

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 July 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

Decision on Requests for Extension of 1 July 2016 Deadline

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Gilles Dutertre

Counsel for the Defence

Mr Mohamed Aouini

Mr Jean-Louis Gilissen

Legal Representatives of Victims

Mr 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

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Judge Raul C. Pangalangan, acting as Single Judge on behalf of Trial Chamber VIII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court issues the following 'Decision on Requests for Extension of 1 July 2016 Deadline', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Regulation 35(2) of the Regulations of the Court.

1. On 1 June 2016, the Chamber, in the lead-up to a 22 August 2016 trial commencement, set a deadline of 1 July 2016 for the parties to disclose all outstanding materials, lists of witnesses and lists of evidence.¹ Noting that an intention to make an admission of guilt has been made in this case, the Chamber directed the parties to provide a list of agreed upon evidence to be considered for the judgment and further separate lists of any additional materials to be considered exclusively for sentencing.
2. On 30 June 2016, the Defence requested a postponement until 1 August 2016 to present its prospective witnesses and further evidence.² The Defence submits that it has been unable to reach agreements with any prospective witnesses due to security concerns and '*l'attitude procédurale*' of Mr Al Mahdi to admit guilt in this case. The Defence also indicates at length Mr Al Mahdi's difficulties in obtaining any visits,³ requesting intervention from the Chamber.⁴
3. On 1 July 2016, the parties submitted a joint filing in which the Office of the Prosecutor ('Prosecution') indicated that it will not be able to provide transcripts to five video interviews included on the parties' joint list of evidence.⁵ Instead, the

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

² Observations de la Défense, conformément à la décision ICC-01/12-01/15-93 de la Chambre, ICC-01/12-01/15-117-Conf-Exp (notified on 1 July 2016).

³ ICC-01/12-01/15-117-Conf-Exp, paras 14-25.

⁴ Email from the Defence to the parties and Chamber, 1 July 2016 at 12:23 (with a correction indicated by way of a further email on 1 July 2016 at 12:52).

⁵ 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, ICC-01/12-01/15-119-Conf.

Prosecution requests an extension of time until 15 July 2016 to provide investigator notes summarising the contents of these interviews.

4. In relation to the Defence's postponement request, the Single Judge does not consider that the Defence provides good cause for an extension of time. The Defence provides no indication as why a month would suffice to overcome what appear to be intractable difficulties in getting any prospective witnesses. Even if this could be done by 1 August 2016, the Registry would then be put under considerable strain to make all the necessary logistical arrangements for these persons prior to the 22 August 2016 trial commencement.
5. The Defence also gives no indication as to what specific documentary materials it expects to acquire by 1 August 2016. The Single Judge will not grant the Defence an extension of time to present further materials in the abstract. This said, if the Defence obtains such documentation prior to the commencement of trial, it may request to make late additions to its evidence lists pursuant to Regulation 35 of the Regulations.
6. As to the Defence request to facilitate Mr Al Mahdi's visits, the Single Judge has sympathy for Mr Al Mahdi's situation. However, the Defence provides no legal basis as to how the Chamber can intervene.⁶ The Registry is already seized of this issue. Even if it is assumed that the Chamber has jurisdiction over the matter, the Registry would have anyways been the organ to implement any assistance of the kind requested. Given the Registry's efforts in that direction, no intervention from the Chamber appears to be necessary.
7. As regards the Prosecution's request to provide the five investigators' notes by 15 August 2016, the Single Judge understands this as a modest request to provide a written record of audio-visual material duly included on the list of evidence. The Single Judge considers that, in principle, documents like transcripts of

⁶ As required by Regulation 23(1)(d) of the Regulations.

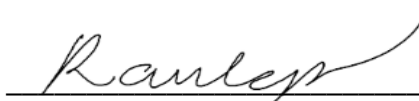
audio-visual material do not necessarily need to be on the list of evidence in order for the parties to submit them with the audio-visual material in question.⁷ Noting also that the underlying audio-visual material is on the parties' joint list of evidence and that the investigator notes will facilitate the understanding of their contents, these notes may be added to the list by 15 July 2016.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Defence requests; and

PERMITS the addition of the five investigator notes to the list of evidence by 15 July 2016.

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



Judge Raul C. Pangalangan, Single Judge

Dated 7 July 2016

At The Hague, The Netherlands

⁷ Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on 'Prosecution's Fifth Request for the Admission of Evidence from the Bar Table', 14 December 2015, ICC-01/05-01/13-1524, para. 7 ('In principle, the Chamber considers that recognising the formal submission of audio-visual material automatically includes recognising the formal submission of any associated transcripts or translations which were duly disclosed [...] To conclude otherwise would serve no useful purpose – the submitting party clearly wanted these documents to be considered, and it would be unduly formalistic to recognise the submission of a video but not a written record designed to faithfully reflect its contents for better comprehension').