Case Record

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Gilles Dutertre

Counsel for the Defence

Mohamed Aouini
Jean-Louis Gilissen

Legal Representative of Victims

Mayombo Kassongo

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Raul C. Pangalangan, acting as Single Judge on behalf of Trial Chamber VIII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court issues the following 'Decision on Publicity of Case Record', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 64(7) and 67(1) of the Rome Statute ('Statute') and Regulation 23 *bis* of the Regulations of the Court.

1. On 4 November 2016, in accordance with a Single Judge order to this effect,¹ the Office of the Prosecutor ('Prosecution'), the Defence team for Mr Al Mahdi ('Defence'), the Legal Representative of Victims ('LRV') and the Registry filed certifications that their filings were as public as possible and requested reclassifications as public of certain filings.²
2. In light of these observations and having reviewed the case record, the Single Judge is satisfied that all Prosecution's filings are as public as possible, with the exception of ICC-01/12-01/15-95-Conf, ICC-01/12-01/15-104-Conf, ICC-01/12-01/15-125-Conf , ICC-01/12-01/15-129-Conf-Red, ICC-01/12-01/15-149-Conf-Exp and ICC-01/12-01/15-155-Conf-Exp for which the Prosecution shall file public redacted versions as soon as practicable or request reclassification.
3. In respect of Defence's filings, the Single Judge directs the Registry to reclassify ICC-01/12-01/15-49-Conf-Exp, ICC-01/12-01/15-115-Conf, ICC-01/12-01/15-147-Conf-Red and ICC-01/12-01/15-170-Corr and its annex as public, as requested. For the rest, the Single Judge is satisfied that the Defence's filings are all as public as possible.
4. With regard to LRV's filings, the Single Judge directs that ICC-01/12-01/15-132-Conf and ICC-01/12-01/15-157-Conf be reclassified as public, as requested.

¹ Order on Publicity of Case Record, 15 September 2016, ICC-01/12-01/15-168.

² *Certificat de publicité de l'Accusation*, ICC-01/12-01/15-181 with one public annex ; *Certificat de publicité de la Défense*, ICC-01/12-01/15-184 (notified on 7 November 2016) ; *Observations du Représentant légal des victimes en conformité avec l'« Order on Publicity of Case Record » du 15 September 2016*, ICC-01/12-01/15-183('LRV Observations'); Registry's Observations pursuant to Trial Chamber VIII's « Order on Publicity of Case Record » (ICC-01/12-01/15-168), ICC-01/12-01/15-182 with one confidential, *ex parte*, annex.

Further, and despite the LRV's submission that the security situation in North Mali makes it necessary to maintain the classification level of any other confidential filings,³ the Single Judge directs that ICC-01/12-01/15-148-Conf-Exp; ICC-01/12-01/15-166-Conf-Exp and ICC-01/12-01/15-173-Conf-Exp be reclassified as public as they are mere notices of non-disclosure of confidential information. Finally, the LRV shall file a public redacted version of ICC-01/12-01/15-109-Conf no later than 22 December 2016 and of ICC-01/12-01/15-127-Conf within 10 days of submission by the Prosecution of ICC-01/12-01/15-95-Conf and ICC-01/12-01/15-125-Conf.

5. In relation to Registry's filings, the Single Judge directs the Registry to reclassify ICC-01/12-01/15-5-Conf and ICC-01/12-01/15-134-Conf, as requested. Further, a public redacted version of ICC-01/12-01/15-28-Conf shall be filed no later than 22 December 2016. Specifically, the Single Judge reminds that he had ordered the Registry to file public redacted versions of the applications to participate in the proceedings of a/35003/16, a/35004/16, a/35005/16, a/35006/16 and a/35007/16,⁴ which shall be effectuated within ten days of notification of the present decision.
6. Finally, in respect of Chambers' decisions, the Single Judge has issued a public redacted version of ICC-01/12-01/15-133-Conf. Further, the Registry shall reclassify ICC-01/12-01/15-61-Conf and ICC-01/12-01/15-140-Conf as public.
7. These measures are taken to ensure the publicity of the proceedings and the completeness of the case record.⁵ The oral rulings made from the bench in open court are already part of the public record because these are duly reflected in the official transcripts of the case. For the sake of clarity, a table containing them is attached to the present decision.⁶ On the other hand, some procedure has been conducted by way of email to expedite decisions on minor procedural matters or

³ LRV Observations, ICC-01/12-01/15-183, para. 4 and disposition.

⁴ Second Decision on Victim Participation at Trial, 12 August 2016, ICC-01/12-01/15-156-Red.

⁵ Article 64(7) and (10) of the Statute.

⁶ Annex B to the present decision.

react to exigent circumstances. In order to ensure that the principle of fairness is respected despite the less formal nature of email decisions, these are typically furnished to all parties and participants and subsequently placed on the record by way of reference in formally issued Chambers' decisions. The Single Judge now further directs the Registry to file in the record the emails listed in Annex A to the present decision. Redactions shall be applied in accordance with footnote 1 of the annex.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

DIRECTS the Prosecution to file public redacted versions or request reclassification of ICC-01/12-01/15-95-Conf; ICC-01/12-01/15-104-Conf, ICC-01/12-01-15-125-Conf, ICC-01/12-01/15-129-Conf-Red, ICC-01/12-01/15-149-Conf-Exp and ICC-01/12-01/15-155-Conf-Exp as soon as practicable and in any event no later than 22 December 2016;

DIRECTS the Registry to reclassify Defence's filings ICC-01/12-01/15-49-Conf-Exp, ICC-01/12-01/15-115-Conf, ICC-01/12-01/15-147-Conf-Red and ICC-01/12-01/15-170-Corr and its annex as public as soon as practicable and in any event no later than 22 December 2016;

DIRECTS the Registry to reclassify LRV's filings ICC-01/12-01/15-132-Conf, ICC-01/12-01/15-148-Conf-Exp; ICC-01/12-01/15-157-Conf, ICC-01/12-01/15-166-Conf-Exp and ICC-01/12-01/15-173-Conf-Exp as public as soon as practicable and in any event no later than 22 December 2016;

DIRECTS the LRV to file public redacted versions of ICC-01/12-01/15-109-Conf and ICC-01/12-01/15-127-Conf in accordance with paragraph 4 above;

DIRECTS the Registry to reclassify ICC-01/12-01/15-5-Conf and ICC-01/12-01/15-134-Conf as public as soon as practicable and in any event no later than 22 December 2016;

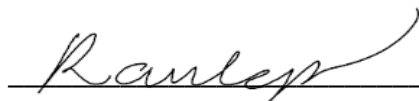
DIRECTS the Registry to file a public redacted version of ICC-01/12-01/15-28-Conf as soon as practicable and in any event no later than 22 December 2016;

DIRECTS the Registry to file public redacted versions of the victims' applications of a/35003/16, a/35004/16, a/35005/16, a/35006/16 and a/35007/16 within ten days of notification of the present decision;

DIRECTS the Registry to reclassify ICC-01/12-01/15-61-Conf and ICC-01/12-01/15-140-Conf as public as soon as practicable and in any event no later than 22 December 2016; and

DIRECTS the Registry to file a report appending all decisions issued by way of email in the record of the case and identified in Annex A as soon as practicable and in any event to later than 22 December 2016.

Done in both English and French, the English version being authoritative.



Judge Raul C. Pangalangan, Single Judge

Dated 2 December 2016

At The Hague, The Netherlands