

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **15 June 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 the Prosecution's Observations on Three Applications
for Victims' Participation in the Proceedings, 31 May 2016,
ICC-01/12-01/15-92-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 20 May 2016, the Registry received three applications to participate in the proceedings of the case *The Prosecutor v. Ahmad Al Faqi Al Mahdi* pursuant to article 68(3) of the Rome Statute.¹
2. During the status conference held on 24 May 2016, Trial Chamber VIII ordered the Parties to submit their observations by 1 June 2016 ("Order").²
3. On 25 May 2016, the Registry provided the Office of the Prosecutor ("Prosecution") with the unredacted versions of the three applications in accordance with rule 89(1) of the Rules of Procedure and Evidence ("the Rules").
4. Pursuant to the Order and to rule 89(1) of the Rules, the Prosecution observes that the three applications contain significant inconsistencies and lack certain information, and suggests that any final decision on their admissibility should be deferred until further clarification and/or information is provided.

Classification

5. 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 contained herein regarding the persons submitting the three applications, which could potentially affect their safety and security. A public redacted version will be filed as soon as practicable.

¹ See ICC-01/12-01/15-90, para. 1.

² [REDACTED].

Observations

6. In the following observations, the Prosecution will refer to Application No. 1 for the one signed [REDACTED] (a/35000/16), Application No. 2 for the one signed [REDACTED] (a/35001/16) and Application No. 3 (a/35002/16) for the one signed [REDACTED].

7. The form used in the three applications is the one pertaining to organisations/institutions. Application No. 1 is submitted on behalf of [REDACTED], Application No. 2 on behalf of [REDACTED] and Application No. 3 on behalf of [REDACTED]. It should be noted that the war crime of intentionally directing an attack against buildings dedicated to religion and historic monuments has been confirmed by Pre-Trial Chamber I [REDACTED].³

8. That being noted, after examination of the three applications, the Prosecution is not currently in a position to offer final observations on their admissibility. Some information contained in the applications suggests that the persons submitting them may have legitimate grounds for participation under article 68(3) and rule 89. However, the Prosecution observes that the three applications contain significant inconsistencies and lack certain critical information, such that the Trial Chamber should order the submitters to provide further clarifications or documents to complete the applications.

Common elements to the three applications

9. First, the Prosecution observes a lack of clarity with respect to the nature of the alleged victims :
 - First, the form used for all three applications pertains to organisations/institutions. However, the alleged harm described

³ [REDACTED].

in each application appears to be harm suffered by the natural person submitting the application and not by the organisation/institution (see point 22 of the applications).⁴

- The information provided with respect to these organisations/institutions and their existence is either incomplete or inexistent (see points 4 and 5 of the applications).
- The answers given in point 6 regarding the legal status of the organisations/institutions are unclear.
- The information required to prove that the person submitting the application is acting on behalf of the organisation/institution is not provided (see point 12).⁵

10. It is therefore unclear whether [REDACTED] constitute organisations/institutions within the meaning of rule 85 (b) of the Rules. It is also unclear whether the three persons submitting the applications, who are [REDACTED], are acting on behalf of [REDACTED] or some associated organisation or institution, and if so, whether they have authority to act in such a capacity. Alternatively, if the three individuals are in fact applying in their personal capacities, they did not use the correct forms and thus have not provided all the relevant information.

11. Second, the Prosecution observes certain inconsistencies within the applications:

- The language of all three persons submitting the applications is [REDACTED] (point 13 of the applications). However, the applications are written in [REDACTED];

⁴ [REDACTED].

⁵ [REDACTED].

- The answers given to questions 14 and 16 related to the assistance of an interpreter or other person are either incomplete or negative;
- It is therefore unclear whether the persons submitting the applications received assistance in filling out the forms, and if so, from whom.

12. Hence, the Prosecution suggests that these elements should be completed or clarified because they relate directly to the authenticity of the applications.

Specific elements for each application

13. Application No. 1, a/35000/16, is submitted by [REDACTED]. He alleges a moral harm in point 22. However, the harm expected in point 22 concerns goods and not the submitting persons. In addition, [REDACTED] in question seeks [REDACTED] (point 26).

14. The submitter of Application No. 2, a/35001/16, describes [REDACTED]. He asks [REDACTED] (points 22⁶ and 26), but does not provide any figures.

15. Application No. 3, a/35002/16, is submitted by [REDACTED]. He alleges a moral harm (point 22⁷) and requests [REDACTED] (point 26), which is not defined.

16. In light of these elements, the Prosecution observes that additional information should be provided regarding the nature of the harm suffered by the named organisations, or by the individuals submitting the applications if acting in their individual capacities.

⁶ Again, the harm expected in point 22 concerns goods and not the submitting persons.

⁷ Again, the harm expected in point 22 concerns goods and not the submitting persons.

Conclusion

17. As a general conclusion, the Prosecution would not object to the participation in the current proceedings of any persons or organisations capable of showing that the requirements for victim participation are met. This of course includes the [REDACTED] named organisations (assuming they are properly constituted and duly represented by these individuals), or of the persons submitting the applications (if acting in their private capacities). However, the Prosecution submits that the applications currently contain significant deficiencies that need to be rectified before the applications can be approved by the Chamber.
18. Any decision on admissibility of the applications should therefore be deferred until further clarification or information is provided.



Fatou Bensouda, Prosecutor

Dated this 15th day of June 2016

At The Hague, The Netherlands