

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 1 June 2016

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF *THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI*

Public

Decision Setting the Commencement Date of the Trial

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 Representatives of Victims

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**

Isabelle Guibal

Others

Trial Chamber VIII ('Chamber') of the International Criminal Court ('Court') issues the following 'Decision Setting the Commencement Date of the Trial', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, pursuant to Article 64(3) of the Rome Statute and Rules 101 and 132 of the Rules of Procedure and Evidence ('Rules').

1. On 24 May 2016, the Chamber held a status conference in order to set the date of the trial ('Status Conference').¹ This status conference was preceded by joint written submissions² from the Office of the Prosecutor ('Prosecution') and the defence for Mr Al Mahdi ('Defence') ('Joint Submissions').³
2. In the present decision, the Chamber will set the commencement date of the trial and fix the attendant calendar leading up to this date. The Chamber will address each part of the calendar in turn.

A. Disclosure of outstanding materials, lists of witnesses (with summaries of anticipated witness testimony), lists of evidence and confirmation of arrangements for all witnesses

3. The Chamber notes the Prosecution's submission that it has limited outstanding disclosure, and the submission of both parties that they may call a limited number of witnesses in this case.⁴
4. The Chamber considers it appropriate to set a deadline for the parties to disclose materials falling under their disclosure obligations. This disclosure deadline is set for 1 July 2016. The parties may – and in some cases, must⁵ – continue disclosing materials after this date, but leave of the Chamber is required to rely on materials disclosed after the deadline. The parties are expected to disclose material on a rolling basis up until the deadline.

¹ Transcript of Hearing, ICC-01/12-01/15-T-3-CONF-FRA.

² Order Scheduling First Status Conference, 6 May 2016, ICC-01/12-01/15-88.

³ Joint Submissions by the Office of the Prosecutor and the Defence in compliance with the 'Order Scheduling First Status Conference', 19 May 2016, ICC-01/12-01/15-89-Conf, (A public redacted version was notified on 25 May 2016: ICC-01/12-01/15-89-Red).

⁴ Joint Submissions, ICC-01/12-01/15-89-Red, paras 11 and 13-14; Status Conference, ICC-01/12-01/15-T-3-CONF-FRA, page 5 line 15 to page 6 line 7.

⁵ E.g. Article 67(2) of the Statute (potentially exculpatory evidence must be disclosed 'as soon as practicable').

5. By this same deadline, the parties are also expected to provide: (i) their final lists of witnesses (with summaries of anticipated witness testimony and estimated length of testimony); (ii) a joint list of evidence containing any additional materials which the parties would like the Chamber to consider pursuant to Article 65(1)(c)(ii) of the Statute⁶ and (iii) separate lists of evidence with any additional materials the parties wish to have considered exclusively for sentencing.
6. The Registry is also directed to file a submission by this same deadline confirming that essential arrangements have been completed for the appearance of all testifying witnesses. If such arrangements are not completed by this deadline for a particular witness, the Chamber may require the calling party to change the mode of testimony – for instance, to require video-link testimony – in order to facilitate the presentation of evidence in a timely manner.

B. Applications by victims to participate in the proceedings

7. The Chamber was informed on 20 May 2016 that three applications to participate as victims during the trial were transmitted to the Court.⁷ The Chamber's determination of these applications will be made in due course.⁸
8. In order to facilitate the fair and expeditious conduct of the proceedings, the Chamber considers it appropriate to set a cut-off date for transmission of further victim applications to participate at trial. Such a deadline ensures that any

⁶ Article 65(1)(c)(ii) provides that: 'Where the accused makes an admission of guilt [...], the Trial Chamber shall determine whether: [...] [t]he admission of guilt is supported by the facts of the case that are contained in: [...] [a]ny materials presented by the Prosecutor which supplement the charges and which the accused accepts'. There are already 645 such materials in this case, as the parties agree that the items on the Prosecution's list of evidence during the confirmation phase of the case may be considered by the Chamber. Status Conference, ICC-01/12-01/15-T-3-CONF-FRA, page 21, line 14 to page 22, line 18.

⁷ Transmission to the Chamber, the Office of Public Counsel for Victims and the Office of the Prosecutor of three unredacted applications to participate in the proceedings, 25 May 2016, ICC-01/12-01/15-90 (with three annexes, all with confidential *ex parte* and confidential redacted versions).

⁸ Pending resolution of the applications, the Office of Public Counsel for Victims advanced submissions before the Chamber on their behalf pursuant to Regulation 81(4)(c) of the Regulations of the Court. Status Conference, ICC-01/12-01/15-T-3-CONF-FRA, page 3 lines 11-14.

victims' counsel fulfil their mandates consistently during trial – because their client base is settled by the trial commencement – and also avoids diverting time and resources away from the conduct of the trial after it begins.

9. The Chamber considers that the deadline for the Registry to transmit all applications to participate in the trial should be set one month before the trial commences. This deadline is without prejudice to receipt and review of subsequent applications to participate in any reparations proceedings which could occur in this case.

C. Motions requiring resolution prior to the commencement of trial

10. As has been done in previous cases, and in order to ensure that no issues affecting the commencement of the trial are unresolved by the commencement date, the Chamber sets a deadline for all motions which require resolution prior to the commencement of trial. This deadline also will be set at one month prior to the commencement of the trial.

D. Commencement date of the trial

11. The Chamber notes the parties' submission that the trial can only start on 25 August 2016.⁹ In order to ensure that the parties have a reasonable opportunity to secure the testimony of their witnesses, and also noting the summer recess and the Chamber's accession to a Defence request that the trial not commence during Ramadan,¹⁰ the Chamber is prepared to set a late August trial commencement date. Noting the parties' submissions that the trial is only estimated to last a few days,¹¹ and in the interest of completing the trial in a single week, the Chamber decides to commence the trial on an earlier date in the same week selected by the parties.

⁹ Joint Submissions, ICC-01/12-01/15-89-Red, paras 5-15; Status Conference, ICC-01/12-01/15-T-3-CONF-FRA, page 16, line 19 to page 21, line 12.

¹⁰ Status Conference, ICC-01/12-01/15-T-3-CONF-FRA, page 16, line 19 to page 17 line 4.

¹¹ Joint Submissions, ICC-01/12-01/15-89-Red, para. 15.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

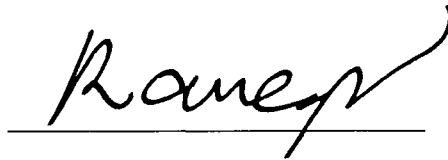
DECIDES that the trial will commence on **Monday, 22 August 2016**; and

SETS the following deadlines leading up to the trial commencement:

1 July 2016: Disclosure of outstanding materials, lists of witnesses (with summaries of anticipated witness testimony), lists of evidence and confirmation of arrangements for all witnesses.

25 July 2016: Registry transmission of applications by victims to participate in the proceedings and motions requiring resolution prior to the commencement of trial.

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



Judge Raul C. Pangalangan, Presiding Judge



Judge Antoine Kesia-Mbe Mindua



Judge Bertram Schmitt

Dated 1 June 2016

At The Hague, The Netherlands