

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **5 April 2018**

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 REDACTED

Request for an extension to submit the Draft Implementation Plan

Source: The Trust Fund for Victims

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Gilles Dutertre

Counsel for the Defence

Mr Mohamed Aouini

Legal Representatives of Applicants

Legal Representatives of Victims

Mr Mayombo Kassongo

**Unrepresented Applicants for
Participation/Reparation**

Unrepresented Victims

**Office of Public Counsel for
Victims**

**Office of Public Counsel for the
Defence**

States' Representatives

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

1. Pursuant to regulation 35 (1) of the Regulations of the Court, the Trust Fund for Victims (hereinafter: Trust Fund) respectfully requests an extension of the time limit for the submission of its Draft Implementation Plan (hereinafter: Plan) in relation to the reparations order of 17 August 2017 (ICC-01/12-01/15-236) in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*. The Trust Fund respectfully requests that the deadline be extended to at least Friday, 20 April 2018.

I. BACKGROUND

2. On 27 September 2016, following an admission of guilt, Trial Chamber VIII (hereinafter: Trial Chamber) convicted Mr Ahmad Al Faqi Al Mahdi (hereinafter: Mr Al Mahdi) of the war crime of attacking protected objects under articles 8 (2)(e)(iv) and 25 (3)(a) of the Rome Statute (hereinafter: Statute).¹

3. On 17 August 2017, the Trial Chamber issued a reparations order² against Mr Al Mahdi pursuant to article 75 of the Statute, wherein it, *inter alia*, instructed the Trust Fund to submit the Plan by 16 February 2018.³

4. On 22 January 2018, the Trust Fund filed a request for extension of time for the submission of the Plan until 18 May 2018.⁴ An extension request was subsequently approved for 6 April 2018.

5. On 9 February 2018, the Trust Fund submitted a *Draft implementation Plan: Progress Report on a Field Mission*⁵ following the [REDACTED] during the period of preparing the Plan.

6. On 8 March 2018, the Appeals Chamber rendered its *Judgment on the appeal of the victims against the 'Reparations Order'*⁶, in response to an appeal of the Reparations Order filed by the single Legal Representative for Victims in this case (hereinafter: LRV)⁷.

¹ Judgment and Sentence, [ICC-01/12-01/15-171](#).

² Reparations Order, [ICC-01/12-01/15-236](#) ("Reparations Order").

³ [Reparations Order](#), p. 60.

⁴ ICC-01/12-01/15-253-Conf-Red.

⁵ ICC-01/12-01/15-256

7. [REDACTED] the Trust Fund conducted the [REDACTED]
[REDACTED] For security reason it was once again not possible for the Trust Fund [REDACTED]
[REDACTED]
8. On 29 March 2018, the Registry shared with the Trust Fund Secretariat a first draft for consideration of the redaction guidelines to be applied in the Al Mahdi case.
9. On 31 March 2018, Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (hereinafter: Mr Al Hassan) was surrendered and transferred into the custody to the International Criminal Court (hereinafter: the Court). Mr Al Hassan's initial appearance was held on 4 April 2018 in relation to war crimes and crimes against humanity allegedly committed in 2012 and 2013 in Timbuktu, Mali.

II. CLASSIFICATION OF THE PRESENT FILING

10. The Trust Fund has classified the present filing confidential, *ex parte* pursuant to regulation 23 *bis* (1) of the Regulations of the Court due to the fact that some of the information contained herein relates to confidential and sensitive activities related to other cases before the Court to which the parties and participants in the present case are not a party and which equally cannot be shared publicly at this time. A public redacted version will be filed simultaneously with the present request.

III. REQUEST FOR VARIATION OF THE TIME LIMIT

11. The Trust Fund remains mindful that the Trial Chamber is conducting the reparations proceedings in this case in an expeditious and timely manner. The Trust Fund is appreciative of the Trial Chamber's positive consideration of its previous extension request. The Trust Fund does not wish in any way to delay the proceedings, but finds itself unfortunately in the position

⁶ ICC-01/12-01/15-259-Red 2.

⁷ On 18 September 2017, the LRV filed notice of appeal against the Reparations Order and on 17 October 2017 the LRV submitted a brief in support of his Appeal (Appeal Notification, ICC-01/12-01/15-242 and ICC-01/12-01/15-244).

of being unable to meet the present deadline of 6 April 2018 for the filing of its Plan, in view of developments and reasons that are predominantly outside of the control of the Trust Fund. The Trust Fund accordingly requests a short extension of time for its submission. In this regard and for the reasons set out below (namely, the development of the Al Hassan case [REDACTED] Mali, and ongoing consultations with [REDACTED] the Trust Fund respectfully submits that good cause within the meaning of regulation 35 of the Regulations of the Court exists for it to be granted a time extension of at least two weeks to submit its Plan, i.e. until 20 April 2018.

12. The unexpected and sudden surrender of Mr Al Hassan on 31 March 2018 to the Court by Malian authorities over the weekend has caused the Trust Fund to further [REDACTED] [REDACTED] as well as with Court colleagues [REDACTED] [REDACTED]. The initiation of a new case against Mr Al Hassan for alleged crimes in Timbuktu and his alleged connection to the crimes against protected buildings is a further complicating development in an already [REDACTED] [REDACTED]

[REDACTED] The Al Hassan warrant of arrest⁸ indicates that the Al Hassan case is intertwined with the events of the Al Mahdi case in numerous ways. Those connections may include [REDACTED] of the alleged crimes and his alleged involvement in the destruction of protected buildings, and therefore likely implicates many [REDACTED] [REDACTED]

14. Any reparative action in the Al Mahdi case thus carries the risk of being influenced by events and attitudes emerging in relation to the Al Hassan proceedings. These implications need to be properly examined, anticipated, and reflected in the Plan. The Trust Fund has already [REDACTED] to assess their reactions and to gauge the implications of the new case on the implementation of reparations. The Trust Fund has inquired whether the new Al Hassan case may influence the extent to which [REDACTED] and what precautions if any are recommended.

⁸ ICC-01/12-01/18-2

15. In addition to external consultations the Trust Fund hosted a senior level meeting with the Office of the Prosecutor and the Registry to begin discussions [REDACTED] of the Al Hassan case on the [REDACTED] in the Al Mahdi case.

16. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17. On 29 March 2018 the Registry shared with the Trust Fund Secretariat a first draft of redaction guidelines to be applied in the Al Mahdi case. Following the subsequent Al Hassan case developments, the Trust Fund Secretariat and Registry have agreed that the development of redaction guidelines applicable in the Al Mahdi case will, in the spirit of the Trial Chamber's instruction to agree on common redaction guidelines for filing parties, benefit from further joint review and possible adaptations, in a process that should also include other relevant stakeholders, including the [REDACTED]. The Trust Fund submits that the Al Mahdi redaction guidelines may also serve as the basis for the promulgation of the Al Hassan redaction guidelines.⁹ This process should ideally be completed by the time of the Trust Fund's submission of the Plan.

18. As the Trial Chamber is aware, communications and interaction between the Court and or the Trust Fund with [REDACTED] is governed by protocols specified in the Best Practices Manual that requires formalized communications through identified focal points. In the Plan, because of the nature of the specific crimes against protected buildings in the Al Mahdi case, the Trust Fund is [REDACTED]
[REDACTED]

19. The Registry has confirmed to the Trust Fund that as per the existing Best Practice Manual between the Court and the [REDACTED] which is currently being reviewed, any [REDACTED]

⁹ The Office of the Prosecutor requested that the Al Mahdi redaction protocol for evidence disclosure in Al Mahdi also be declared applicable in Al Hassan, see ICC-01/12-01/18-15.

[REDACTED]

[REDACTED]

While the Trust Fund has taken care not to include avoidable references to discussions or information received from most of [REDACTED] this is not entirely possible with [REDACTED]. The present situation does not yet allow the Trust Fund to [REDACTED] even in the absence of judicially or operationally sensitive references to [REDACTED]. The Trust Fund has been advised by the Registry that this procedure will take at least one week from submission of the relevant text from the Plan via the Registry to the [REDACTED].

[REDACTED]

20. The final issue of concern that is affecting the finalization of the Plan pertains to the 8 March 2018 Appeals Chamber judgment on reparations in the Al Mahdi case. The description of the [REDACTED] in the Plan requires further adjustment in consideration of the Appeals Chamber judgment with respect to the role of the Defence and the Trial Chamber in the administrative procedure of [REDACTED]. The language and procedure outlined in the Plan should be harmonised with related procedures in other cases, notably the Lubanga case, and sufficient time is required to [REDACTED] [REDACTED] on this matter in the Plan.

21. In conclusion, the Trust Fund considers it feasible to complete the above-mentioned outstanding tasks within at least a two week period of time and accordingly requests a short extension of time to enable it to complete a Plan that is meaningful, programmatically feasible, responsive to the Trial Chamber's order and the Appeals Chamber judgment as well as to the expectations of [REDACTED]. Accordingly, the Trust Fund respectfully requests that it be granted an extension of the deadline mentioned above to 20 April 2018 and submits that good cause within the meaning of regulation 35 (1) of the Regulations of the Court exists for the requested extension in light of the reasons set out above.

FOR THE FOREGOING REASONS

The Trust Fund for Victims respectfully submits this request for a short extension of time.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 5 April 2018

At The Hague, The Netherlands