

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **14 April 2022**

TRIAL CHAMBER VIII

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Bertram Schmitt
Judge Socorro Flores Liera

SITUATION IN THE REPUBLIC OF MALI

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

URGENT - Confidential

**Decision on the LRV's Urgent Request for an extension of the time limit pursuant to
'Decision on the TFV's Twenty-third update report on the updated implementation
plan (ICC-01/12-01/15-439-Conf)'**

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

The Office of the Prosecutor
Mr Karim A. A. Khan

Counsel for the Defence
Mr Mohamed Aouini

Legal Representative 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

Trust Fund for Victims
Mr Pieter de Baan

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**
Mr Philipp Ambach

Others

Trial Chamber VIII of the International Criminal Court, in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi* (the ‘*Al Mahdi* case’), having regard to regulation 35 of the Regulations of the Court (‘Regulations’), issues this Decision on the LRV’s Urgent Request for an extension of the time limit pursuant to ‘Decision on the TFV’s Twenty-third update report on the updated implementation plan (ICC-01/12-01/15-439-Conf)’ (the ‘Decision’).

I. PROCEDURAL HISTORY

1. On 5 April 2022, the Chamber issued its Decision on the TFV’s Twenty-third update report on the updated implementation plan, *inter alia*: i) directing the Legal Representative of Victims (‘LRV’) and the Trust Fund for Victims (‘TFV’) to conclude the collection of applications for individual reparations, at the latest, within four weeks from the notification of that decision; and ii) directing the TFV to complete the implementation of individual awards, at the latest, within four months from the notification of that decision.¹

2. On 8 April 2022, the LRV submitted an urgent request, asking the Chamber for an extension of the deadline for the collection of applications of individual reparations by, at least, six months (‘Request’).²

3. Following the Chamber’s instructions,³ on 9 April 2022 the Defence informed that it will not submit observations on the Request.⁴ On 13 April 2022, the TFV submitted a Response (‘Response’).⁵

II. SUBMISSIONS AND ANALYSIS

4. In support of the Request, the LRV presents two main arguments. First, he submits that the victims’ knowledge and trust in the work of the Court and the reparations process as a whole has increased gradually, notably after the individual reparations started to be disbursed.⁶ Accordingly, the LRV submits that depriving additional victims of the possibility to submit

¹ Decision on the TFV’s Twenty-third update report on the updated implementation plan, 5 April 2022, ICC-01/12-01/15-439-Conf, disposition.

² Corrigendum de ‘Demande urgente d’extension de délai suivant ‘Decision on the TFV’s Twenty-third update report on the updated implementation plan (ICC-01/12- 01/15-439-Conf)’, ICC-01/12-01/15-440-Conf’ du 7 avril 2022 (‘Request’), 8 April 2022, ICC-01/12-01/15-440-Conf-Corr, para. 33.

³ E-mail from the Chamber’s Legal Officer, 8 April 2022, at 14:42 hrs.

⁴ E-mail from the Defence to the Chamber’s Legal Officer, 9 April 2022, at 11:34 hrs.

⁵ Trust Fund for Victims’ response to the Legal Representative for Victims’ request for extension of time (‘TFV’s Response’), 13 April 2022, ICC-01/12-01/15-441-Conf.

⁶ Request, ICC-01/12-01/15-440-Conf-Corr, paras 14-15.

applications when they finally understand the process, may run the risk of resulting in their frustration and potential re-victimisation, especially considering that some of their relatives have already managed to submit their applications.⁷

5. Secondly, the LRV argues that it is necessary to finalise the process of identifying victims displaced outside Mali, who could not yet be approached.⁸ The LRV notes that he was tasked with identifying displaced victims, who are known to have fled to Niger, Burkina Faso, and Sudan.⁹ However, the LRV submits that his multiple requests for missions in the past year have been rejected for administrative, security, or financial reasons.¹⁰ Nevertheless, the LRV informs that, on 1 April 2022, a mission to Niger – to take place between 4 and 11 June 2022 – was finally approved.¹¹ The mission, he submits, is aimed at mapping a geographical area currently unknown and identify new victims,¹² and to launch the process of identifying the victims residing outside of Mali.¹³

6. In the argument of the LRV, even if the mission to Niger goes forward, the situation of victims residing in other countries remains unaddressed.¹⁴ For example, he submits that in his last mission to Mali he was informed that victims have also been displaced to Mauritania and Senegal.¹⁵ As for the remaining countries, the LRV argues that it would be necessary to conduct a pre-screening of the potential victims and identify their location before evaluating the time and the means necessary for interviewing them, which would require several missions.¹⁶

7. In its Response, the TFV supports the Request for the LRV to collect applications in Niger and Burkina Faso and submits remarks related to the place of residence of beneficiaries of individual reparations¹⁷ and to the distribution of labour agreed with the LRV.¹⁸ As to the distribution of labour, the TFV submits that, in 2019, it was agreed that the TFV would be in charge of the identification of beneficiaries, including those residing in Niger and Burkina

⁷ Request, ICC-01/12-01/15-440-Conf-Corr, para. 18.

⁸ Request, ICC-01/12-01/15-440-Conf-Corr, para. 21.

⁹ Request, ICC-01/12-01/15-440-Conf-Corr, para. 22.

¹⁰ Request, ICC-01/12-01/15-440-Conf-Corr, paras 22-23.

¹¹ Request, ICC-01/12-01/15-440-Conf-Corr, para. 24.

¹² Request, ICC-01/12-01/15-440-Conf-Corr, para. 24.

¹³ Request, ICC-01/12-01/15-440-Conf-Corr, para. 25.

¹⁴ Request, ICC-01/12-01/15-440-Conf-Corr, para. 27.

¹⁵ Request, ICC-01/12-01/15-440-Conf-Corr, para. 26.

¹⁶ Request, ICC-01/12-01/15-440-Conf-Corr, para. 28.

¹⁷ Indicating that a mapping conducted in 2019 and 2020 showed that beneficiaries can be divided among those residing in: i) Bamako and Timbuktu; ii) Mali, notably Gao and Mopti; iii) Niger and Burkina; and (iv) elsewhere in the world. *See* TFV's Response, ICC-01/12-01/15-441-Conf, para. 9.

¹⁸ TFV's Response, ICC-01/12-01/15-441-Conf, para. 8.

Faso, while the collection of applications would be organised depending on the beneficiaries' place of residence, with the collection of applications in Bamako and Timbuktu being jointly collected by the LRV and TFV's intermediaries.¹⁹ After the TFV located beneficiaries outside of Bamako and Timbuktu, it was agreed with the LRV in April 2020, that the TFV would be in charge of the collection of all applications, except for those in Niger and Burkina Faso that the LRV agreed to collect.²⁰ Having deployed sufficient efforts to identify beneficiaries and provide them with an opportunity to submit applications, since mid-December 2020 the TFV decide to stop engaging into active collection of applications, while providing the opportunity to submit applications to individuals directly approaching the TFV.²¹

8. The TFV further submits that it has already conducted a pre-screening of beneficiaries in Niger and Burkina Faso, which was transmitted to the LRV in March 2020.²² The TFV reiterates its willingness to advise and assist the LRV to carry out its work and suggests that the same process that it followed in Timbuktu for the collection of applications could be adopted by the LRV in Niger and Burkina Faso, limiting the number of necessary missions to one per country.²³ The TFV also extends its support to the LRV in relation to additional or pending matters, including to obtain an attestation from a figure of authority from Timbuktu and to consolidate and finalise outstanding applications.²⁴

9. Finally, TFV submits that it generally does not take issue with the Chamber's deadline for the completion of the implementation of individual reparations, which in practice amounts to three months from the collection of the applications by the LRV.²⁵ However, it notes that it may require exceptions, such as those arising from any unexpected circumstances.²⁶ The TFV commits itself to, in due course, propose a process to cater for residual individuals approaching the TFV or its partners during the implementation of collective reparations.²⁷

10. The Chamber notes that, pursuant to regulation 35(2) of the Regulations, it may extend or reduce a time limit if good cause is shown, and, where appropriate, after having given the participants an opportunity to be heard. In the past, this and other chambers of the Court have

¹⁹ TFV's Response, ICC-01/12-01/15-441-Conf, para. 10.

²⁰ TFV's Response, ICC-01/12-01/15-441-Conf, paras 12-13.

²¹ TFV's Response, ICC-01/12-01/15-441-Conf, para. 14.

²² TFV's Response, ICC-01/12-01/15-441-Conf, para. 16.

²³ TFV's Response, ICC-01/12-01/15-441-Conf, paras 17-18.

²⁴ TFV's Response, ICC-01/12-01/15-441-Conf, paras 20-21.

²⁵ TFV's Response, ICC-01/12-01/15-441-Conf, paras 22-23.

²⁶ TFV's Response, ICC-01/12-01/15-441-Conf, para. 23-27.

²⁷ TFV's Response, ICC-01/12-01/15-441-Conf, para. 27.

considered that factors such as difficulties in organising field missions and COVID-19 related restrictions, are all good causes to extend a time limit.²⁸

11. The Chamber notes the difficulties alleged to have been encountered by the LRV to organise field missions and that multiple requests have been rejected in the past year for administrative, security, or financial reasons.²⁹ The Chamber also notes the LRV submission that a mission to Niger, to take place between 4 and 11 June 2022, was recently approved.³⁰

12. The Chamber also notes that, as explained by the TFV, upon agreement with the LRV, the task of identifying all potential beneficiaries, including those residing in Niger and Burkina Faso, pertained to the TFV, and was completed in April 2020.³¹ The Chamber also notes that, according to the distribution of labour with the TFV, the LRV was only tasked with collecting by himself applications in Niger and Burkina Faso, as individuals residing elsewhere were approached by the TFV.³² The Chamber further recalls that the victims residing outside of Mali have already been identified and pre-screened by the TFV since early 2020, and that the LRV was in possession of lists of victims residing in Niger and Burkina Faso since March 2020.³³ The Chamber regrets that in a period of more than two years, no concrete efforts appear to have been made by the LRV to find alternative ways to engage with the victims residing in Niger and Burkina Faso. In addition, the Chamber is dissatisfied to learn that, according to the TFV's submission,³⁴ several applications of victims residing in Mali are still awaiting consolidation and completion by the LRV.

13. In these circumstances, the Chamber finds that good cause to extend the time limits has only partly been shown. Accordingly, the Chamber will only partly extend the time limit, for the final time, allowing the LRV to carry out his mission to Niger and to finalise the collection of applications of victims residing in Niger and Burkina Faso until 15 August 2022. The Chamber urges the LRV to have regard to the process the TFV put in place to collect the

²⁸ See, for instance, Decision on the LRV Request for Extension of Time to Submit Individual Reparations Applications, ICC-01/12-01/15-359-Conf, para. 14; Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, 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](#), paras 2, 4; Trial Chamber IX, *Prosecutor v. Dominic Ongwen*, Decision on requests for extension of time, 19 July Extension 2021, [ICC-02/04-01/15-1865](#), para. 10.

²⁹ Request, ICC-01/12-01/15-440-Conf-Corr, paras 22-23.

³⁰ Request, ICC-01/12-01/15-440-Conf-Corr, para. 24.

³¹ TFV's Response, ICC-01/12-01/15-441-Conf, paras 10, 12-13.

³² TFV's Response, ICC-01/12-01/15-441-Conf, para. 12.

³³ TFV's Response, ICC-01/12-01/15-441-Conf, paras 12-13, 16.

³⁴ TFV's Response, ICC-01/12-01/15-441-Conf, paras 20-21.

applications in in Timbuktu, as detailed in its submission³⁵ and also to complete all the outstanding applications.³⁶ To expedite the process, the LRV should rely on the TFV's assistance, as emphasized by the TFV throughout its submission.

14. In light of the extension granted above, the Chamber also extends, for the final time, the deadline for the TFV to complete the implementation of individual reparations until 14 November 2022.

³⁵ TFV's Response, ICC-01/12-01/15-441-Conf, para. 17.

³⁶ TFV's Response, ICC-01/12-01/15-441-Conf, paras 20-21.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,

PARTLY GRANTS the Request;

EXTENDS the deadline for the LRV to conclude the collection of applications for individual reparations in Niger and Burkina Faso, until 15 August 2022; and

DIRECTS the TFV to complete the implementation of individual awards by 14 November 2022, at the latest.

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



Judge Antoine Kesia-Mbe Mindua
Presiding Judge



Judge Bertram Schmitt



Judge Socorro Flores Liera

Dated this Thursday, 14 April 2022

At The Hague, The Netherlands