

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **15 August 2018**

TRIAL CHAMBER VIII

Before:

Judge Raul C. Pangalangan, Presiding Judge

Judge Antoine Kesia-Mbe Mindua

Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF MALI

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

Public

Public redacted version of “Request for clarification of the eligibility criteria for individual reparations awards related to economic harm”

Source:

The Trust Fund for Victims

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:**Office of the Prosecutor**

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1. Pursuant to regulation 57 of the Regulations of the Trust Fund for Victims (“TFV Regulations”), the Trust Fund for Victims (“Trust Fund”) respectfully requests the Trial Chamber’s clarification of the meaning of the term “exclusive” in the context of the eligibility criteria for persons entitled to individual reparations for economic harm in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*.

I. CLASSIFICATION OF THE PRESENT SUBMISSION

2. The Trust Fund has classified the present filing as confidential pursuant to regulation 23 bis (1) of the Regulations of the Court based on the fact that the filing addresses the individual reparations award eligibility criteria that could, in its view, lead to the identification of beneficiaries, thus potentially putting their safety and security at risk. The Trust Fund will file a public redacted version of this submission as soon as possible.

II. BACKGROUND

3. On 27 September 2016, following an admission of guilt, Trial Chamber VIII (“Trial Chamber”) convicted Mr Ahmad Al Faqi Al Mahdi (“Mr Al Mahdi”) of the war crime of attacking protected buildings (“Protected Buildings”) under articles 8(2)(e)(iv) and 25(3)(a) of the Rome Statute (“Statute”).¹

4. On 17 August 2017, the Trial Chamber issued its “Reparations Order”² against Mr Al Mahdi pursuant to article 75 of the Statute, wherein it, *inter alia*, awarded individual reparations for consequential economic loss “only to those whose livelihoods *exclusively* depended upon the Protected Buildings.”³ The Trial Chamber indicated that this would include [REDACTED]

[REDACTED]

¹ Judgment and Sentence, [ICC-01/12-01/15-171](#).

² Reparations Order, [ICC-01/12-01/15-236](#) (“Reparations Order”).

³ [Reparations Order](#), para. 81 (emphasis in the original).

⁴ [Reparations Order](#), [REDACTED]

5. On 17 October 2017, the legal representative for victims (“LRV”), partially appealed the Reparations Order in relation to, *inter alia*, the exclusive link requirement.⁵

6. On 8 March 2018, in its judgment on the LRV’s appeal, the Appeals Chamber rejected the ground of appeal related to the exclusive link requirement, holding that the Trial Chamber had not erred in exercising its discretion.⁶

7. On 20 April 2018, the Trust Fund submitted its draft implementation plan (“Draft Implementation Plan”), followed by a corrigendum on 30 April 2018.⁷ Therein, the Trust Fund submitted that, aside from [REDACTED]

[REDACTED] may also extend to [REDACTED]

[REDACTED] In addition, the Trust Fund requested clarification from the Trial Chamber as to whether [REDACTED] would also qualify for the individual economic reparations award.⁹

8. As to the exclusive link requirement, the Trust Fund noted that the Reparations Order does not require [REDACTED] to assert and prove that he/she only exercises this vocation as a source of livelihood and does nothing else as a means of earning income or otherwise.¹⁰ It then inferred “that the focus of the inquiry under Sub-group A [persons whose [REDACTED] *is the exclusivity of one’s role and commitment* in terms of [REDACTED] one or more of the Protected Buildings and its heritage.”¹¹

9. On 12 July 2018, the Trial Chamber issued its decision on the Draft Implementation Plan, wherein it reiterated that “individual reparations in the form of compensation for the

⁵ Brief in support of the Appeal (in part and limited) ICC-01/12-01/15-242-Conf-Exp-Corr filed against the Reparations Order of 17 August 2017 (ICC-01/12-01/15-236) issued by Trial Chamber VIII, [ICC-01/12-01/15-244-tENG](#), paras 19-29.

⁶ Judgment on the appeal of the victims against the “Reparations Order”, [ICC-01/12-01/15-259-Red2](#), para. 43.

⁷ Public Redacted version of the *corrigendum* of Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#).

⁸ [Draft Implementation Plan](#), [REDACTED].

⁹ [Draft Implementation Plan](#), para. 98.

¹⁰ [Draft Implementation Plan](#), para. 113.

¹¹ [Draft Implementation Plan](#), para. 114 (emphasis in the original).

economic harm suffered by those whose livelihoods exclusively depended upon the Protected Buildings.”¹²

10. In said decision, the Trial Chamber [REDACTED]
[REDACTED]
[REDACTED] may be eligible for individual reparations provided that they can demonstrate this [exclusive] link.”¹³

III. REQUEST FOR CLARIFICATION

11. The Trust Fund respectfully requests that the Trial Chamber clarify the scope of the “exclusive link” required to receive individual awards for economic harm insofar as persons tasked with responsibilities in [REDACTED] are concerned.

12. The Trust Fund considers that there are two possible interpretations of the “exclusive link” requirement. First [REDACTED]
[REDACTED]
[REDACTED] (“First Interpretation”). Alternatively [REDACTED]
[REDACTED]
[REDACTED] (“Second Interpretation”). In other words, according to the First Interpretation, a potential beneficiary would [REDACTED]
[REDACTED] whereas, under the Second Interpretation, [REDACTED]
[REDACTED]
[REDACTED]

¹² Public Redacted version of ‘Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations, [ICC-01/12-01/15-273-Red](#) (“Decision on Draft Implementation Plan”), paras [REDACTED]

¹³ [Decision on Draft Implementation Plan](#), para. 64.

13. The Trust Fund recalls that its role is to faithfully apply the eligibility criteria established by the Trial Chamber in its Reparations Order.¹⁴ The Trust Fund notes that the LRV has already made submissions in relation to the potential difficulties in proving eligibility under the first interpretation.¹⁵ Without wishing to overstep its role, the Trust Fund nonetheless respectfully communicates to the Trial Chamber that information gathered [REDACTED] [REDACTED] has confirmed the factual veracity of these concerns. Furthermore, it appears that some, and potentially a significant portion, of the persons who [REDACTED] [REDACTED] as understood under the First Interpretation.

14. The Trust Fund respectfully submits that the clarification sought is of primary relevance for the proper and efficient functioning of the screening process, as well as the communication of accurate information to potential [REDACTED] [REDACTED] as to the information they need to provide to qualify for individual awards for economic harm. In addition, having clarification on this point would ensure focused and relevant submissions on the side of all the stakeholders involved in the screening process, namely, VPRS, the LRV, the Defence and, ultimately, the Trust Fund.

15. Most importantly, having clarity on this aspect of the eligibility criteria would reduce the risk of creating false expectations among those persons who have [REDACTED] [REDACTED] in case the First Interpretation is applicable, and reduce the risk of causing frustration among victims.

FOR THE FOREGOING REASONS

The Trust Fund for Victims respectfully submits this request for clarification.

¹⁴ See *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, [ICC-01/04-01/06-3129](#), paras 32, 205.

¹⁵ The Trust Fund understands that the Appeals Chamber did not specifically address the merits of the LRV’s interpretation of the exclusive link requirement. Rather, it focused on “whether, in reaching the decision it did, the Trial Chamber erred in the exercise of its discretion”. [ICC-01/12-01/15-259-Red2](#), para. 33. The Trust Fund thus understands that it falls within the Trial Chamber’s discretion to clarify the eligibility criteria that it established.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,
on behalf of the Board of Directors of the Trust Fund for Victims

Dated this 15 August 2018

At The Hague, The Netherlands