

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

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Date: **16 May 2022**

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 Document

Public redacted version of "Request for Extension of time", 22 January 2018,
ICC-01/12-01/15-253-Conf-Exp

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

Counsel for the Defence

Mr Mohamed Aouini

Legal Representatives of Victims

Mr Mayombo Kassongo

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for

Participation/Reparation

Office of Public Counsel for
Victims

States' Representatives

Office of Public Counsel for the
Defence

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 (“Trust Fund”) respectfully requests an extension of the time limit for the submission of its draft implementation plan (“Draft Implementation 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 Friday, 18 May 2018.

1. BACKGROUND

2. On 27 September 2016, following an admission of guilt, Trial Chamber VIII (“Trial Chamber”) convicted Mr Ahmad Al Faqi Al Mahdi (“Mr Al Mahdi”) of the war crime of attacking protected objects under articles 8 (2)(e)(iv) and 25 (3)(a) of the 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 Draft Implementation Plan by 16 February 2018.³

4. On 8 September 2017, the Trust Fund organised an meeting with the various relevant directorates and sections of the Registry to discuss collaboration and support in relation to: 1) situation analysis and security assessments; 2) mission planning and identification of local stakeholders; 3) the eligibility screening process; 4) secure storage of victim data; and 5) outreach activities to currently unknown victims.

5. On 15 September 2017, the Trust Fund held an introductory consultation meeting with UNESCO officials in Paris, France, where the following topics were discussed: 1) the status of the restorations of the mausoleums and ongoing plans (jointly with the Malian government) for their maintenance; 2) ██████████ activities in Mali related to cultural heritage; 3) the possibility of organising a public ceremony for the presentation of the symbolic award for reparations ordered to be made to ██████████ on behalf of the harm suffered by the international

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.

community; and 4) fundraising possibilities. Follow up meetings were conducted via phone conference as well as in a second visit to [REDACTED].

6. On 16 October 2017, the Trust Fund conducted a mission to the [REDACTED] [REDACTED] to discuss, *inter alia*, the Trust Fund's planned mission to Mali, the relevant activities [REDACTED] Mali, and to gather information in relation to the location of potential victims either internally displaced or residing in settlement camps outside of Mali.

7. Throughout, the Trust Fund has held consultations and mission planning meetings with the legal representative of victims ("Legal Representative"), relevant sections of the Registry and the field office regarding the planned mission to Bamako and Timbuktu, Mali. The Trust Fund also conducted an extensive mapping exercise of local and international non-government organizations operating in Timbuktu and Bamako, Mali, for the purposes of identifying resource persons, internationally and in Mali, potential implementing partners and in order to gain a better understanding of the available services and activities already in place, as well as to identify potential service gaps.

8. The joint Trust Fund, Legal Representative, and Registry mission was conducted in Bamako, Mali from [REDACTED] November 2017. The mission was joined and co-facilitated by Trust Fund for Victims Board ("TFV Board") member Ms Mama Koité Doumbia, who is a citizen of Mali residing in Bamako.

9. Unfortunately, the planned visit to Timbuktu was canceled for security reasons.

10. During the first mission to Bamako, the Trust Fund undertook the following types of activities:

- a. Through an efficient and effective facilitation by the Legal Representative, for which the Trust Fund wishes to express its sincere gratitude, the Trust Fund was able to meet and engage with all of the Legal Representative's available clients, including those living in Timbuktu who travelled to Bamako for the occasion. The Trust Fund notes the intrinsic reparative value of these engagements as expressed by the participating

victims, next to the clear and important informational value for the Trust Fund's task of developing the Draft Implementation Plan.

- b. The first mission was an important opportunity to introduce the reparations order and the related undertaking of developing the draft implementation plan to senior representatives of Government Ministries, including in the areas of foreign affairs and international cooperation, justice, culture, solidarity and humanitarian action, national reconciliation and security. A collective meeting and subsequent bilateral meetings served to provide information and clarification about the implementation aspects of the reparations order and to discuss the possibility and various options for the Mali Government to support and contribute to the implementation of the awards, including the receipt of the €1 symbolic award to the Government of Mali.
- c. The Trust Fund was able to meet with the various [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
- d. In a separate meeting with representatives of the broader international (donor) community in Mali, the Trust Fund was also able to explain the potential funding arrangements for the reparations awards through the Trust Fund, considering the current indigence of the convicted person, including the option of donors making contributions earmarked for (elements of) the reparations awards.
- e. In a series of meetings with representatives of international and domestic NGOs and civil society organizations, the Trust Fund gathered important contextual and operational information and documentation.

11. On 5 and 6 December, the TFV Board held a Board meeting in New York, USA during the Assembly of States Parties ("ASP") conducted at the same time. At its meeting, the TFV Board and Secretariat discussed, *inter alia*, the state of development of the Draft Implementation Plan, the Trial Chamber's complement request to the TFV Board

pursuant to regulation 56 of the Regulations of the Trust Fund, and fundraising opportunities related to the reparations order.

12. In December 2017, the Trust Fund finalized the recruitment of an Associate Field Programme Officer whose responsibilities include providing assistance in developing the Draft Implementation Plan.

13. On [REDACTED] December 2017, the Trust Fund conducted a second mission to Bamako, Mali. For security reasons, it was still not possible to visit Timbuktu. The second mission included meetings and consultations with stakeholders already met during the first mission, with the aim of gathering additional information, following an internal analysis of the findings of the first mission, and to lay the foundation for the on-site engagement with stakeholders based in Timbuktu.

14. The Trust Fund is conducting a third mission to Mali from [REDACTED] January 2018, during which the Trust Fund intends, security permitting, to visit Timbuktu for the first time.

II. REQUEST FOR VARIATION OF THE TIME LIMIT

15. Despite best efforts, but due to security complications and scheduling challenges, the Trust Fund regrets to inform the Trial Chamber that it will not be in a position to complete the preparation of the Draft Implementation Plan by the current deadline and accordingly requests an extension of time for its submission. In this regard and for the reasons set out below (namely, the inability to visit Timbuktu to date due to security constraints, ongoing consultations with the Government of Mali and ongoing consultation [REDACTED] [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 three months to submit its Draft Implementation Plan, i.e. until 18 May 2018.

16. At the outset, the Trust Fund considers it important to explain the Court's procedures, which are applicable to the Trust Fund, relevant to field missions that involve meetings with government and international organizations, as well as victims and local stakeholders. The procedures for TFV/Court staff to meet with an international organization ([REDACTED])

██████████) require a minimum of 30 days notification period to obtain authorization (first from the ██████████ ██████████) to set up initial meetings in Mali. This same 30 day notification period also applies for purposes of support requests from Registry staff, such as logistical support and security assessments. The Trust Fund expresses its appreciation to the Registry for arranging a joint meeting with ██████████ ██████████. At this meeting, the Trust Fund was able to clarify the administrative and programmatic nature of its activities, as opposed to those of the Court, which extends to the Trust Fund's requests for meetings and information ██████████ ██████████, for the purpose of developing draft implementations plans of reparations orders. While this clarification promises to remove some blockages, the 30 days notification period remains in place in regard of each new mission and the related ██████████ which includes the need to obtain ██████████ permission prior to engaging with ██████████ and their country offices.

17. The Trust Fund wishes to underline the exemplary assistance and support it has received throughout this process from the relevant sections of the Registry in The Hague and in the field office. However, the reality remains that, at a minimum, it takes more than a month to get the appropriate permissions before a mission can actually be undertaken. Further, this does not account for the initial preparation time required, which can only begin once the reparations order has been issued, to identify the relevant organizations and government officials/Ministries that need to be consulted during the mission; a task which necessarily must be carried out before the one month process of seeking authorization and logistical support can begin.

18. While the Trust Fund undertook other activities from The Hague during this planning period (i.e. ██████████, the mapping exercise, consultations with the Legal Representative, consultations on the victim eligibility screening process with VPRS, etc.), developing the contours of a Draft Implementation Plan can only really begin following a field mission. The consequence of these requirements to undertake a field mission is that the Trust Fund was in effect operating already under a deadline of less than five months to prepare the Draft Implementation Plan, without accounting for the Christmas holiday season, during which the majority of necessary stakeholders were not available. Compounding this, the first part of

December was taken up with the ASP, which the TFV Board and Secretariat in a support role needed to attend to raise interest in the reparations order so that the Trust Fund can be in a position to be responsive to the Trial Chamber's complement request.

19. Second, for purposes of responding to the *Al Mahdi* reparations order, information obtained from one or more site visits to Timbuktu, in the Trust Fund's view, is the foundation for developing the Draft Implementation Plan, from which other potential programme aspects (i.e. those relevant to the possible return of victims located in Bamako and possibly outside of the country in ■■■ refugee camps) are built onto. The cancellation of the Timbuktu mission in November 2017 prevented the development of the Draft Implementation Plan from moving beyond the preliminary stages according to the Trust Fund's original timetable.

20. As a concrete example of the effects of the Trust Fund's inability to visit Timbuktu, the Trust Fund observes that, in terms of outreach to potential victims that are currently unknown and also in relation to the proposed eligibility screening process for individual reparations awards for Timbuktu residents, it is not possible to refine and assess the feasibility of preliminary planning absent a site visit and meetings with local government authorities. In order to develop a proposed eligibility screening process, it is absolutely necessary to understand the documentation that is actually available to people in Timbuktu in regards to their relationship (economic or familial) with the mausoleums.

21. Third, the Trust Fund wishes to inform the Trial Chamber that it needs to continue consultations and planning for the presentation of the symbolic awards to the Mali government and ■■■■■. In this regard, the Trust Fund would stress that this planning is contingent upon the availability of outside actors, whose schedule the Trust Fund cannot dictate or control.

22. Fourth and finally, outside of the presentation of the symbolic award, the Trust Fund also wishes to inform the Trial Chamber that, in its view, there is a need for further engagements with the government of Mali. At the central level, these consultations relate to the government's potential cooperation and support in the implementation process. In this regard, the government of Mali has expressed an active interest and willingness to be a constructive part of the Draft Implementation Plan development process with the Trust Fund. Based on the Trust Fund's experience in other reparations proceedings, the relevant government's

participation in the implementation of a reparations programme can dramatically affect what can feasibly be implemented and accordingly needs to be, from a programme perspective, taken into account at the design stage, i.e. the development of the Draft Implementation Plan stage. At the local level (Timbuktu), due to the ongoing security issues and the cancellation of two previous Timbuktu missions, the level of engagement and potential contribution of the local government, including the municipal administration, remains to be ascertained.

23. In this regard, the Trust Fund submits that as the *Al Mahdi* reparations order relates to the protected buildings themselves, it is all the more necessary that the relevant government authorities are fully consulted during the design stage. The protected buildings implicate issues that go beyond those that relate solely to private property. This means that the Trust Fund must be in a position to understand the parameters of what is permissible, as well as the applicable procedures that may be required, in terms of any proposals related to their maintenance and protection, as set out in the reparations order.

24. The Trust Fund hopes to be in a position to have a clearer understanding of the potential cooperation and support available from the government of Mali (local and national) following the planned January mission, though there will remain a need for further discussions and consultations after the mission has taken place.

25. In conclusion, the Trust Fund considers it feasible to complete the above-mentioned outstanding tasks within a three month period of time and accordingly requests an extension of time to enable it to complete a Draft Implementation Plan that is meaningful, programmatically feasible, funded, responsive to the Trial Chamber's order for reparations as well as to the expectations of victims and the inhabitants of Timbuktu. Accordingly, the Trust Fund respectfully requests that it be granted an extension of the deadline mentioned above to 18 May 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 an 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 22 January 2018

At The Hague, The Netherlands