

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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N° ICC-01/12-01/15
Date: 30 September 2015

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

Prosecution's submissions regarding disclosure and redactions

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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Mr James Stewart

Counsel for the Defence

Counsel for Ahmad AL MAHDI

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

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

States' Representatives

Amicus Curiae

Other

REGISTRY

Registrar

Mr Herman von Hebel

Defence Support Section

Victims and Witnesses Unit

Detention Section

1. On 18 September 2015, the Single Judge of Pre-Trial Chamber I (“Chamber”), Judge Cuno Tarfusser, issued a Warrant of Arrest against Ahmad AL FAQI AL MAHDI (“AL MAHDI”).¹
2. On 30 September 2015, Mr AL MAHDI made his initial appearance before the Chamber. At the initial appearance, the Single Judge fixed the date of confirmation hearing for 18th of January 2016 and ordered the Prosecution to commence disclosure of relevant material to the Defence of Mr AL MAHDI (“Defence”) pursuant to applicable provisions of the Rome Statute and the Rules of Procedure and Evidence.
3. As per articles 61(3) and 67(2) of the Rome Statute and rules 76 and 77 of the Rules of Procedure and Evidence, the Prosecution has a duty to disclose to the Defence the evidence that will be relied upon at the confirmation hearing as well as any evidence in the Prosecution’s possession or control which tends to show the innocence of the accused, or to mitigate his guilt, or which may affect the credibility of Prosecution evidence, or which is material to the preparation of the defence. The Prosecution is committed to complying fully with its disclosure obligations.
4. In order to facilitate the disclosure process and provide clarity to the Parties and the Chamber, the Prosecution submits the following observations and proposals regarding the confidentiality of disclosed material and redactions.

Confidentiality

5. All material or information disclosed to the Defence which is not already publicly available will be classified as “confidential.” The confidential level of the disclosed material is essential to protect the identity and safety of witnesses, their family members or third parties, as well as staff members of the Court and others who work with the Court.
6. Confidentiality is equally important to safeguard the Prosecutor’s ability to continue her investigations on the ground.

¹ ICC-01/12-01/15-1-Red.

Redactions

7. In light of the provisions under articles 57(3)(c) and 68 of the Rome Statute and rules 81 and 121(2) of the Rules of Procedure and Evidence, and noting the Pre-Trial Practice Manual² as well as the practice of several other Pre-Trial and Trial Chambers in recent cases,³ the Prosecution invites the Single Judge to approve a set of standard redaction categories which would require no prior authorisation from the Single Judge before implementation and disclosure. Such a measure, which has been successfully implemented in other cases, will make disclosure and the whole proceedings more expeditious and preserve the interests of the Defence.
8. The Prosecution proposes the following categories of standard redactions:

Under rule 81(2) of the Rules

(Material or information that may prejudice further or ongoing investigations)

- **Category A.1:** Locations of witness interviews/accommodation, insofar as disclosure would unduly attract attention to the movements of the Prosecution's staff and witnesses, thereby posing a risk to ongoing or future investigations;
- **Category A.2:** Identifying and contact information of the Prosecution's, Victims and Witnesses Unit or other Court staff members who travel to or are based in the field, insofar as disclosure of this information could hinder their work in the field and thereby put at risk the ongoing or future investigations of the Prosecutor. This category can be further specified in the following sub-categories: A.2.1 for translators, A.2.2 for interpreters, A.2.3 for stenographers, A.2.4 for psycho-social experts, A.2.5 for other medical experts and A.2.6 for other staff members falling within this category;

² http://www.icc-cpi.int/iccdocs/other/Pre-Trial_practice_manual_%28September_2015%29.pdf, section IV.2 (September 2015).

³ At pre-trial stage: ICC-02/04-01/15, 23 April 2015, *Decision on issues related to disclosure and exceptions thereto*; ICC-01/09-02/11-495-AnxA; ICC-01/04-02/06-411-AnxA; ICC-02/11-01/11-737-AnxA.

- **Category A.3:** Identifying and contact information of translators, interpreters, stenographers and psycho-social experts assisting during interviews who are not members of the Prosecution's staff but who travel to or are based in the field, insofar as disclosure of this information could hinder their work so that the Prosecution could no longer rely on them, and thereby put at risk ongoing or future investigations of the Prosecutor. This category can be further specified in the following sub-categories: A.3.1 for translators, A.3.2 for interpreters, A.3.3 for stenographers, A.3.4 for psycho-social experts, A.3.5 for other medical experts and A.3.6 for other persons falling within this category;
- **Category A.4:** Identifying and contact information of investigators, insofar as disclosure of this information could hinder their work in the field thereby putting at risk the ongoing or future investigations of the Prosecutor;
- **Category A.5:** Identifying and contact information of intermediaries insofar as disclosure of this information could hinder their work in the field, thereby putting at risk the ongoing or future investigations of the Prosecutor;
- **Category A.6:** Identifying and contact information of leads and sources, insofar as disclosure of this information could result in the leads and sources being intimidated or interfered with and would thereby put at risk the ongoing or future investigations of the Prosecutor. This category can be further specified in the following sub-categories: A.6.1 for individual sources, A.6.2 for non-governmental organisations, A.6.3 for international organisations, A.6.4 for national governmental agencies, A.6.5 for academic sources, A.6.6 for private companies and A.6.7 for other sources;
- **Category A.7:** Means used to communicate with witnesses insofar as disclosure of this information may compromise investigation techniques or the location of

witnesses and would thereby put at risk the ongoing or future investigations of the Prosecutor.

Under rule 81(4)

(Confidentiality of information to protect the safety of witnesses and victims and members of their families)

- **Category B.1:** Contact information of witnesses, insofar as necessary to protect the safety of the witness;
- **Category B.2:** Identifying and contact information of family members of witnesses, insofar as necessary to protect their safety;
- **Category B.3:** Identifying and contact information of “other persons at risk as a result of the activities of the Court” (“innocent third parties”), insofar as necessary to protect their safety;
- **Category B.4:** Location of witnesses who are admitted in the International Criminal Court Protection Programme (“ICCPP”) and information revealing the places used for present and future relocation of these witnesses, including before they enter the ICCPP.

Under rule 81(1) of Rules

(Reports, memoranda or other internal documents)

- **Category C:** Reports, memoranda or other internal documents prepared by the Prosecution.⁴

9. The Prosecution will indicate the relevant category by including the corresponding code in the redaction box unless such indication would defeat the purpose of the

⁴ Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure by virtue of rule 81(1) of the Rules. Occasionally, parts of documents that need to be disclosed contain material or information covered by rule 81(1). Under Category C, the Prosecution will redact the material or information covered by rule 81(1) from the documents before disclosure.

redaction. The Prosecution will monitor the need for redactions over time and lift redactions when no longer warranted.

10. Upon disclosure of redacted material, the Prosecution will consider in good faith any requests of the Defence for information concerning specific redactions, or any requests to lift certain redactions.
11. If such *inter partes* consultations do not resolve the issue, the Prosecution proposes that the Defence may challenge specific redactions by way of an application to the Single Judge. In such cases, the Prosecutor would retain the burden of proof to justify the challenged redaction.
12. Any redactions which do not fall in the categories listed above would be subject to an application to the Single Judge. A written application would also be required for any request for anonymity of witnesses under rule 81(4) of the Rules of Procedure and Evidence or any request for non-disclosure of an entire item of evidence.
13. In cases in which an application to the Single Judge justifying the redactions is required, the Prosecution would proceed to disclosure with redactions as proposed simultaneously with the application. Such application (redacted if necessary to not defeat its purpose) would also be provided to the Defence.



Fatou Bensouda, Prosecutor

Dated this 30th day of September 2015

At The Hague, The Netherlands