

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 05 April 2018

**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 'Decision on Second Trust Fund for Victims'  
Request for Extension of Time', 5 April 2018**

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

**The Office of the Prosecutor**

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**Legal Representative of Victims**

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**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**

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**Victims Participation and Reparations  
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Trust Fund for Victims

**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 Second Trust Fund for Victims' Request for Extension of Time', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Article 64 to the Rome Statute ('Statute') and Regulation 35 of the Regulations of the Court.

1. On 17 August 2017, the Chamber issued the Reparations Order, instructing, *inter alia*, the Trust Fund for Victims ('TFV') to submit its draft implementation plan ('DIP') by 16 February 2018.<sup>1</sup>
2. On 22 January 2018, the TFV filed a request for extension of time for the submission of the DIP until 18 May 2018.<sup>2</sup>
3. On 12 February 2018, the extension was partly granted and the TFV given until 6 April 2018 to submit the DIP.<sup>3</sup> Nonetheless, in this decision, the Single Judge already emphasised that, in light of the crucial role of the TFV in awarding reparations to victims, he expected the TFV to take all necessary and reasonable efforts to finalise its work by the newly set date.<sup>4</sup>
4. Yet, on 5 April 2018, the TFV submitted a second request for extension of time ("Request").<sup>5</sup> The TFV indicates that for reasons "predominantly" outside of its control it will not be in a position to submit the DIP before 20 April 2018. The TFV invokes the arrest of Mr Al Hassan, the ongoing consultations with

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<sup>1</sup> ICC-01/12-01/15-236.

<sup>2</sup> ICC-01/12-01/15-253-Conf-Red. It is noted that the TFV initially filed the Request as public. On 24 January 2018, the TFV requested that the Request be reclassified as confidential, *ex parte*, available to the Chamber only (Email from TFV to Trial Chamber VIII Communications on 24 January 2018 at 10:25). The Single Judge granted the request for reclassification and ordered the submission of a confidential redacted version of the Request by 26 January 2018. Deadlines for submission of any response ran from this date onwards.

<sup>3</sup> Decision on Trust Fund for Victims' Request for Extension of Time, 12 February 2018, ICC-01/12-01/15-257-Red, para. 6.

<sup>4</sup> Decision on Trust Fund for Victims' Request for Extension of Time, 12 February 2018, ICC-01/12-01/15-257-Red.

<sup>5</sup> Request for an extension to submit the Draft Implementation Plan, 5 April 2018, ICC-01/12-01/15-260-Conf, confidential, *ex parte* available to the Chamber only. A public version was filed on the same day (ICC-01/12-01/15-260-Red).

external stakeholders [REDACTED] and the issuance of the Appeals Chamber's judgment in the case as constituting good cause for varying the time limit.<sup>6</sup>

5. In respect of the first TFV's argument, namely the unexpected arrest and surrender of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ('Mr Al Hassan') the Single Judge understands that its potential future implications on the reparations proceedings in the *Al Mahdi* case need to be carefully considered. However, the TFV could have elected to submit the DIP within the time limit set by the Chamber and report on adjustments, if any, to be made in light of the Al Hassan case. The Single Judge notes that the TFV decided to proceed otherwise, and thus expects that any information currently in possession of the TFV be properly reflected in the DIP. The Single Judge is prepared to use his discretionary powers to grant the extension sought by the TFV on this basis only.
6. In respect of the second argument, namely that any mention of collaboration with external stakeholders [REDACTED] would need to be cleared by the [REDACTED] in accordance with the Best Practice Manual [REDACTED],<sup>7</sup> the Single Judge would have expected the TFV to act diligently and to already frame this well-known clearance process in its planning. The Single Judge deplores that this was not the case and does not consider that this constitutes good cause warranting an extension of the time limit.
7. In respect of the TFV's third argument, namely that the issuance of the Appeals Chamber' judgment in the case requires adjusting the DIP,<sup>8</sup> the Single Judge regrets that the TFV did not make use of the almost one month which elapsed since the judgement was rendered on 8 March 2018 to proceed

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<sup>6</sup> Request, ICC-01/12-01/15-260-Red, paras 11, 12-15, 16-19 and 20.

<sup>7</sup> Request, ICC-01/12-01/15-260-Conf, paras 16-19.

<sup>8</sup> Request, ICC-01/12-01/15-260-Red, para. 20.

to making these adjustments. This amount of time was amply sufficient and the TFV failed to show that this constitutes good cause warranting an extension of the deadline.

8. The Single Judge expresses his concerns as to what seems to be becoming a pattern of the TFV routinely requesting extensions of time in the proceedings before this Court. The present request is particularly problematic, being notified the day before a deadline which had already been extended and citing problems that could have been addressed on time.<sup>9</sup> In light of its specific role, the TFV does not generate the same number of filings as the LRV or Defence. Despite this, Trial Chambers since 2015 have now had to rule on over 15 TFV requests for extensions of time across the *Lubanga*,<sup>10</sup> *Katanga*,<sup>11</sup> *Bemba*<sup>12</sup> and *Al Mahdi* cases, which is to say, in every ICC case which has reached the reparations stage and in which TFV actually participated.<sup>13</sup>

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<sup>9</sup> As the TFV partly acknowledges it itself, *see* Request, ICC-01/12-01/15-260-Red, para. 11 (“reasons predominantly outside[ its] control”).

<sup>10</sup> Trial Chamber II, *Ordonnance enjoignant au Fonds au profit des victimes de déposer les documents sollicités par la Chambre sur le processus de sélection des nouvelles victimes, sur l'état d'avancement des discussions avec les acteurs concernés concernant la recherche*, 16 March 2018, ICC-01/04-01/06-3395, paras 5-8 (explaining how this order came after the TFV requested 3 extensions which were granted via email decision, only for the TFV to have missed the final deadline); Trial Chamber II, Decision granting an extension of time limit to submit observations on the request of the Office of Public Counsel for Victims of 16 September 2016, 25 October 2016, ICC-01/04-01/06-3228; Trial Chamber II, Decision extending the time limit for the submission of additional reparation programme information, 4 May 2016, ICC-01/04-01/06-3207; Trial Chamber II, Decision on the request of the Trust Fund for Victims for an extension of the time limit for the submission of the first batch of files of potential victims, 29 March 2016, ICC-01/04-01/06-3205; Trial Chamber II, Decision on the “Request for extension of time to submit the draft implementation plan on reparations”, 14 August 2015, ICC-01/04-01/06-3161.

<sup>11</sup> Trial Chamber II, Decision Granting the Trust Fund for Victims Access to Document ICC-01/04-01/07-3728-Conf-Exp-AnxII and an Extension of the Time Limit to Submit the Draft Implementation Plan for Reparations, 11 July 2017, ICC-01/04-01/07-3749; Trial Chamber II, Decision granting the Trust Fund for Victims an extension of time for submission of the Draft Implementation Plan, 22 June 2017, ICC-01/04-01/07-3744; Trial Chamber II, Decision on the “Request by the Board of Directors for extension of time to submit Observations on Reparations Procedure”, 24 April 2015, ICC-01/04-01/07-3541.

<sup>12</sup> Trial Chamber III, Decision on the Trust Fund for Victims request for extension of time, 28 February 2018, ICC-01/05-01/08-3608 (with annex); Trial Chamber III, Order on the Trust Fund for Victims’ request for an extension of the time limit, 7 October 2016, ICC-01/05-01/08-3442.

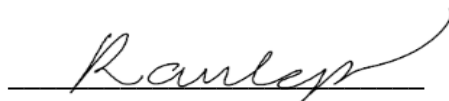
<sup>13</sup> The present decision, plus Decision on the Trust Fund for Victims’ request for extension of time, 12 February 2018, ICC-01/12-01/15-257; Decision on the Trust Fund for Victims’ request for extension of time, 24 November 2017, ICC-01/12-01/15-249; Decision Granting an Extension of Time for Filing of TFV Submissions, 12 May 2017, ICC-01/12-01/15-219.

9. The Single Judge recognises and affirms the important role that the TFV plays in reparations proceedings, which complete the judicial process. It was established for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims.<sup>14</sup> The TFV must act with a degree of diligence commensurate with the importance of its mandate. This applies especially in carrying out its mandate within the judicial process, which calls for proper pleading and practice before the courts, and which indispensably entails clear filing deadlines. Regardless of whatever extenuating circumstances may exist at the time of any given extension, the volume of TFV extension requests suggests that it must improve its process.

**FOR THE FOREGOING REASON, THE SINGLE JUDGE HEREBY**

**GRANTS** the Request.

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



**Judge Raul C. Pangalangan, Single Judge**

Dated 5 April 2018

At The Hague, The Netherlands

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<sup>14</sup> Article 79(1) of the Statute.