

1 International Criminal Court  
2 Trial Chamber VIII - 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 Presiding Judge Raul Pangalangan, Judge Antoine Kesia-Mbe Mindua and  
6 Judge Bertram Schmitt  
7 Status Conference  
8 Tuesday, 24 May 2016  
9 (The status conference starts in open session at 9.31 a.m.)  
10 THE COURT USHER: All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE PANGALANGAN: Could I ask the court officer to call the case.  
14 THE COURT OFFICER: Thank you, your Honour.  
15 The court is sitting in the situation in the Republic of Mali, in the case of The Prosecutor  
16 versus Ahmad Al Faqi Al Mahdi.  
17 PRESIDING JUDGE PANGALANGAN: Thank you. And may I call for the  
18 appearances. Counsel, please introduce --  
19 THE INTERPRETER: Microphone.  
20 PRESIDING JUDGE PANGALANGAN: I'm sorry. I'm sorry for that. Yes, come to  
21 think of it, yes.  
22 Well, thank you court officer for calling the case.  
23 I now call for appearances by counsel. And please introduce yourselves and your  
24 representative clients for the record.  
25 May we start with the Prosecution.

1 MR DUTERTRE: (Interpretation) Good morning, your Honour. Good morning,  
2 your Honours. My name is Gilles Dutertre and I am the senior trial lawyer for the  
3 Prosecution. Today I'm accompanied by my colleague, Colin Black, and my case  
4 manager Sanja Bokulic. Thank you very much.

5 PRESIDING JUDGE PANGALANGAN: Thank you so much for the Prosecution.  
6 Now for the Defence, please.

7 MR AOUMINI: (Interpretation) Good morning, your Honour, ladies and gentlemen,  
8 members of the Court. I am Mohamed Aouini, main counsel of Mr Ahmad Al Faqi  
9 Al Mahdi. I have the honour to be before you to defend Mr Ahmad Al Faqi. I'm  
10 accompanied by Mr Jean-Louis Gilissen, lawyer in Liège, in Belgium; and we are helped  
11 for the session by Ms Sylviane Emma Glodjinon, she is the case manager; Mr  
12 Colin Gilissen; and Mrs Judith Akebe; as well as Mr Amin Abed Ali. Thank you, sir.

13 PRESIDING JUDGE PANGALANGAN: Thank you.  
14 Thank you so much, Counsel.

15 Any other appearances?

16 MS MASSIDDA: (Interpretation) Good morning, your Honour, your Honours. In  
17 accordance with the instructions of the Chamber of yesterday, 23 May 2016, the office of  
18 public counsel is appearing in accordance with Regulation 81(c) of the Regulations of the  
19 Court with a view to presenting the interests of the victims who have filed their  
20 application to participate in this case.

21 And today with me in the hearing we have Maître Sarah Pellet, who is a counsel; on my  
22 right-hand side, behind us, we have Mr Mohamed Abdou, who is a lawyer; and myself,  
23 Paolina Massidda, lead counsel.

24 PRESIDING JUDGE PANGALANGAN: Thank you. Thank you, Counsel. Any other  
25 appearances? Yes, please.

1 MS OSEREDCZUK: (Interpretation) Good morning, your Honour, your Honours.  
2 For the Registry, myself, Isabelle Oseredczuk, who represents the VWU. Thank you.  
3 PRESIDING JUDGE PANGALANGAN: Thank you so much.  
4 And on behalf of the Chamber, I am Judge Raul Pangalangan, and on my right is  
5 Judge Antoine Mindua and on my left is Judge Bertram Schmitt.  
6 For the record, the Chamber was informed just last Friday that victim applications have  
7 been received by the Registry. And pursuant to Rule 81(4)(c) of the Regulations of the  
8 Court the OPCV is here today to advance submissions on behalf of these applicants  
9 pending resolution of their applications.  
10 And I thank the OPCV for being here on very short notice.  
11 Well, welcome to the first status conference in the trial phase of this case.  
12 The purpose of this status conference is to set the commencement date of the trial and  
13 other matters.  
14 As is a matter of public record, the accused has announced an intention to make an  
15 admission of guilt in this case, and the parties have given the Chamber a recommended  
16 sentencing range if this admission is accepted. This Chamber will proceed on an  
17 understanding that an admission of guilt is going to be made in this case. However, this  
18 is subject to the Chamber's independent power under Article 65 of the Statute to accept or  
19 reject any such admission.  
20 Let me just briefly deal with directions on issues not being discussed at the status  
21 conference.  
22 As the parties can recall, they were directed by the Chamber to make their submissions for  
23 the status conference, they have done that jointly. Not every issue raised in those  
24 submissions will be discussed today. However, the Chamber will give some brief  
25 directions on some of those issues not covered.

1 First, the parties indicate that they have no objection to the Chamber pronouncing both  
2 the judgment and the sentence simultaneously in this case. And there being no objection  
3 on this point, the Chamber decides to proceed on that basis.

4 Second, the Prosecution indicates that it still has limited outstanding disclosure in this  
5 case. All outstanding materials falling under the Prosecution's disclosure obligations  
6 must be disclosed as soon as possible. In the near future, the Chamber intends to set a  
7 deadline for the Prosecution to make those disclosures that it wants the Chamber to  
8 consider in this case. Unless otherwise indicated, the redaction regime adopted by the  
9 Pre-Trial Chamber, set out in decision 9, will continue to apply. I believe this will  
10 simplify proceedings for all the parties and will be in the interest of the efficient  
11 administration of justice.

12 Third, the parties indicate that they intend to file a public redacted version of the  
13 agreement regarding the admission of guilt and the agreed factual basis thereto. The  
14 parties are to finalise these arrangements promptly and are directed to file this public  
15 redacted information by no later than 1600 of 17 June 2016.

16 The Chamber will now turn to the specific status conference items being discussed today,  
17 the items set out in the order of 6 May 2016.

18 Preliminary, let me just emphasise two points: It is not necessary for the parties, having  
19 made their joint submissions, to repeat any of their written submissions at this status  
20 conference. The Chamber has reviewed the joint written submissions and today it is an  
21 opportunity for the parties to complement those existing submissions and answer  
22 questions from the Chamber.

23 Second, please observe the five-second rule, pausing briefly between sentences for the  
24 benefit of the interpreters. I hope I have followed that rule myself so far.

25 Now, turning to the agenda items for today.

1 The Chamber will first address the submissions in relation to the submissions and  
2 witnesses and then the commencement date for the trial and other matters.  
3 On oral submissions, first addresses the both parties.  
4 The Chamber notes that the both parties both wish to give oral statements at the  
5 commencement of trial. And the Prosecution estimates that it will require approximately  
6 one hour for these submissions.  
7 The Defence, and this I address to the counsel for Defence, you have expressed a wish to  
8 address the Chamber today on the length and content of your oral submissions. You  
9 have the floor.  
10 MR AOUMINI: (Interpretation) Thank you, your Honour. Very quickly and in order  
11 not to take too much time of the Court, we have presented written submissions on the  
12 beginning of the procedures. And I will not be lengthy on that.  
13 Our written comments present the reasons that explain our choice for the date of the  
14 beginning of the procedures.  
15 Now, on the beginning of the procedures and the commencement of the procedure and  
16 the comments, we will present before your honourable Court our oral comments which  
17 may last 45 minutes to an hour and a half. We cannot specify exactly today the duration  
18 of those oral comments, but we may need 45 minutes to an hour and a half for the  
19 comments that we may present at the commencement of the procedure.  
20 We also have another point we would like to mention before the Court which is not  
21 included in our written submissions. We are presently discussing with one or two  
22 witnesses the possibility of their venue to present testimonies before your Chamber. And  
23 this may be difficult because of the place the witness is located in today.  
24 And your Court has taken into account, or may take into account in the future, the reasons  
25 we have explained in our request to delay the commencement to the beginning -- or, the

1 end of August or the beginning of September. Thank you, your Honour.

2 PRESIDING JUDGE PANGALANGAN: Thank you so much, Counsel.

3 So we note your -- the period that will be needed for your oral submissions. As regards  
4 the commencement date of the trial, we will address that shortly today. The Chamber  
5 will actually indicate the time limits in a formal order at the commencement of trial in due  
6 course.

7 Okay, this I address to both parties in turn: The Prosecution indicates that it intends to  
8 call three witnesses. And we wish to hear further submissions from the parties about any  
9 other information they have about their prospective witnesses, and having heard from the  
10 Defence to the extent as well that it applies to your plan to call two witnesses. There are  
11 some specific questions but I will ask the Prosecution first.

12 MR DUTERTRE: (Interpretation) Thank you very much, your Honour. Now, it is our  
13 intention to bring before you a certain amount of documentary material, and then we'd  
14 like to call to the bar three witnesses.

15 Just to address them, in paragraph 21 of our confidential filing, the first witness, who is in  
16 the second bullet point, and who is identified here, this witness can broach matters going  
17 to fact, but also to the sentencing. And it's our belief that, given his knowledge of the  
18 case, he is able to apprise the Chamber with regard to the accused.

19 I'm a bit evasive because we're in public session here and I don't really want to reveal  
20 anything that may reveal the identity of the witness.

21 PRESIDING JUDGE PANGALANGAN: Counsel, are you requesting that we go into  
22 private session?

23 MR DUTERTRE: (Interpretation) That might be a bit more useful for the Chamber.  
24 Yes, I do thank you for that, your Honour.

25 PRESIDING JUDGE PANGALANGAN: Okay. Can I ask the court officer can we go

1 into private session.  
2 (Private session at 9.47 a.m.)  
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15 (Open session at 10.12 a.m.)  
16 THE COURT OFFICER: We're in open session, your Honour.  
17 PRESIDING JUDGE PANGALANGAN: Thank you.  
18 The Chamber notes that it gave the parties a preliminary indication of the commencement  
19 of trial in mid-June 2016. The parties have responded that this date should be us pushed  
20 back to 25 August because: First, Defence counsel's obligations at other tribunals,  
21 international tribunals; the availability of certain prospective witnesses, including  
22 arrangements for their protection; and wanting to start the trial after the conclusion of  
23 Ramadan.  
24 The Chamber will first address the -- will start with the last request.  
25 The Chamber is willing to accommodate the request to commence the trial after Eid in



1 early July. Whether the trial, however, whether it -- whether the trial should be pushed  
2 back until August, due to the availability of Prosecution witnesses, depends on these  
3 witnesses' particular circumstances and whether the Chamber decides that it wishes to  
4 hear them.

5 However, the Chamber emphasises that this trial needs to proceed expeditiously, and  
6 reminds counsel that they are expected to be present whenever the Chamber intends to sit,  
7 particularly in view of the fact that only a few days should be necessary for the conduct of  
8 the proceedings as already indicated. The experience of this Court demonstrates that  
9 Chambers have been strict in ensuring that counsel attend hearings when they have been  
10 scheduled.

11 We will now proceed to further submissions the parties may wish to make on these  
12 matters and is particular -- and the Chamber is particularly interested in further  
13 submissions on the date of commencement of trial, if any.

14 Can we hear from the -- does the Prosecution or the Defence have any further comments  
15 beyond what the Chamber has already declared?

16 MR DUTERTRE: (Interpretation) Thank you, your Honour. Obviously, the  
17 Prosecutor will be ready according to the decision of the Chamber.

18 But now with regards to the witnesses, or the month of July, the witness has taken up and,  
19 given that person's position, it's difficult for that person to remove himself from those  
20 obligations. However, if the Chamber decide that that person should be approached and  
21 provides the result, via the legal officer, but according I would think that his schedule is  
22 full with regards to the obligations, but we could approach him on that point.

23 With regards to the two other witnesses, that's not necessarily problematic, there are just  
24 some clarifications to be given to the Chamber, a couple of points which provide us with  
25 logistical difficulties.

1 We are currently finishing the correction of the interviews from 2015. And I think that  
2 the Chamber will have the finalised version rather than the draft that was provided for  
3 the confirmation hearing.  
4 Now, there are no surprises for the Defence, they know what's contained therein, but we  
5 wouldn't be able to come up with disclosure for that before the end of June, beginning of  
6 July. There's no harm, as far as I'm concerned, because the Defence knows what is  
7 contained therein. But obviously, as regards the deadline for disclosure and the date that  
8 the Chamber's set, that will be shortened.  
9 Now, I don't think that the Defence has a difficulty in this regard but they themselves can  
10 say what they think about that.

11 But we will approach the main witness to speak about the scheduling difficulties and we'll  
12 try and do everything in the shortest possible time frame.

13 PRESIDING JUDGE PANGALANGAN: My thanks to the Prosecution.

14 And any comments from the Defence?

15 MR AOUMINI: (Interpretation) Thank you, your Honour.

16 At the outset, I would like to thank the Bench for their decision and for taking into  
17 consideration the fasting and Ramadan and the decision of not holding or not  
18 commencing the trials during the month of Ramadan.

19 (Redacted)

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12 PRESIDING JUDGE PANGALANGAN: We note the submission by the counsel for  
13 Defence. And the Chamber will render a --  
14 MR GILISSEN: (Interpretation) Your Honour, could I just add something, with your  
15 leave?  
16 PRESIDING JUDGE PANGALANGAN: Please.  
17 MR GILISSEN: (Interpretation) Thank you very much. I'm in contact with this  
18 witness and by error -- I don't want to lead the Chamber into error, there's not yet a  
19 protection request which has been made because we're waiting for the agreement of this  
20 person before filing such a request for protection. I just wanted to point that out.  
21 Just a couple of additional comments that I'd like to make in this regard. They are very  
22 short.  
23 I mentioned that it wasn't just a way of repeating those because we have a different  
24 problem which is addressed in a different way. The arrival of candidate victims, we're  
25 not speaking about victims yet, they are candidates for the recognition of the status of

1 victims. Now, they come to us and they need work and the Chamber knows the work  
2 that's needed, and it could go beyond that.

3 Now, with regards to the charges that have been retained, it can't be just anybody who  
4 has status of victim recognized in such a trial, so we are in agreement, I think, with the  
5 OPCV that it is clear that there needs to be work of verification and checking, which needs  
6 to be carried out within a deadline which will be extremely short if your Chamber should  
7 consider that you keep the month of June as the date. Of course the decision is up to you.  
8 We just want to bring this information to you.

9 And we would also say, I'm not a Muslim, I don't practise Ramadan, but I have already  
10 practised Ramadan when I went to Maître Aouini, he will remember that, but it is true  
11 that Eid, first of all, is at the end of Ramadan and it's above all the end of a time when  
12 people are in a state of weakness. Well, I don't want to dramatise it too much, but they  
13 are slightly weaker and that the preparation of trial will be done in conditions which are  
14 manifestly not optimal for a useful and effective defence.

15 And that's what I respectfully would like to put to the Chamber and I know that you will  
16 carry out the appropriate arbitration thereof, but perhaps Maître Aouini who does  
17 practise Ramadan can speak about that with the appropriate knowledge thereof.

18 PRESIDING JUDGE PANGALANGAN: Well, I can assure the counsel that the Chamber  
19 will take all of these factors into account and will formalise its decision on the  
20 commencement of the trial.

21 (Microphone not activated)

22 MR DUTERTRE: (Interpretation) Thank you, your Honour. Very briefly, just to go  
23 back onto the issues mentioned by the Defence, we need summaries sufficiently in  
24 advance to make sure potential victims can be prepared for in an appropriate manner. I  
25 just wanted to mention that.

1 Furthermore, I would like to take this opportunity to say within the framework of  
2 disclosure, I would say straightaway there's information so that people aren't surprised by  
3 it; we have certain witnesses who we're interviewing within the framework of the case, it's  
4 not really relevant with regard to the charges, but it does come within Rule 77, so the  
5 Chamber will be notified of applications asking for disclosure of summaries for these  
6 witnesses, anonymous witnesses under Rule 77 for the Defence. Thank you.

7 PRESIDING JUDGE PANGALANGAN: Thank you.

8 Well, again, I can assure the Prosecution that the Chamber will take into account not just  
9 the difficulties mentioned by the Defence, but that order of the Chamber will also take  
10 into account the need for both opposing parties to be apprised in advance and to prepare  
11 for the testimony.

12 Okay, let us just turn to other matters.

13 The Chamber's first question pertains to the requirements for the Chamber to evaluate the  
14 admission of guilt. Under Article 65 of the Statute the Chamber is directed to consider,  
15 and this I quote, "any materials presented by the Prosecutor which supplement the  
16 charges and which the accused accepts." The Chamber notes that the Prosecution filed a  
17 list of evidence in this case; namely, the annexes to filings 67 and 74.

18 I now direct this to the parties: Can the Chamber treat the materials on these lists of  
19 evidence as having been presented by the Prosecutor and accepted by the accused for  
20 purposes of its determination under Article 65?

21 I ask the Prosecution.

22 MR DUTERTRE: (Interpretation) Yes, absolutely, your Honour, your Honours. All  
23 the evidence that we've disclosed within the list of evidence supports the confirmation of  
24 charges and that is the material which we submit for your examination. The Defence can  
25 confirm that.

1 Now, with regards to that, there are also some additional pieces of evidence from the  
2 witness, that's P-451, there's additional evidence from him, and we potentially will go  
3 back to that with regard to Rule 77, but it will be very restricted in terms of the list, so we  
4 also have some additional elements which we shall disclose at the shortest possible  
5 juncture.

6 PRESIDING JUDGE PANGALANGAN: Thank you. Thank you so much, Counsel.  
7 And for the Defence?

8 MR AOUINI: (Interpretation) Your Honour, we agree based on our consultations with  
9 the Prosecution and the explicit and detailed acknowledgment of the -- or explanation of  
10 the issue to the accused. So we agree. Thank you.

11 PRESIDING JUDGE PANGALANGAN: I thank both parties.

12 The Chamber will therefore treat the materials in the annexes of filings 67 and 74 as  
13 materials presented by the Prosecution and accepted by the accused for purposes of its  
14 Article 65 determination.

15 I will now proceed to the second question. And I direct this specifically to the counsel for  
16 the Defence.

17 Counsel, you have indicated that Mr Al Mahdi has been apprised of the consequences of  
18 entering into an admission of guilt. The Chamber wishes to receive confirmation that  
19 your discussion with the accused of these consequences included a discussion of the  
20 following: The rights that the accused is waiving by making an admission of guilt, that's  
21 the first; any possible defences that he may have; the maximum sentence that could be  
22 imposed by the Chamber; the possibility of having an order issued against him for  
23 reparations; and the fact that the Chamber is not required to accept the admission of guilt  
24 or the recommended sentencing range, that covers the range -- the nature and  
25 consequences of the admission. And I ask you now, Counsel, have you fully explained

1 all these to the accused?

2 MR AOUMI: (Interpretation) Thank you, your Honour. I would like to clarify to the  
3 Chamber that I was sitting next to the accused since the beginning, since the early  
4 investigations where I was mandated to be next to him during the investigation done by  
5 the Defence office. So since the first instance, the accused was telling me that he was a  
6 Muslim who believes in justice and he wants to be truthful to himself and he wants to  
7 admit the acts that he has committed and he wants to ask at the same time for pardon  
8 from the people in Timbuktu and the Malian people.

9 So I stopped him at that point and I reminded him of the legal text and the consequences  
10 that could emerge from any word or any admission that he might say, every word that he  
11 will utter. And I let him think for a few hours because we were during a mission in  
12 Niger where he was arrested, and so I gave him enough time to think and understand  
13 what I had explained to him. And he had admitted that the first, second and third  
14 consequences that I had explained to him and I told him what rights he is waiving and I  
15 informed him of the legal text and I told him what could be the consequences of his  
16 admission.

17 So he discussed the issue with me, and he is present here and the Chamber can ask him in  
18 person. So I discussed the matter with him again and he used to tell me again that he  
19 was a believer and he wants to be truthful to himself and he really regrets all the actions  
20 that he have committed and he understands the circumstances that had led him to being  
21 with these armed groups.

22 When he insisted on his words, I felt that he was being really honest and truthful and he  
23 was talking as if he wanted to inform or tell everyone that he really regrets his actions and  
24 he will fully be held responsible of his actions.

25 So I explained to him the matter three times and this is when we started interrogating him.

1 And he was then, sorry, interrogated by the investigators of the Prosecution. And he  
2 made statements that were complete and he was very honest and spontaneous and even  
3 at the last moment he was still insisting on the same words and the same attitude was  
4 adopted during the preliminary session, and so -- hearing, sorry. And so this is the  
5 words that he had repeated, these are the words that he has admitted.

6 And as counsel who is fulfilling his obligations and who is being truthful to his own  
7 beliefs and the interest of the accused, I would like to assure you once again that the  
8 accused had been fully explained to his rights by myself. I have informed him of  
9 everything that could entail or could emerge from his admission, guilt -- pleading guilty  
10 and admission of guilt, and so I informed him also of the sentencing that could be reached  
11 by the Chamber and I also informed him of the victims who might demand reparation  
12 that he might also be held responsible for.

13 So I have explained to him fully all these issues and he is present here today to confirm or  
14 deny these words. Thank you, your Honour.

15 PRESIDING JUDGE PANGALANGAN: And thank you as well for your very full reply.

16 (Trial Chamber confers)

17 PRESIDING JUDGE PANGALANGAN: I now proceed to a final question and this I  
18 address to both parties: Do the parties wish to make written submissions specifically on  
19 issues of sentencing prior to the commencement of the trial?

20 So this pertains to just submissions on the sentence because since we have joined  
21 the -- there's been a joinder of the proceedings, would you like -- may I ask the Prosecutor  
22 if he wishes to make such written submissions?

23 MR DUTERTRE: (Interpretation) Yes, your Honour, I think that we will make written  
24 submissions for the Chamber beforehand and we'll go into greater detail during the  
25 hearing and we will develop the arguments then.



1 PRESIDING JUDGE PANGALANGAN: Thank you.

2 And for the Defence?

3 MR AOUMINI: (Interpretation) Your Honour, we have decided to make oral statements  
4 at the beginning of the trial, but we could as well present in summary the main elements  
5 of the Defence strategy, so those will be restricted comments in writing before the  
6 commencement of the trial pertaining to the main elements and the basis of our defence  
7 strategy. And we will also make oral comments at the beginning of the trial. Thank  
8 you, sir.

9 PRESIDING JUDGE PANGALANGAN: Thank you. Thank you, Counsel.

10 Allow me now to turn to the victim applications in this case. The Prosecution has  
11 already received the applications in question in unredacted form, and the Defence  
12 should -- you should receive a redacted version by tomorrow at the latest.

13 The Chamber wishes to receive the parties' submissions on these victim applications by 1  
14 June at 1600.

15 MR DUTERTRE: (Interpretation) Your Honour, we just don't have them yet.

16 PRESIDING JUDGE PANGALANGAN: I'm sorry about that. We will make sure that  
17 you receive the copies.

18 And as soon as the parties are -- so we'll make sure about that, that both parties should get  
19 their copies.

20 Also by the same deadline, 1 June, and pursuant to Regulation 86(5), the Chamber, and  
21 this I address to the Registry, the Chamber wishes to receive a report from the Registry  
22 indicating whether it considers these victim applications to be both complete and in which  
23 the applicant alleges to have personally suffered harm, whether direct or indirect as a  
24 result of the crimes charged in this case. The Chamber will then render a decision on  
25 these applications and set a procedural framework for processing any further applications

- 1 received.
- 2 This concludes the Chamber's order on this matter.
- 3 Unless there are any other matters that the parties wish to raise, this concludes the status
- 4 conference. The Chamber will revert back in due course to set the commencement of the
- 5 trial, noting the submissions of the parties here today.
- 6 Thank you. Thank you very much.
- 7 THE COURT USHER: All rise.
- 8 (The status conference ends in open session at 10.39 a.m.)