

Situation: Mali

The Prosecutor v. Ahmad Al Faqi Al Mahdi

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ICC-01/12-01/15

Update: 17 August 2017

Questions and Answers on Reparations in the Al Mahdi Case

17 August 2017

WHAT DID TRIAL CHAMBER VIII DECIDE REGARDING REPARATIONS IN AL MAHDI CASE?

On 17 August 2017, Trial Chamber VIII of the International Criminal Court (“ICC” or “Court”) issued a Reparations Order in the Al Mahdi case concluding that Mr Al Mahdi is liable for 2.7 million euros in expenses for individual and collective reparations for the community of Timbuktu for intentionally directing attacks against religious and historic buildings in that city between around 30 June 2012 and 11 July 2012.

Noting that Mr Al Mahdi is indigent, the Chamber encouraged the Trust Funds for Victims (“TFV”) to complement the reparations award and directed the Fund to submit for the Chamber’s approval a draft implementation plan for 16 February 2018.

WHAT WAS MR AL MAHDI CONVICTED FOR AND WHAT WAS THE SENTENCE?

On 27 September 2016, Trial Chamber VIII, composed of Judge Raul C. Pangalangan (Presiding), Judge Antoine Kesia-Mbe Mindua and Judge Bertram Schmitt, unanimously found Mr Al Mahdi guilty beyond reasonable doubt as a co-perpetrator of the war crime consisting in intentionally directing attacks against religious and historic buildings in Timbuktu, Mali, in June and July 2012.

The Chamber sentenced Mr Al Mahdi to nine years’ imprisonment. The time he has spent in detention since his arrest upon the ICC warrant issued on 18 September 2015 will be deducted from the sentence.

WHAT PRINCIPLES GUIDED THE CHAMBER IN ORDERING THE REPARATIONS?

The Chamber examined observations of the ICC Prosecutor, the Defence, the Legal representatives of Victims (“LRV”) representing the 139 reparations applicants, *amici curiae* including UNESCO, the TFV, the ICC Registry and four experts appointed by the Chamber.

The Chamber recalled also the reparations principles established by the ICC Appeals Chamber’s [decision](#) in the Lubanga case, including that reparations shall be granted to victims without adverse distinction on the grounds of gender, age, race, colour, language, religion or belief, political or other opinion, sexual orientation, national, ethnic or social origin, wealth, birth or other status. When deciding on reparations, the Court shall treat the victims with humanity and shall respect their dignity and human rights, and it will implement appropriate measure to ensure their safety, physical and psychological well-being and privacy

Trial Chamber VIII also stressed that reparations in the present case are designed – to the extent achievable – to relieve the suffering caused by the serious crime committed, address the consequences of the wrongful act committed by Mr Al Mahdi, enable victims to recover their dignity and deter future violations. Reparations may also assist in promoting reconciliation between the victims of the crime, the affected communities and the convicted person.

Finally, the Chamber also considered that a gender-sensitive approach to the protection of cultural heritage and to the combating of its destruction is also particularly essential because women and girls may face gender-specific risks, challenges and discrimination in gaining access to and defending cultural heritage.

WHY IS THE ICC CONCERNED WITH THE PROTECTION OF CULTURAL HERITAGE?

The international community has recognised in various legal instruments, including the ICC Rome Statute, the importance of the human right to cultural life and its physical embodiments. These instruments condemn the destruction of cultural heritage. The ICC Rome Statute qualifies the fact of intentionally directing attacks against religious and historic buildings as a war crime.

The Chamber highlighted the importance of cultural heritage and noted the UNESCO statement that “the loss of heritage during times of conflict can deprive a community of its identity and memory, as well as the physical testimony of its past. Those destroying cultural heritage seek to disrupt the social fabric of societies”.

The Chamber stressed that, because of their purpose and symbolism, most cultural property and cultural heritage are unique and of sentimental value. Their destruction thus carries a message of terror and helplessness and destroys part of humanity's shared memory and collective consciousness; it is an irreplaceable loss that negates humanity and it renders humanity unable to transmit its values and knowledge to future generations. The attack on the religious and historic Buildings in Timbuktu not only destroyed cherished monuments, but also shattered the community's collective faith that they were protected.

The destruction of cultural heritage erases part of the heritage of all humankind. The Chamber acknowledged the suffering endured by the Malian community and the international community as a whole as a result of the destruction of the Timbuktu's religious and historic buildings and considered that addressing the harm suffered by the community of Timbuktu will also effectively address the broader harm suffered by Malians and the international community as a whole. Indeed, in the words of one of the appointed experts: "[S]ince ultimately it is the local population that is in the best position to preserve the heritage in question, therefore the measures of reparation might most sensibly be aimed at strengthening their capacity to do so".

WHAT INDIVIDUAL AND COLLECTIVE REPARATIONS DID THE CHAMBER ORDER?

The Chamber considers that the harm caused by Mr Al Mahdi's actions is primarily collective in character. The Chamber ordered reparations for three categories of harm: damage to the historic and religious buildings, consequential economic loss and moral harm. Reparations are to be collective through rehabilitation of the sites and collective reparations for the community of Timbuktu as a whole to address the financial loss and economic harm as well as the emotional distress suffered as a result of the attack.

The Chamber also ordered individual reparations for those whose ancestors' burial sites were damaged in the attack and for those whose livelihoods exclusively depended upon the attacked buildings. The latter group includes those whose livelihood was to maintain and protect the historic and religious Buildings and certain business owners such as a business whose only purpose is to sell sand perceived as holy from the sites of the attacked Buildings. The limited number of individual reparations ordered should be prioritised during the reparations' implementation because of the particular extent to which they were harmed by Mr Al Mahdi's conduct. Whenever possible, reparations should reflect local cultural and customary practices unless these are discriminatory or exclusionary or they deny victims equal access to their rights

Finally, the Chamber noted that since the attacks, UNESCO – together with other stakeholders – has rebuilt or restored each of the attacked Buildings. However, that has no impact on whether Mr Al Mahdi is liable for the damage caused.

DID THE CHAMBER ORDER SYMBOLIC REPARATIONS FOR VICTIMS?

The collective reparations ordered by the Chamber may include symbolic measures – such as a memorial, commemoration or forgiveness ceremony – to give public recognition of the moral harm suffered by the Timbuktu community and those within it.

In addition, the Chamber has already concluded that it considered Mr Al Mahdi's apology to be genuine, categorical and empathetic. It does not consider that a further apology above and beyond what Mr Al Mahdi has already given to be necessary.

As a symbolic measure to ensure that victims have access to Mr Al Mahdi's apology, the Chamber orders the Registry to produce an excerpt of the video of Mr Al Mahdi's apology and post it on the Court's website with the corresponding transcript translated into the primary languages spoken in Timbuktu.

DID THE CHAMBER ORDER OTHER SYMBOLIC REPARATIONS?

Yes, the Chamber ordered one symbolic euro to be received by the Malian State and by the UNESCO given the specific nature of the case.

WHAT IS THE LIABILITY OF MR AL MAHDI FOR THESE REPARATIONS?

Mr Al Mahdi was found guilty beyond reasonable doubt as a co-perpetrator of the war crime consisting in intentionally directing attacks against religious and historic buildings in Timbuktu, Mali, in June and July 2012. His indigence is not a relevant factor in assessing his liability.

Based on the observations and reports received by the Chamber, the Judges estimated his liability to 97,000 euros for the damage to the buildings, 2.12 million euros for consequential economic loss and 483,000 euros for moral harm.

Adding up Mr Al Mahdi's liability across the various kinds of harm caused, the Chamber sets his total liability at 2.7 million euros.

HOW MUCH WILL THE VICTIMS GET OF THE INDICATED AMOUNT OF 2.7M OF WHICH MR AL MAHDI IS LIABLE?

The Chamber assessed the liability of M. Al Mahdi at 2.7M for the property damage, moral harm and economic loss resulting from his criminal conduct. That does not mean that 2.7M will be distributed to the victims. In fact, noting Mr Al Mahdi's indigence, the

Chamber encourages the TFV's to complement any individual or collective reparations to the extent possible and to engage in fundraising efforts to the extent necessary to complement the totality of the reparations.

At this moment it is not possible to know what would be the decision of the TFV or the resources available for the reparations in this case.

The Chamber established guidelines for the reparations process and requested the TFV to submit a draft implementation plan. The plan will provide precisions on the available resources and the proposed modalities to implement the reparations. The Chamber noted also that the proposed amount of a TFV complement may be increased at a later point in the implementation process on account, inter alia, of successful fundraising efforts.

The Chamber ordered symbolic reparations and collective reparations through rehabilitation of the sites as well as collective reparations for the community of Timbuktu as a whole. Individual reparations are ordered only for a limited number of victims because of the particular extent to which they were harmed – these reparations are to be prioritised in the TFV draft implementation plan to be reviewed by the Chamber.

WHAT ARE THE NEXT STEPS?

Noting Mr Al Mahdi's indigence, the Chamber encourages the TFV to complement any individual or collective reparations to the extent possible and to engage in fundraising efforts to the extent necessary to complement the totality of the reparations.

The Chamber set a deadline for the TFV's draft implementation plan for 16 February 2018 including the objectives, outcomes and necessary activities as well as eligibility screening process to identify beneficiaries.

The LRV and Defence may file any observations on the draft implementation plan within 30 days of its notification.

Upon approval by the Chamber, the TFV will then identify projects and discrete implementation partners for the Chamber's approval.