

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 July 2016

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding Judge

SITUATION IN THE REPUBLIC OF MALI

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

Public, with annex

Directions on the Conduct of the Proceedings

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 Representative of Victims

Mayombo Kassongo

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**

Others

Judge Raul C. Pangalangan, acting as Presiding Judge on behalf of Trial Chamber VIII ('Presiding Judge' and 'Chamber', respectively) of the International Criminal Court ('Court') issues the following 'Directions on the Conduct of the Proceedings', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 64(8)(b), 65 and 67-68 of the Rome Statute ('Statute') and Rule 140 of the Rules of Procedure and Evidence ('Rules').

1. The trial in this case is currently set to commence on 22 August 2016.¹
2. The present decision constitutes the Presiding Judge's directions on the conduct of the proceedings. These directions have been designed around Mr Al Mahdi's announced intentions to make an admission of guilt in this case. Given that this trial is projected to be limited in character, the Presiding Judge does not consider it necessary to give the parties an opportunity to make submissions and agree on how to conduct the proceedings.²
3. Issues left unaddressed in the present decision and which require intervention from the Chamber will be dealt with in the course of the trial. In particular, the Presiding Judge will not regulate the questioning of witnesses in the abstract. The necessity or propriety of any particular question will be dealt with on a case-by-case basis, noting the Presiding Judge's obligations to: (a) make the questioning of witnesses and the presentation of evidence fair and effective for the determination of the truth and (b) avoid delays and ensure the effective use of time.³

¹ Decision Setting the Commencement Date of the Trial, 1 June 2016, ICC-01/12-01/15-93.

² Article 64(8)(b) of the Statute provides that '[a]t the trial, the presiding judge may give directions for the conduct of the proceedings, including to ensure that they are conducted in a fair and impartial manner'. Further, Rule 140(1) of the Rules provides that '[i]f the Presiding Judge does not give directions under article 64, paragraph 8, the Prosecutor and the defence shall agree on the order and manner in which the evidence shall be submitted to the Trial Chamber. If no agreement can be reached, the Presiding Judge shall issue directions'.

³ Regulation 43 of the Regulations.

A. Applicable protocols

4. The confidential information/witness contact protocol adopted by the Pre-Trial Chamber in this case shall continue to have effect.⁴
5. This trial is of a limited scope and duration, and all three testifying witnesses are either Prosecution staff members or experts who would not be expected to require much information about the process of testifying before this Court.⁵ With this in mind, the Presiding Judge considers that there is no useful purpose for permitting any witness preparation in this case. The trial will instead proceed on the basis of a witness familiarisation protocol as annexed to the present decision.⁶ For witness P-182, who is also a Prosecution staff member, he may continue having contacts with the Prosecution during his testimony, on condition that he does not discuss any aspect of his evidence or prospective testimony with any member of the calling party.

B. Reading of the charges

6. As for reading the charges to the accused at the commencement of trial,⁷ the Presiding Judge considers that an extract of the confirmed charge is sufficient for this purpose. Accordingly, the Court Officer will read only Section B of the confirmed charge.⁸ No waiver or written certification that this is sufficient is required; the accused can confirm at the commencement of trial if he understands the charges or if any further reading is necessary.

⁴ Annex A to Decision on the adoption of a protocol on the handling of confidential information, 6 November 2015, ICC-01/12-01/15-40-AnxA.

⁵ Annex A to the *Communication de la liste des témoins que le Bureau du Procureur entend appeler lors du procès*, 1 July 2016, ICC-01/12-01/15-118-Conf-AnxA.

⁶ An identical version of this protocol was adopted by Trial Chamber IX. See *The Prosecutor v. Dominic Ongwen*, Decision on Protocols to be Adopted at Trial, 22 July 2016, ICC-02/04-01/15-504 (at Annex 1).

⁷ Article 64(8)(a) of the Statute.

⁸ Public redacted Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi, 24 March 2016, ICC-01/12-01/15-84-Red, pages 26-27.

C. Schedule of the trial and presentation of evidence

7. Given that the judgment and sentence will be combined in this case,⁹ the trial hearing will cover the submissions to be made at trial (like opening and closing statements), presentation of evidence and any submissions of the kind which would be advanced at a sentencing hearing.¹⁰ Noting the time estimates provided by the parties,¹¹ the overall schedule of the trial is as follows:

- (i) *Reading of the charges.*
- (ii) *Opportunity to make an admission of guilt or plead not guilty.* If an admission is indeed made, the Chamber will conduct a short inquiry in order to determine whether: (a) the accused understands the nature and consequences of the admission and (b) the admission is voluntarily made after sufficient consultation with defence counsel. If a plea of not guilty is entered, then the hearing will adjourn at this point.
- (iii) *Prosecution submissions and presentation of evidence.* This includes three hours of oral submissions (including any audio-visual presentations, closing statements and further sentencing submissions),¹² and a nine hour maximum allotment in order for it to examine its three witnesses.
- (iv) *Formal closing of the submission of evidence to be considered pursuant to Article 65 of the Statute.*

⁹ ICC-01/12-01/15-T-3-CONF-ENG, page 4 lines 1-3.

¹⁰ In this regard, it is noted that Article 76(2) of the Statute, which governs sentencing hearings, does not apply in Article 65 proceedings ('Except where article 65 applies [...]').

¹¹ Annex A to the *Communication de la liste des témoins que le Bureau du Procureur entend appeler lors du procès*, 1 July 2016, ICC-01/12-01/15-118-Conf-AnxA; ICC-01/12-01/15-T-3-CONF-ENG, page 5 line 1 to page 10 line 15; Public redacted version of "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, 25 May 2016, ICC-01/12-01/15-89-Red, para. 18.

¹² By the trial commencement, written submissions on sentencing will have already been received from all participants and the Registry. Order Requesting Submissions on Sentencing, 14 June 2016, ICC-01/12-01/15-99.

- (v) *Legal Representative of Victims ('LRV') submissions*, up to a maximum of one hour.¹³
- (vi) *Defence submissions*, up to a maximum of one and a half hours. It is noted that the Defence did not identify any witnesses by the deadline set by the Chamber.¹⁴
8. As to the order of questioning for Prosecution witnesses, and subject to Rule 140(2)(c) of the Rules, the Prosecution will question the witness first, followed by the LRV and the Defence. The LRV is not required to provide an advance written note of any questions it intends to ask¹⁵ – applications to question may be presented orally, and the necessity or propriety of questions asked will be addressed on a case-by-case basis. Such questions may also relate to any future reparations proceedings which may occur.¹⁶
9. The Defence will be entitled to the same amount of time as the Prosecution when questioning witnesses. Given the LRV's more limited role in the trial proceedings, he is expected to take substantially less time than a questioning party when conducting his questioning. The Chamber will be vigilant in assessing these questions on a case-by-case basis while mindful of the fair and expeditious conduct of the proceedings.
10. Inefficient questioning will not be allowed, even if such questioning does not exceed the applicable time estimates. If the examination of a witness has been

¹³ It is noted that the LRV requested a minimum of an hour to make oral submissions at the opening of the trial, along with other written observations. *Requête des victimes autorisées tendant à obtenir un droit aux observations écrites et orales au cours du procès en vertu de l'Article 68(3) du Statut et de la Règle 91(2) du Règlement de procédure et de preuve*, 19 July 2016, ICC-01/12-01/15-132-Conf. With an hour of oral submissions at trial combined with the LRV's forthcoming written sentencing submission directed in order ICC-01/12-01/15-99, it is considered that the LRV has been afforded sufficient opportunity to make oral and written observations.

¹⁴ See Decision on Requests for Extension of 1 July 2016 Deadline, 7 July 2016, ICC-01/12-01/15-126 (rejecting Defence request to postpone the applicable deadline to 1 August 2016).

¹⁵ This is an optional requirement in Rule 91(3) of the Rules.

¹⁶ Regulation 56 of the Regulations.

concluded, the Chamber expects to immediately commence with the next witness unless otherwise indicated.

D. Use of materials during the hearing

11. At least five days before the trial commencement, the Prosecution shall provide the Chamber and other participants with a list, via email, of any material(s), including audio-visual material(s), it intends to use during the hearing, including during the examination of its witnesses. This list shall also indicate: (i) any passages intended to be used within any lengthy document(s) and (ii) the ERN under which the material can be found in e-court.
12. At least one day before the trial commencement, the Defence and LRV shall provide a list of any documents they intend to use during the hearing, via email.
13. The participant intending to use any documents shall ensure that electronic, searchable copies of the documents have been uploaded into e-court prior to their use.
14. For the benefit of the judges, three binders must be prepared with hard copy versions – delineated with numbered tabs – of all documentary materials to be used during the hearing. When referencing these materials in court, the participants must refer to the documents in these binders both by their tab number and ERN.
15. As regards the use of speech in audio-visual material during the hearing, the participant in question must indicate the ERN of a corresponding working language transcript. The Court interpreters must be sufficiently informed of which part of the transcript corresponds to which part of the audio-visual material being played. In such situations, the interpreters will read only the relevant part of the transcript into the record – they are not required to directly interpret the audio-visual material. Should the participants disagree with the

accuracy of the transcription read in court, they may request corrections in accordance with the procedure set out later in the present decision.¹⁷

E. Evidence

16. The Presiding Judge considers it unnecessary to regulate how evidence is presented if an admission of guilt is made, as the parties have already submitted the evidentiary materials for the Chamber to consider pursuant to Article 65(1)(c)(ii) of the Statute.¹⁸ The Chamber will consider the relevance, probative value and potential prejudice of this evidence, along with the testimony of the three Prosecution witnesses, in deliberating whether to convict the accused pursuant to Article 65(2) of the Statute.

F. Private and closed session

17. Insofar as possible, witness testimony shall be given in public. Requests for private and/or closed sessions shall be made in a neutral and objective way, if possible, referring to the topics that will be covered. To the extent possible, the participants are directed to group identifying questions together to avoid unnecessary recourse to private and/or closed session. Requests to redact part of what is said in open session should generally be made via email, so as not to attract undue attention to any confidential information.

¹⁷ See Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Initial Directions on the Conduct of the Proceedings, 13 July 2016, ICC-02/04-01/15-497, para. 23.

¹⁸ Annex A to the *Communication de la liste conjointe d'éléments de preuve additionnels soumise en application de l'article 65(1)(c)(ii) du Statut et demande d'extension de temps pour déposer 5 notes d'enquêteurs*, 1 July 2016, ICC-01/12-01/15-119-Conf-AnxA; Annex A to the Addendum à la «Communication de la liste conjointe d'éléments de preuve additionnels soumise en application de l'article 65(1)(c)(ii) du Statut et demande d'extension de temps pour déposer 5 notes d'enquêteurs», 1 juillet 2016, ICC-01/12-01/15-119-Conf, 15 July 2016, ICC-01/12-01/15-130-Conf-AnxA. See also ICC-01/12-01/15-93, para. 5; Transcript of Hearing, 24 May 2016, ICC-01/12-01/15-T-3-CONF-ENG, page 21 line 13 to page 22 line 14 (confirming that confirmation phase lists of evidence fall under Article 65(1)(c)(ii) of the Statute). The parties presented no further evidence to be considered exclusively for sentencing.

G. Transcripts

18. The Registry shall make public the redacted version of the transcripts within two days of the notification of the edited confidential version.¹⁹ Thereafter, the calling participant shall review the transcript and propose a lesser redacted version within 21 days of notification by the Registry.²⁰ Within 10 days of receiving the proposed lesser-redacted version, the other participants may raise any objections. Should no objections to the proposed lesser-redacted version be made, the Registry shall file it in the record of the case with the appropriate document number designation.
19. Requests for corrections to the transcript shall be submitted to the Registry within 10 days from the notification of the edited version of the transcript.²¹ The requests to the Registry shall refer to the edited version of the transcript and contain a table providing: (i) the full reference of the transcript, date and case name; (ii) the passage extracted from the edited version of the transcript containing the discrepancies to be reviewed; (iii) the pages and lines of the passage to be reviewed and (iv) the language originally used by the speaker. The Registry shall apply any corrections to the transcript in accordance with its normal methods within two days of receipt of the correction request.

¹⁹ As regards the first status conference at trial (ICC-01/12-01/15-T-3-CONF-ENG), this timeline, as well as the timeline for corrected transcripts, shall run as of 15 August 2016.

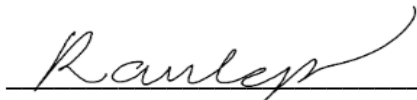
²⁰ When the English and French versions of a transcript are notified on different days, the latter of the two notification dates triggers this timeline.

²¹ When the English and French versions of a transcript are notified on different days, the latter of the two notification dates triggers this timeline.

FOR THE FOREGOING REASONS, THE PRESIDING JUDGE HEREBY

ADOPTS the aforementioned directions concerning the conduct of the proceedings, including the familiarisation protocol annexed to the present decision.

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

A handwritten signature in cursive script, appearing to read 'Raul C. Pangalangan', is written above a solid horizontal line.

Judge Raul C. Pangalangan, Presiding Judge

Dated 22 July 2016

At The Hague, The Netherlands