

Initial Appearance

(Open Session)

ICC-01/12-01/15

1 International Criminal Court
2 Pre-Trial Chamber I - Courtroom 2
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi - ICC-01/12-01/15
5 Single Judge Cuno Tarfusser
6 Initial Appearance
7 Wednesday, 30 September 2015
8 (The hearing starts in open session at 11.01 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 SINGLE JUDGE TARFUSSER: Good morning. Good morning. Please be seated.
12 THE COURT USHER: Please be seated.
13 SINGLE JUDGE TARFUSSER: It is about time that we move because here it's falling
14 apart.
15 Well, good morning to everybody in the courtroom, in the public gallery and from
16 wherever they're looking at us.
17 I would first of all ask the court officer to introduce the case.
18 THE COURT OFFICER: (Interpretation) Situation in the Republic of Mali,
19 The Prosecutor versus Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15.
20 SINGLE JUDGE TARFUSSER: (Interpretation) Thank you.
21 Now I will ask, first, the Prosecutor to introduce herself and the team.
22 MS BENSOUDA: Thank you, Mr President.
23 The Office of the Prosecutor is represented today by Gilles Dutertre, senior trial
24 lawyer; Colin Black, trial lawyer; Jagganaden Muneesamy, trial lawyer;
25 Richard Nsanzabaganwa, cooperation advisor; and Pascal Turlan cooperation advisor.

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1 Thank you.

2 SINGLE JUDGE TARFUSSER: Yourself.

3 MS BENSOUDA: And myself, Mr President, Fatou Bensouda, Prosecutor.

4 SINGLE JUDGE TARFUSSER: Thank you, Ms Prosecutor.

5 Now the floor to the Defence to present the team.

6 MR AOUINI: (Interpretation) Good morning, your Honour. I am

7 Mohamed Aouini, a lawyer working for the cour de cassation, in Tunisia, with me

8 today -- to ensure the Defence of Mr Ahmad Al Faqi Al Mahdi in my capacity as duty

9 counsel. And I must say that I'm honoured to be here today. With me today is

10 Mr Gilissen, a lawyer with the cour de cassation, in Liège, Belgium. Thank you,

11 your Honour.

12 MR KEÏTA: (Interpretation) Good morning, your Honour. I am Xavier-Jean Keïta,

13 senior counsel, at the Office of Public Counsel for the Defence. My mandate is to

14 assist all Defence teams if they desire assistance, as well as suspects and the accused.

15 Today for this hearing, Aouini, my colleague, wished to be here; and

16 Geraldine Danhoui is here, who is a legal assistant; and

17 Ms Aimel Yousfi-Roquencourt, who is a legal consultant. Ms Yousfi-Roquencourt,

18 consultant OPCD.

19 SINGLE JUDGE TARFUSSER: Thank you very much to the Defence counsel, to

20 Mr Keïta.

21 Now I'll turn to the Office of the Registrar.

22 MR HENQUET: Good morning, your Honour. The Registrar is represented today

23 by Mr Pieter Vanaverbeke, the acting head of the legal aid unit and myself,

24 Thomas Henquet, legal counsel.

25 SINGLE JUDGE TARFUSSER: Thank you very much.

1 The courtroom officers are Charlotte Dahuron and Wilfred.
2 Myself, I'm Judge Cuno Tarfusser, Single Judge, representing Pre-Trial Chamber II -- I.
3 I can't remember. I'm in both. I'm in both so I can't remember. I'm assisted by my
4 legal team, Federica Gioia, legal officer, and Sarah Ravelling, associate legal officer.
5 For the record, I have to say that also the suspect is here.
6 Mr Ahmad Al Faqi Al Mahdi is present.
7 So just for the record, I will now turn to the first issue, which I think is very important,
8 it is the language issue. Without determining the language we can't proceed.
9 I would ask personally Mr Al Faqi -- first of all, I understand that he has -- he is being
10 provided with interpretation into Arabic. Is this correct, Mr Al Faqi? Mr Keïta --
11 MR AL MAHDI: (No interpretation)
12 SINGLE JUDGE TARFUSSER: Excuse me a minute.
13 Mr Keïta.
14 MR KEÏTA: (Interpretation) Your Honour, with your leave, Mr Ahmad Al Faqi
15 Al Mahdi wishes to be referred to as Mr Al Mahdi throughout the entire proceedings,
16 not Mr Al Faqi. So Mr Al Mahdi, please.
17 SINGLE JUDGE TARFUSSER: I think also the suspect himself could have said how
18 he would like to be addressed.
19 So I ask the suspect how he would like to be addressed and if he is provided with an
20 Arabic translation.
21 MR AL MAHDI: (Interpretation) Yes, your Honour, I would like to be addressed
22 as Mr Al Mahdi during this hearing. And I am getting interpretation into Arabic,
23 indeed. Thank you.
24 SINGLE JUDGE TARFUSSER: So is Arabic the language you fully understand and
25 speak?

1 MR AL MAHDI: (Interpretation) Yes, Arabic is the language I understand and I
2 speak.

3 SINGLE JUDGE TARFUSSER: Okay. This being the case, I would like to remind
4 everybody to speak slowly and to pause from time to time in order to allow the
5 good -- a good translation, interpretation for Mr Al Mahdi and obviously into English
6 and French of what Mr Al Mahdi is going to say.

7 The object and purpose of this hearing, his first appearance, pursuant to Article 60(1)
8 of the Statute and Rule 121(1) of the Rules of Procedure and Evidence, is first to
9 identify correctly and fully the person who is here detained as a suspect;
10 Then to fully inform the suspect of the crimes which he is alleged to have committed
11 and to give him, if he wishes so, if he so wishes, the possibility -- the first possibility to
12 comment or to make statements in relation to the allegations in the proper judicial
13 proceedings;

14 Third, to inform the person of his rights inside the proceedings;

15 And then, finally, to set a date for the confirmation of charges hearing.

16 I will also take this opportunity to address a few matters concerning the organisation
17 of the proceedings, leading up to the confirmation of charges hearing, and this I will
18 do in order to ensure that the proceedings from its very beginning, from this moment
19 on, can and will proceed smoothly, efficiently and expeditiously, which is the right of
20 the suspect of course.

21 So this said, I come to the identification of the suspect.

22 Mr Al Mahdi, I will - I ask you please to identify yourself completely with name,
23 place, and date of birth, nationality and any other things you think is useful for your
24 complete identification. Please, Mr Al Mahdi, you have the floor.

25 MR AL MAHDI: (Interpretation) Yes, your Honour, I am called -- my name is

1 Ahmad Al Faqi Al Mahdi, I am from the Tuareg -- the tribe of Ansar. I was born
2 about 40 years ago in Agoune. I'm a graduate of the Teachers Institute, in Timbuktu.
3 And I was a civil servant in education in the Malian government beginning 2011.
4 SINGLE JUDGE TARFUSSER: Thank you very much. I would just like to remind
5 also you that to speak slowly because I heard just quite a pace in your -- in your
6 answer. To speak slowly is -- also you have to observe for correct interpretation
7 from Arabic into English and in French, if possible. Thank you very much.
8 Now Mr Al Mahdi, I come to that part where I have to inform you of the crimes you
9 allegedly have committed. And for this reason, I ask the court officer to read out
10 slowly the allegations in French, in the French language, as French is the original
11 language in which the arrest warrant was issued, although we attached an Arabic
12 translation.

13 Please court officer, you have the floor.

14 THE COURT OFFICER: (Interpretation) There are reasonable grounds to believe
15 that Ahmad Al Mahdi is criminally responsible for having committed as an
16 individual, and jointly with other persons, facilitated, or otherwise assisted, in the
17 commission of war crimes by intentionally directing attacks against buildings
18 dedicated to religion and/or historical monuments in Timbuktu between about 30
19 June 2012 and 10 July 2012, namely:

- 20 1) The mausoleum of Sidi Mahmoud Ben Omar Mohamed Aquit;
- 21 2) The mausoleum of Sheikh Mohamed Mahmoud Al Arawani;
- 22 3) The mausoleum of Sheikh Sidi Mokhtar Ben Sidi Muhammad Ben Sheikh
23 Alkabir;
- 24 4) The mausoleum of Alpha Moya;
- 25 5) The mausoleum of Sheikh Sidi Ahmed Ben Amar Arragadi;

- 1 6) The mausoleum of Sheikh Muhammad El Micky;
- 2 7) The mausoleum of Sheikh Abdoul Kassim Attouaty;
- 3 8) The mausoleum of Ahamed Fulane;
- 4 9) The mausoleum of Bahaber Babadié; and
- 5 10) The Sidi Yahia mosques.

6 Offences provided for and punishable under Articles 8(2)(e)(iv), Articles 25(3)(a), in
7 person or as a direct co-perpetrator, 25(3)(c) and, finally, Article 25(3)(d) of the
8 Rome Statute.

9 SINGLE JUDGE TARFUSSER: Thank you very much, courtroom officer.

10 I note that the warrant of arrest, as I said before, has been served upon you in -- upon
11 your arrest in the Arabic -- also in the Arabic translation and that you are assisted by
12 duty counsel appointed by the Registrar.

13 I also note for the record that you, Mr Al Mahdi, have been provided with a redacted
14 version, although I think not yet translated into Arabic, which is ongoing, of the
15 Prosecutor's application for a warrant of arrest, and that the Prosecutor has been
16 ordered by the Single Judge to review, without undue delay, and I saw that -- I also
17 know that this is ongoing and that you are aware of it, to review the material, all the
18 material, the evidence provided in support of the application in order to ensure that
19 your right to be informed promptly and in detail of the nature, cause and content of
20 the charges can be meaningfully exercised by yourself and by your counsel.

21 This being the case, I ask you now, Mr Al Mahdi, if you have clearly understood what
22 you are accused of.

23 MR AL MAHDI: (Interpretation) Yes, your Honour, I have understood in general,
24 but for the details I will rely upon my counsel to understand the details.

25 SINGLE JUDGE TARFUSSER: Of course. Thank you very much, Mr Al Mahdi.

1 And now I will come to inform you of your rights before this Court in this

2 proceedings:

3 (1) You will be presumed innocent until proven guilty beyond reasonable doubt at
4 trial, if there is to be a trial, and that the burden of proof lies with the Prosecutor.

5 You have the right not to have imposed on you any reversal of the burden of proof
6 and any onus of rebuttal;

7 (2) You have the right to be informed promptly and in detail of the nature of the
8 case and the content of the charges against you in a language which you fully
9 understand and speak, which you told me is Arabic and which has already been done
10 just now;

11 (3) You have the right to have adequate time and facilities to prepare your defence
12 and to freely communicate in a confidential manner with your counsel, with the
13 counsel of your choice;

14 (4) You can have free assistance of an interpreter, if you need for that, if you have
15 need for that, and have necessary translation to meet the requirements of fairness.

16 And I think also this is -- everything is ongoing in that direction;

17 (5) You have the right to remain silent and you cannot be forced to testify against
18 yourself or to have to plead guilty;

19 (6) You can make unsworn statements within the oral or written statements within
20 the framework of your defence whenever you wish to do so.

21 You have the right to receive and to have disclosed to you material which shows or
22 tends to show -- sorry.

23 THE COURT OFFICER: (Interpretation) I beg your pardon, your Honour. I'm
24 afraid we have a problem with the French interpretation which is not coming through.

25 Allow me to check -- to determine what the problem is.

- 1 SINGLE JUDGE TARFUSSER: Is the problem solved? Okay, thank you.
- 2 So I will start again with point 7:
- 3 (7) You have the right to receive and to have disclosed to you material, which shows
4 or tends to show your innocence, mitigates your guilt, or which may affect the
5 credibility of Prosecution evidence in possession of the Prosecutor;
- 6 (8) You have the right to challenge the charges and the evidence presented by the
7 Prosecutor, and to present evidence yourself. You will have the possibility to
8 question, or to have questioned Prosecution witnesses and to have Defence witnesses
9 also testify in order to present other evidence;
- 10 (9) You are entitled to waive your right to attend status conferences convened for
11 the purposes of disclosure of evidence, or other purposes which are more technical
12 hearings, the status conferences I mean;
- 13 (10) You have the right and I can assure you you will be tried without undue delay;
- 14 (11) You have the right to appeal certain decisions pursuant to Article 82 of the
15 Statute and the relevant Rules of Procedure and Evidence;
- 16 (12) And last, you have the right to apply for interim release. I would like to
17 particularly draw your attention this, considering that any periodic review of
18 detention does not start unless the Defence makes its first application for interim
19 release. The time limit of 120 days under Rule 118(2) runs from the Chamber's
20 ruling on any such application.
- 21 Now I again ask you, Mr Al Mahdi, if you have understood everything about your
22 rights.
- 23 MR AL MAHDI: (Interpretation) Yes, your Honour, I have understood them well.
- 24 SINGLE JUDGE TARFUSSER: Thank you very much. And now that you have
25 been informed of the charges, that you have been informed of your rights, I ask you if

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1 you want to make at this point in time any comments or statements with regard to the
2 allegations, to the facts you are accused of? Do you want to say something?

3 MR AL MAHDI: (Interpretation) No, your Honour. I would like to consult my
4 counsel and his team and I will have comments possibly later.

5 SINGLE JUDGE TARFUSSER: Okay, thank you very much.

6 Now I come to determine the date of the confirmation hearing. As Rule 121 of the
7 Rules of Procedure and Evidence makes it mandatory to the Chamber to set at this
8 point the date of the confirmation hearing, and after having discussed with my
9 colleagues of the Chamber, with the parties, of course, and with the Registry, and it
10 was crucial because of the move from this premises to the permanent premises, which
11 will happen in December, I set the date for the commencement of the hearing on the
12 confirmation of charges for this case on Monday, 18 January 2016.

13 This said, the hearing -- first, the initial appearance could be closed, but I would like
14 to raise, as I said in the beginning, some organisational matters. So in order to
15 smoothen a bit the whole proceedings, I will touch upon three points: One, the first
16 one is disclosure.

17 A decision will be filed today concerning disclosure and exceptions thereto, setting
18 out certain categories concerning the redaction of evidence. I will issue a written
19 decision including these categories since reading them outright now would take some
20 time. It might be sometimes not very clear.

21 I would then turn to the Prosecutor, now, and would like to know whether it is
22 possible to already provide an estimate of the amount and the nature of documents
23 the OTP intends to rely on for the purpose of the confirmation hearing and, this is
24 more likely to have a more precise answer, how soon the Prosecutor will be in a
25 position to start with the process of disclosure of material to the Defence.

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1 I would just remind that 18 January is nearly after tomorrow, so I think we have to
2 really to speed up, or because the term is not very long, but I think it is time that we
3 shorten a little bit this period which goes from the first appearance to the
4 confirmation hearing.

5 Ms Prosecutor, you have the floor.

6 MS BENSOUDA: Mr President, senior trial lawyer, Gilles Dutertre, will respond to
7 those questions.

8 MR DUTERTRE: (Interpretation) Good morning, your Honour.

9 Regarding when we can begin to disclose evidence, as of next week; in other words,
10 as soon as the Defence has recruited a case manager. In that case, we will be in a
11 position to provide the evidence. We already have two batches of evidence to be
12 disclosed.

13 As for the volume of documents, I believe we have approximately 392 documents that
14 have been made reference to in our arrest warrant. There are other items to be
15 disclosed. The exact volume has not been determined, but disclosure to the Defence
16 will occur. I can assure the Court that a number of protective measures will be
17 requested and that we will work as quickly as we can to disclose all evidence to the
18 Defence with the appropriate protective measures. In any event, the OTP staff will
19 work very hard and very quickly to ensure that disclosure is done by the date set.
20 Now, the Prosecution will be immediately tabling after this hearing a number of
21 observations regarding redactions. And I'm sure that this filing will come in just as
22 your decisions are coming out. And we are suggesting the same sort of redactions as
23 the ones done in the Ongwen case.

24 And I don't think the Chamber will be surprised by any of these requests in our
25 filings. There is really nothing very new about all of this. Thank you,

1 your Honour.

2 SINGLE JUDGE TARFUSSER: Okay. Of course, I mean, the whole procedure
3 should be closed by 18 December, as the -- 18th or 19th, it depends on the way how
4 you calculate but, in any case, this is a period where in any case everything has to be
5 disclosed.

6 Thank you very much.

7 The second issue I want to raise regard the time limit for the responses under
8 Regulation 34(b) of the Regulations of the Court.

9 According to Regulation 34(B) of the Regulations in conjunction with Regulation 24(1),
10 the Prosecutor and the Defence may file a response to any document filed by any
11 participant in the case within 21 days of notification of this document to which the
12 party is responding. This applies, according to the Rules, unless otherwise provide
13 by the Court's legal text or otherwise ordered.

14 What I'm going to do now, otherwise order, because for the sake of efficiency and
15 avoidance of delays in addressing any procedural matter that requires intervention by
16 the Single Judge in the present proceedings leading to the confirmation of charges
17 hearing, the order I issue is the following:

18 The Prosecutor and the Defence may respond to each other's filing within five
19 days - not 21, five days - of notification in accordance with Regulation 31 of the
20 Regulations of the document to which they are responding.

21 If and when victims are admitted to participate in the proceedings, this order will
22 apply also to the victims of course.

23 After these five days, after expiring of the five days, and irrespective of whether a
24 response is presented, a decision can and will be issued any time, at any time.

25 In any case, issues raised by any party would need to be decided upon with particular

1 urgency, the other party would be requested by way of email communications, and
2 not by formal decisions, to provide a response if it wishes to respond within a time
3 limit even shorter than five days, as appropriate. The decision would be issued
4 upon expiration of this particular time limit set.

5 So this is also a measure to accelerate the proceedings because I think 21 days is far
6 too long, in any case.

7 Third, and final, issue is regard to the leave to appeal. In this regard, I remind the
8 parties that interlocutory appeals under Article 82(1)(d) of the Statute, are to be
9 considered as an exceptional - as an exceptional - remedy in the presence of one of the
10 issues mentioned therein, which have to be and which will be interpreted restrictively
11 by the Chamber. Interlocutory appeals are not a tool for expressing disagreement
12 with the decision taken by the Chamber. Normally the Chamber -- a decision of the
13 Chamber is always disagreed by one party, so -- but that's not the problem, so it is not
14 a disagreement, as very often it is perceived and it appears. Of course I'm not
15 referring to this case because it is too early to refer to this case, but to my experience.
16 And, therefore, I'm saying this as a guidance to the parties.

17 So these are the three issues I wanted to raise for the organisational matter.

18 And if there is nothing else the parties would wish to raise by then, I come to the
19 conclusion of this hearing. Is there something you wish to raise?

20 MS BENSOUDA: No, Mr President.

21 MR AOUINI: (Interpretation) Your Honour, with regard to the commencement of
22 disclosure by the Prosecution of evidence, the client, Mr Ahmad Al Mahdi would like
23 to confirm or indicate as briefly as possible what his choice is in this regard. I am
24 still duty counsel to date, and disclosure can only be done or completed at least one
25 week after the confirmation of my appointment.

1 So I would like, therefore, that the Prosecution only commence disclosure seven to 10
2 days after my official appointment. And I thank you, your Honour.

3 SINGLE JUDGE TARFUSSER: Thank you very much. This is the first time I hear
4 that the Prosecutor has to refrain from disclosing. Normally it is the other way
5 around, that the Prosecutor is always blamed for not disclosing. But it is a good -- it
6 is a good reason. I think the Prosecutor will take care of this.

7 So if there is nothing else to be discussed, I think it was quite a short and a good first
8 appearance hearing.

9 I come to the conclusion, and if any, of course, if any further issue, question or
10 problem arises between now and the date set for the confirmation hearing, i.e. 18
11 January, it will be dealt with by the Single Judge either through written decisions
12 upon submissions by the parties or, and also here for a guidance,
13 preferably - preferably - after oral discussion in status conferences to be scheduled ex
14 officio or on request of the parties, which I think is the better way to do it instead of
15 just throwing us papers and making decisions all the time.

16 So thank you very much. Thank you especially to the -- I think it is difficult for the
17 Arabic translator. Thank you very much for -- to the translators, to all the people
18 who made this happen, to the Prosecution, to the Prosecutor, to the Defence, to the
19 OPCD, the Registry, to my team thank you very much.

20 And this closes this hearing. Thank you very much.

21 THE COURT USHER: All rise.

22 (The hearing ends in open session at 11.37 a.m.)