

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 25 May 2016

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Single Judge

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

PUBLIC

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

Source: Office of the Prosecutor and Defence for Mr Ahmad AL FAQI AL MAHDI

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

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REGISTRY

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Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 6 May 2016, Trial Chamber VIII (the “Chamber”) requested the Parties to seek agreement and file, if possible, joint submissions on certain agenda items in order to facilitate the preparation of the First Status Conference, on 24 May 2016.¹
2. More specifically, the Chamber instructed the Parties to make submissions on the following issues: (a) the commencement date of the trial, (b) whether they wish to make any oral submissions at the commencement of trial and, if so, their length, (c) whether the judgment and sentence can be pronounced simultaneously if the Chamber elects to proceed under article 65(2) of the Rome Statute and, in relation to this point, whether the Parties intend to present any witnesses or evidence specifically in regard to sentencing and, finally, (d) any other matters.
3. The Office of the Prosecutor (the “Prosecution”) and Defence Counsels for Mr Ahmad AL FAQI AL MAHDI (the “Defence”) have consulted. They have reached mutual agreements on the different points listed by the Chamber.

Confidentiality

4. Pursuant to regulation 23*bis* (2) of the Regulations of the Court, the present request is filed confidentially due to the sensitivity of some information contained herein regarding witnesses. A public redacted version will be filed as soon as practicable.

¹ ICC-01/12-01/15-88.

Submissions

(a) Commencement date of trial

Defence Observations

5. The Defence of Mr Ahmad Al Faqi Al Mahdi respectfully stresses that the Accused is a Muslim, of a religious faith that he practices diligently.
6. In this year 2016, the Ramadan period has officially been announced to run from June 6 and to end thirty (30) days later. During the period of Ramadan, the religious principles and rules impose several obligations on believers including, in particular, that of fasting during the day. Specifically, it appears that during the month of Ramadan of 2016, the period of daily fasting for a person living in The Hague (The Netherlands) can be estimated at nineteen (19) hours each day.
7. Therefore, the Defence respectfully submits that during this period, Mr Ahmad Al Faqi Al Mahdi will be in a difficult condition, making it extremely difficult for him to go through the pressure and tension that characterize the conduct of criminal proceedings.
8. The Ramadan period is followed by the feast of Eid-al-Fitr, falling this year on 7 July 2016, which enables individuals of Muslim faith to seal the end of a month of religious efforts and reflections.
9. Meanwhile, during the first half of the month of July 2016, Mr Mohamed Aouini, lead Defence Counsel for Mr Ahmad Al Faqi Al Mahdi, has to face some long-standing commitments that pertain to the specific needs of his professional responsibilities before the Special Tribunal for Lebanon. Thus,

regardless of his good will, the lead Counsel for Mr Ahmad Al Faqi Al Mahdi proves to be professionally and legitimately unavailable in the period that will immediately follow the end of Ramadan.

10. Therefore, the Defence respectfully submits that the organisation of a trial before the official judicial recess of the International Criminal Court is actually made impossible without running a serious, and difficult to repair, risk of disruption of any useful and effective Defence.
11. Finally, the Defence notes that the Prosecution will have to finalise its ongoing disclosure, its selection of witnesses and possibly implement witness protective measures (see below). Arising implications will have to be considered and tackled by the Defence.

Prosecution Observations

12. The Prosecution notes the constraints and difficulties expressed by the Defence and the expected impact they may have on the Defence's ability to prepare for trial. For these reasons, the Prosecution has no objection to the trial starting after the end of the Court's summer recess.
13. The suggested delay based on Defence needs allows for the Prosecution to properly finalise its disclosure² (see below para. 27) and appropriately make preparations for witnesses to be called.
14. In particular, commencing the trial in late August would facilitate certain logistical steps regarding two planned prosecution witnesses:

- First, [REDACTED];

² The amount of material to be disclosed is very limited, [REDACTED].

- In addition, protective measures will need to be implemented to minimise the exposure and security risks regarding [REDACTED].

Joint Proposal

15. The Prosecution and Defence therefore jointly propose that the start of trial be scheduled starting 25 August 2016, bearing in mind that both Parties believe only a few days will be necessary for the conduct of the proceedings.

(b) Presentation of oral submissions at the commencement of trial

16. Both Parties intend to make oral submissions at the commencement of trial. The Parties are of the view that oral submissions will assist the Chamber in assessing the evidence and the basis for the Accused's admission of guilt, and also help the public better understand the case and advance the manifestation of the truth and reconciliation in Mali.

Defence Observations

17. The Defence will address the content and length of its oral submissions at the status conference on 24 May 2016.

Prosecution Observations

18. In its oral submissions, the Prosecution intends (i) to introduce the context in which the crime occurred, (ii) to provide a concise overview of the events and the investigation, and (iii) to explain the types of evidence that it will present in court and rely upon, [REDACTED]. The Prosecution estimates that its oral submissions will require approximately one hour.

(c) Joinder of the judgment and the sentence

19. The Parties submit that the judgment and sentence in this case can be pronounced simultaneously if the Chamber elects to proceed under article 65(2) of the Statute.

20. Noting footnote 3 of the Single Judge's Order Scheduling First Status Conference,³ the Parties agree that article 65 proceedings are expressly excepted from article 76(2).

21. The Parties submit that a joint hearing would prevent unnecessary duplication in the presentation of evidence and will also make the proceedings more expeditious, which is one of the advantages of proceeding under article 65.

22. The Prosecution further clarifies that it currently intends to present a limited amount of documentary evidence (see below) in court and to call three witnesses, each of whom will provide testimony of relevance to both conviction and sentencing.

23. Concretely, the Prosecution currently plans to:

- present and explain an interactive demonstrative exhibit [REDACTED];⁴
- [REDACTED];
- [REDACTED]; and
- [REDACTED].

³ ICC-01/12-01/15-88, para. 3(c), n.3.

⁴ [REDACTED], subject to the Chamber's approval.

24. This will also allow the public to understand the nature of the case and the evidence collected.

25. The Prosecution anticipates that it will need around four court days to present this evidence, allowing time for questioning by the Defence and/or the Chamber.

(d) Other matters

26. The Prosecution respectfully submits the following additional observations:

27. Disclosure – The Prosecution is continuing its review and disclosure of information in compliance with its disclosure obligations under the Statute and Rules of Procedure and Evidence. The Prosecution expects to disclose only a limited number of additional Rule 77 items and a few incriminatory materials.⁵

28. Protective measures – The Prosecution notifies the Chamber of its intention to request appropriate protective measures for at least two of the witnesses it will call to testify at trial. An application to that effect will be submitted as soon as witness selection is finalised.

29. As a matter of fact, the security situation in Mali and the neighbouring region is tense due to the persistent risks posed by a coalition of “jihadist” armed groups, including Al Qaeda in the Islamic Maghreb (AQIM) and Ansar Dine, the very armed groups at issue in this case. For example:

⁵ Including the quality checked versions [REDACTED].

- Since the beginning of 2015, more than 200 attacks by terrorist groups have been recorded, notably attacks against individuals suspected of cooperating with international organisations.⁶ Of these attacks, at least 40 occurred in 2016;⁷
- The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) has experienced the highest number of fatalities of any UN peacekeeping mission;⁸
- Last month, three ICRC workers were kidnapped by members of Ansar Dine in the Kidal region;⁹
- The Prosecution recalls in this regard [REDACTED];¹⁰
- Earlier this year, in January 2016,¹¹ AQIM kidnapped a Swiss national from her residence in Timbuktu and notably asked for the liberation of Mr AL MAHDI in exchange for her release.¹²

30. The violence in Mali appears to be spreading from the northern provinces of Timbuktu, Gao, and Kidal to central and southern areas, including Mopti, Segou, and Bamako.¹³ The country is currently under a nation-wide state of emergency, which was declared after the group Al-Mourabitoun, an off-shoot

⁶ FIDH, 'Mali : la paix à l'épreuve de l'insécurité, de l'impunité et de la lutte contre le terrorisme', Note de situation – 19 février 2016, at https://www.fidh.org/IMG/pdf/note_de_situation_mali_finale.pdf.

⁷ Threat Matrix, 'Ansar Dine claims four attacks in Mali', 5 March 2016, at <http://www.longwarjournal.org/archives/2016/03/ansar-dine-claims-four-attacks-in-mali.php>.

⁸ BBC, 'World's most dangerous peacekeeping mission', 20 November 2015, at <http://www.bbc.com/news/world-africa-34812600>.

⁹ Africanews, '3 Red Cross staff still missing days after their abduction in Mali', 20 April 2016, at <http://www.africanews.com/2016/04/20/3-red-cross-staff-still-missing-days-after-their-abduction-in-mali/>; Le Point, 'Mali: trois humanitaires de la Croix-Rouge enlevés par des djihadistes', 21 April 2016, at http://www.lepoint.fr/monde/mali-trois-humanitaires-de-la-croix-rouge-enleves-par-des-djihadistes-21-04-2016-2033903_24.php.

¹⁰ [REDACTED].

¹¹ <http://www.theguardian.com/world/2016/jan/08/swiss-national-beatrice-stockly-abducted-second-time-mali-timbuktu>.

¹² RFI, 'Aqmi diffuse une video de l'otage suisse enlevée au Mali', 27 January 2016, at <http://www.rfi.fr/afrique/20160127-aqmi-diffuse-video-otage-suisse-enlevee-mali-beatrice-stockly>.

¹³ HRW, 'Mali: Abuses Spread South', 19 February 2016, at <https://www.hrw.org/news/2016/02/19/mali-abuses-spread-south>.

of AQIM, took 170 people hostage and killed 22 in Bamako on 20 November.¹⁴ The state of emergency has been extended until 15 July 2016.¹⁵

31. In light of the security situation in Mali, there is a high likelihood that any persons identified as prosecution witnesses, [REDACTED], could become direct targets of physical violence, including killing:

- The Prosecution recalls the beheading on 25 September 2014 of a Tuareg man who had been accused of working with the MINUSMA;¹⁶
- In early 2015, Ansar Dine announced in a communiqué its clear intention to harm international forces and local enemies;¹⁷
- Further, in September 2015, Abou TALHA, one of AQIM's leaders and a member of the common plan alleged in the DCC, publicly threatened to attack a peacekeeping convoy near Timbuktu.¹⁸

32. *Reclassification* – [REDACTED]¹⁹ [REDACTED]²⁰)

¹⁴ See, e.g., The Guardian, 'Mali hotel hostage situation over as UN troops report seeing 27 bodies', 20 November 2015, at <http://www.theguardian.com/world/2015/nov/20/gunmen-take-hostages-radisson-hotel-mali-bamako>; New York Times, 'Deadly Siege Ends After Assault on Hotel in Mali', 20 November 2015, at http://www.nytimes.com/2015/11/21/world/africa/mali-hotel-attack-radisson.html?_r=0; RFI, 'Ce que l'on sait de l'attentat à l'hôtel Radisson de Bamako' 21 November 2015, at http://www.rfi.fr/afrique/2min/20151120-attentat-mali-hotel-radisson-blu-bamako-al-mourabitoun-terrorisme-al-qaida#/20151120-attentat-mali-hotel-radisson-blu-bamako-al-mourabitoun-terrorisme-alqaida?&_suid=144836922990102058847676074465.

¹⁵ Reliefweb, 'Mali: l'état d'urgence prorogé jusqu'au 15 juillet (gouvernement)', 13 April 2016, at <http://reliefweb.int/report/mali/mali-l-tat-durgence-prorog-jusquau-15-juillet-gouvernement>.

¹⁶ See MLI-OTP-0020-0008, a press article published by *Sahara Media*, in the Arabic language, on 25 September 2014: 'Head of a doctor and a message ... sign of a new war in the Azawad'. According to this article, members of armed groups decapitated a hostage of Tuareg origin who was accused of working with MINUSMA. They eventually publicly displayed his head at a market in a town located about 120 km north of Timbuktu.

¹⁷ Sahelien.com, 'Mali: Le groupe Ansar Eddine envoie des tracts aux populations locales', 7 janvier 2015, MLI-OTP-0022-0404.

¹⁸ Video, MLI-OTP-0029-0179.

¹⁹ [REDACTED].

²⁰ [REDACTED].



Fatou Bensouda, Prosecutor



Maître Mohamed Aouini

Dated this 25th day of May 2016

At The Hague, The Netherlands