

Summary of the judgement on the appeal of the LRV in the case of Ahmad Al Faqi Al (reparations)

Delivered by Judge Howard Morrison,

Presiding Judge in this appeal,

8 March 2018

This summary is not part of the written judgment. Please note that only the written judgment is authoritative.

1. Today, the Appeals Chamber is delivering its judgment on the Legal Representative of Victims' appeal against the Reparations Order of Trial Chamber VIII, filed in accordance with article 82 (4) of the Statute. The Trial Chamber's decision was rendered on 17 August 2017. In today's summary I will refer to it as the Impugned Decision and I will refer to Trial Chamber VIII as the Trial Chamber. I will refer to Mr Ahmad Al Faqi Al Mahdi as Mr Al Mahdi and the Legal Representative of Victims as the LRV.
2. I shall summarise the Appeals Chamber's judgment, which was taken unanimously. This summary is not part of the written judgment. Please note that only the written judgment is authoritative. It will be notified to the parties and participants shortly after this hearing.
3. The Appeals Chamber recalls that Mr Al Mahdi was convicted as a co-perpetrator under articles 8 (2) (e) (iv) and 25 (3) (a) of the Statute for intentionally attacking ten protected objects in Timbuktu, Mali, between around 30 June 2012 and 11 July 2012, and sentenced to 9 years of imprisonment. I will refer to those ten protected objects as "the Protected Buildings".

4. The LRV filed its notice of appeal in this case on 18 September 2017, and its appeal brief on 18 October 2017. Pursuant to the Appeals Chamber's directions on the conduct of the appeal proceedings, the Trust Fund filed its observations on the LRV's Appeal Brief on 29 November 2017, to which Mr Al Mahdi and the LRV responded on 11 December 2017. Mr Al Mahdi did not file a separate response to the LRV's Appeal Brief, although general arguments related to the appeal were included in its response to the LRV's Appeal Brief.
5. The LRV raises two ground of appeal.
6. Under his first ground of appeal, the LRV submits that the Trial Chamber erred in limiting individual reparations for economic loss to those whose livelihoods exclusively depended upon the Protected Buildings.
7. The Appeals Chamber notes first that a trial chamber, in making an award for reparations, has discretion, explicitly circumscribed only by the "scope and extent of any damage, loss and injury", as per article 75 (1) of the Statute and rule 97 (1) of the Rules of Procedure and Evidence. In reaching its decision, a trial chamber shall take account of parties' submissions, as per article 75 (3) of the Statute, and it "may appoint appropriate experts to assist it in determining the scope, extent of any damage, loss and injury" pursuant to rule 97 (2) of the Rules of Procedure and Evidence. The Appeals Chamber notes that the Trial Chamber, in analysing "the different kinds of harm alleged in the information before it", stated that it "freely considered all submissions, applications, supporting materials, expert reports and other relevant information".
8. The Appeals Chamber finds that the LRV has not shown that the Trial Chamber abused its discretion in reaching the decision it did, given the information it had before it and it finds no error in the Trial Chamber's determination of the category of victims who should be entitled to individual reparations for economic loss in this case.
9. In his second ground of appeal, the LRV argues that the Trial Chamber erred in delegating a "power of adjudication" for reparations to the TFV, a non-judicial entity. He also challenges the Trial Chamber's findings on the confidentiality of the victims' identifying information.
10. With respect to his first argument related to the alleged delegation of power to the TFV, the Appeals Chamber notes that the Trial Chamber considered that "the names of all the victims meeting its parameters for individual reparations [were] simply not known and consider[ed] that it would be impracticable for the Chamber to attempt to

identify and assess them all itself”. The Trial Chamber therefore considered it “best that individual reparations be awarded on the basis of an administrative screening by the TFV.”

11. The Appeals Chamber considers that the Trial Chamber’s decision is in conformity with rule 98 (2) of the Rules of Procedure and Evidence and the underlying rationale of this provision, namely that there may be situations in which it may be “impossible or impracticable to make individual awards directly” and that the Trial Chamber may need to rely on the TFV to enhance the efficiency and effectiveness of the reparations process. The Appeals Chamber finds that is within the discretion of a trial chamber to request, on a case-by-case basis, the assistance of, for example, the TFV to undertake the administrative screening of beneficiaries of individual reparations meeting the eligibility criteria set out by the trial chamber.
12. The Appeals Chamber therefore finds that the Trial Chamber did not err in this respect. However, the Appeals Chamber finds that, it is for the Trial Chamber, in the exercise of its judicial functions, to make final determinations on individual victim applications where administrative decisions of the TFV are contested or *proprio motu*.
13. Therefore the Appeals Chamber amends the Impugned Decision to the extent that applicants for individual reparations should be able to contest before the Trial Chamber the decision taken by the TFV on their eligibility for individual reparations, and it is for the Trial Chamber to make the final determination in this respect.
14. In relation to the second argument raised by the LRV under his second ground of appeal, regarding confidentiality issues, the Appeals Chamber first notes that the LRV requests that the Appeals Chamber grant “initial measures of confidentiality” in order to ensure that identifying information of victims who sought anonymity is not transmitted to the TFV or Mr Al Mahdi without their consent. In this respect, the Appeals Chamber observes that the Trial Chamber stated that “no identity of a reparations applicant may be transmitted to the TFV or Defence without the victim’s consent”. Therefore, in the view of the Appeals Chamber, the Trial Chamber did not lift any protective measures and the Appeals Chamber dismisses the LRV’s argument as not arising from the Impugned Decision.
15. Second, the Appeals Chamber notes that, in his submissions before the Appeals Chamber, the LRV also raises more general concerns as to the disclosure of information relating to the identity of applicants to both the TFV and Mr Al Mahdi. The Appeals Chamber recalls that the Trial Chamber stated that “[a]nyone who

wishes to be considered for individual reparations must make their identity known to both the TFV and the Defence”.

16. The Appeals Chamber notes that, in the proceedings prior to issuance of the Impugned Decision, the identifying information of applicants had been withheld from Mr Al Mahdi. The Appeals Chamber recalls that when ruling on requests for redactions, a trial chamber must take into account and balance the rights and interests of the parties as per article 68 of the Statute, which provides that “[t]he Court shall take appropriate measures to protect the safety [...] of victims and witnesses. [...] These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”.
17. The Appeals Chamber notes that Mr Al Mahdi’s interests at this stage of the proceedings are limited. The Trial Chamber has already set Mr Al Mahdi’s monetary liability and, as argued by the LRV, the results of the screening process will have no impact on this.
18. Given the particular circumstances of this case, the Appeals Chamber finds that, in balancing the interests of the parties at issue, the Trial Chamber failed to justify why it was appropriate to essentially place the victims in the position where they would have to choose between security concerns and their eligibility to be granted individual reparations. The Appeals Chamber finds that the Trial Chamber erred in ordering that access to applicants’ identifying information should be granted to Mr Al Mahdi, as a condition for the applicants to have their applications for reparations reviewed by the TFV. This finding is reversed and the Impugned Decision amended to the extent that the TFV is authorised to also consider applications for individual reparations made by applicants who do not wish to have their identifying information disclosed to Mr Al Mahdi.
19. The Appeals Chamber also notes that the LRV has also argued against disclosure of identifying information to the TFV. The Appeals Chamber considers that for the TFV to exercise the screening, it needs to be able to verify the identity of the applicants. Therefore, victims who wish to obtain individual reparations must make their identity known to the TFV or consent for such information to be transmitted to the TFV.

20.OVERALL CONCLUSION

21. The “Reparations Order” is amended to the effect that:

- Victim applicants who wish to be considered for individual reparations but do not wish that their identities be disclosed to Mr Al Mahdi may nevertheless participate in the administrative screening process that the Trust Fund for Victims will carry out. In that case, their identities will be disclosed to the Trust Fund for Victims, but will not be disclosed to Mr Al Mahdi.
- Victim applicants, who the Trust Fund for Victims finds, as a result of the administrative screening, ineligible for individual reparations, are entitled to request that the Trial Chamber review the assessment by the Trust Fund for Victims. The Trial Chamber may also review the assessment by the Trust Fund for Victims *proprio motu*.

22. The remainder of the “Reparations Order” is confirmed.