

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/15
Date: 12 August 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 'Second Decision on Victim Participation at Trial',
12 August 2016**

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 Aouni
Me Jean-Louis Gilissen

Legal Representatives of Victims

Mayombo Kassongo

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Paolina Massidda

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigell Verrill

Detention Section

**Victims Participation and Reparations
Section**

Isabelle Guibal

Others

Judge Raul C. Pangalangan, acting as Single Judge on behalf of Trial Chamber VIII ('Single Judge') of the International Criminal Court ('Court') having regard to Articles 64(2) and (6)(e) and 68(1) and (3) of the Rome Statute ('Statute'), Rules 16, 85, 86 and 89-92 of the Rules of Procedure and Evidence ('Rules') and Regulations 79-80, 81(4) and 86 of the Regulations of the Court ('Regulations') and incorporating by reference the applicable law as set out in the 'Decision on Victim Participation at Trial and on Common Legal Representation of Victims',¹ issues the following 'Second Decision on Victim Participation at Trial'.

I. Procedural History

1. On 25 July 2016, the Registry transmitted six applications to participate as victims in the trial proceedings ('Applications') in unredacted form to the Office of Prosecutor ('Prosecution') and the Chamber, and in redacted form to the defence team for Mr Al Mahdi ('Defence').²
2. On the same day, the Registry submitted its report pursuant to Regulation 86(5) of the Regulations of the Court ('Registry Report').³ Annex A of that report is a memorandum by the Office of Public Counsel of Victims ('OPCV') that indicates the preference of applicant a/35008/16 to be represented by the OPCV, instead of by Mr Mayombo Kassongo,⁴ who had been appointed by the Chamber as the common legal representative.⁵

¹ 8 June 2016, ICC-01/12-01/15-97-Red, paras 10-26 and 36 ('Decision on Victim Participation').

² Transmission to the Chamber and the Office of the Prosecutor of six unredacted applications to participate in the proceedings, 25 July 2016, ICC-01/12-01/15-142 (with six confidential *ex parte* annexes, available to the Prosecution only); Transmission to the Defence of redacted versions of six applications to participate in the proceedings, ICC-01/12-01/15-143 (with six confidential annexes, available to the Defence and the Prosecution).

³ Second Report on Applications to Participate in the Proceedings, ICC-01/12-01/15-144 with four annexes.

⁴ Internal memorandum of the Office of the Public Council for Victims, 13 July 2016, ICC-01/12-01/15-144-Conf-ExpAnxA.

⁵ Decision on Victim Participation, ICC-01/12-01/15-97-Conf-Red, para 38.

3. On 2 August 2016, in accordance with the procedure set out by the Chamber,⁶ the Prosecution⁷ submitted its observations on the Applications, indicating that it does not object to the participation of a/35003/16, a/35004/16, a/35005/16, a/35006/16 and a/35007/16.⁸ The Prosecution submits that the admission of the sixth applicant (a/35008/16) should be deferred until he/she submits additional information to establish the link between the harm claimed and the crime alleged in these proceedings.⁹
4. The Defence did not file any submissions.
5. On 9 August 2016, in accordance with a Chamber's order to this effect,¹⁰ the Registry transmitted additional information pertaining to four of the Applications (a/35003/16, a/35004/16, a/35005/16 and a/35006/16) to the parties and the Chamber ('Additional Information').¹¹
6. On 11 August 2016, in accordance with a Chamber's order,¹² the Prosecution filed its observations on the Additional Information, indicating that it does not object to their participation in the proceedings and that it leaves it to the Chamber to determine whether these applicants are acting as individuals or as organisations.¹³

⁶ Decision on Victim Participation, ICC-01/12-01/15-97-Conf-Red, para 13.

⁷ Prosecution's Observations on Six Applications for Victims' Participation in the Proceedings, ICC-01/12-01/15-149-Conf-Exp.

⁸ Prosecution Observations, ICC-01/12-01/15-149-Conf-Exp, paras 4-5, 8-13 (a/35003/16), 14-19 (a/35004/16), 20-26 (a/35005/16), 27-32 (a/35006/16) and 33-29 (a/35007/16).

⁹ Prosecution Observations, ICC-01/12-01/15-149-Conf-Exp, paras 7 and 40-47.

¹⁰ Email from Chamber to Registry, 3 August 2016 at 13:21.

¹¹ Transmission to the Chamber and the Office of the Prosecutor of unredacted versions of supplementary information pertaining to four applications for participation in the proceedings, 9 August 2016, ICC-01/12-01/15-153 and four confidential, *ex parte* annexes; Transmission to the Defence of redacted versions of supplementary information pertaining to four applications for participation in the proceedings, ICC-01/12-01/15-154 with 4 confidential *ex parte* annexes.

¹² Email from Chamber to parties on 9 August 2016 at 18:53.

¹³ Prosecution's Observations on the "Supplementary Observations on Four Applications for Victims' Participation in the Proceedings", ICC-01/12-01/15-155-Conf-Exp, in particular paras 6 and 22.

II. Determination of the Chamber with regard to a/35003/16, a/35004/16, a/35005/16, a/35006/16, a/35007/16 and a/35008/16

7. The Single Judge notes that none of the parties object to the admission of a/35003/16, a/35004/16, a/35005/16, a/35006/16 and a/35007/16 to participate in the trial proceedings. Accordingly, in line with the procedure set out by the Chamber in the Decision on Victim Participation,¹⁴ these applicants are admitted to participate in the present proceedings as organisations. The Additional Information fails to make it clear whether the individuals acting on behalf of the organisations are also applying as individuals. In this regard, the Single Judge recalls that in the Decision on Victim Participation, the Chamber had indicated that individuals representing organisations and willing to participate as victims as well shall fill in a *separate* form.¹⁵ Accordingly, the Single Judge treats the Additional Information as supplementary material to characterise the applicants as organisations before the Chamber.
8. With regard to a/35008/16, the Single Judge notes that the Prosecution does not appear to object to his/her admission, but submits that additional documentation establishing the link between the harm claimed and the crimes alleged should be filed. The Prosecution considers that all other requirements are met.¹⁶
9. The Single Judge thus finds that: (i) the quality of the organisation;¹⁷ (ii) the capacity of the individual acting on its behalf;¹⁸ and (iii) his/her identity are clearly established.¹⁹

¹⁴ Decision on Victim Participation, ICC-01/12-01/15-97-Red, paras 10-14.

¹⁵ Decision on Victim Participation, ICC-01/12-01/15-97-Red, paras. 25.

¹⁶ Prosecution Observations, ICC-01/12-01/15-149-Conf-Exp, paras 6 and 42-46.

¹⁷ ICC-01/12-01/15-142-Conf-Exp-Anx6, point 3, 5 and 6 and pages 13-15.

¹⁸ ICC-01/12-01/15-142-Conf-Exp-Anx6, point 10 and pages 10-12.

¹⁹ ICC-01/12-01/15-142-Conf-Exp-Anx6, points 7 and 9, signature on page 7 and page 9.

10. With regard to whether the organisation suffered direct harm as a result of an incident falling within the parameters of the charges, the Single Judge notes that the mandate of the organisation is, *inter alia*, to [REDACTED].²⁰ The Single Judge therefore considers that the organisation has suffered a direct harm as a result of the destruction of the mausoleum as confirmed in the decision on the confirmation of charges to the extent that the buildings [REDACTED] were destroyed. The Single Judge clarifies that it does not find that the destruction of [REDACTED] falls within the scope of the charges. Accordingly, the Single Judge admits a/35008/16 to participate in the proceedings.
11. With regard to the legal representation of a/35008/16, the Single Judge has noted his/her 'preference' to be represented by the OPCV, as detailed in the memorandum of the OPCV.²¹ However, the Single Judge recalls the Decision on Victim Participation wherein he held that 'unless compelling reasons are shown, any victim subsequently admitted to participate in the case shall be represented by Mr Kassongo'.²² The OPCV's previous relationship with this applicant does not, without more, constitute 'compelling reasons' – in fact, the Chamber decided to appoint only Mr Kassongo in this case 'in awareness that the Office of Public Counsel for Victims also claims to represent one additional applicant [...]'.²³ The Single Judge does not find that a separate legal representative needs to be appointed solely for a/35008/16, noting further that this victim's interests appear to be identical in nature to that of the victims already admitted to participate in the proceedings.

²⁰ ICC-01/12-01/15-142-Conf-Exp-Anx6, pages 4 and 15.

²¹ ICC-01/12-01/15-144-Conf-Exp-AnxA, page 2.

²² Decision on Victim Participation, ICC-01/12-01/15-97-Red, para. 38.

²³ Decision on Victim Participation, ICC-01/12-01/15-97-Red, para. 38, n. 28.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

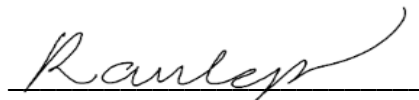
ADMITS a/35003/16, a/35004/16, a/35005/16, a/35006/16, a/35007/16 and a/35008/16 to participate in the proceedings as organisations;

DIRECTS the Registry to notify the LRV of the unredacted versions of these victims' participation applications;²⁴

DIRECTS the Registry to file public redacted versions of the applications of a/35003/16, a/35004/16, a/35005/16, a/35006/16 and a/35007/16; and

DIRECTS the Registry to give the LRV access to Annex D to the Registry Report (ICC-01/12-01/15-144-Conf-Exp-AnxD).

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



Judge Raul C. Pangalangan, Single Judge

Dated 12 August 2016

At The Hague, The Netherlands

²⁴ Annexes 1-6 of ICC-01/12-01/15-142.