

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 December 2016**

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding
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 document

Submissions on the reparations proceedings

Source:

The Trust Fund for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Gilles Dutertre

Counsel for the Defence

Mr Mohamed Aouini
Mr Jean-Louis Gilissen
Ms Melinda Taylor

Legal Representative of Victims

Mr Mayombo Kassongo

**The Office of Public Counsel for
Victims**

States Representatives

Authorities of the Republic of Mali

REGISTRY

Registrar

Mr Herman von Hebel

Victims and Witnesses Unit

Victims Participation and Reparations Section

Mr Philipp Ambach

I. Background

1. On 27 September 2016, Trial Chamber VIII (hereinafter “Trial Chamber”) rendered its “Judgment and Sentence”,¹ in which it convicted Mr Ahmad Al Faqi Al Mahdi (hereinafter “Mr Al Mahdi”), pursuant to articles 8 (2) (e) (iv) and 25 (3) (a) of the Statute, as a co-perpetrator of the war crime of attacking protected objects and sentenced him to 9 years of imprisonment.²

2. On 29 September 2016, the Trial Chamber issued a calendar for the reparations proceedings in the case (hereinafter “Reparations Calendar”),³ in which it invited, *inter alia*, the Trust Fund for Victims (hereinafter “Trust Fund”) to make “general submissions [...] on the reparations proceedings in this case by **2 December 2016**” (emphasis in original).⁴

3. In the Reparations Calendar, the Trial Chamber also invited interested organisations to submit applications to make *amicus curiae* observations pursuant to rule 103 of the Rules⁵ and also set out a schedule for the identification and appointment by the Trial Chamber of experts,⁶ as well as setting the deadline to 11 January 2017 for the submission of the reports of the Trial Chamber appointed experts (hereinafter “Expert Reports”).⁷ Finally, the Trial Chamber set 16 December 2016 as the deadline for the filing of any application for reparations, noting that this deadline was “without prejudice to whether or how these applications will ultimately be considered by the Chamber”.⁸

4. On 25 and 31 October 2016, the Trial Chamber granted the requests of five organisations to submit observations under rule 103 of the Rules (hereinafter “*Amicus Curiae* Observations”) and set the deadline for their submission to 2 December 2016.⁹

¹ Judgment and Sentence, ICC-01/12-01/15-171.

² Judgment and Sentence, p. 49.

³ “Reparations Phase Calendar”, ICC-01/12-01/15-172.

⁴ Reparations calendar, para. 2 (iii).

⁵ Reparations calendar, para. 2 (iii), p. 5. The original deadline for the identification of the experts by way of a formal filing was 28 October 2016. Following a request from the Registrar, the deadline was extended to 9 December 2016, but the remaining schedule was not modified. See Decision on Registry Request for Extension of Time to Identify Experts and Partly Amending the Reparations Phase Calendar, ICC-01/12-01/15-177.

⁶ Reparations calendar, para. 2 (i)- (ii).

⁷ Reparations calendar, para. 2 (v).

⁸ Reparations calendar, para. 2 (iv).

⁹ Decision on Application by Queen’s University Belfast Human Rights Centre, the Redress Truss [*sic*], the FIDH and AMDH to submit *amicus curiae* observations (ICC-01/12-01/15-175 and ICC-01/12-01/15-176), ICC-01/12-

5. The Trust Fund hereby submits the requested general submissions on the reparations proceedings in this case.

II. Preliminary Observations

6. At the outset, the Trust Fund would first like to explain how it understands its role in reparations proceedings, as the submissions that follow are shaped by this understanding.

7. The Trust Fund's relation to the Court is understood as a partnership that in reparations proceedings has three different dimensions - as an advisory, expert body (pre-order for reparations), as the implementing agency and as a funding agency (post-order) - depending on the stage of proceedings and needs of the Court. The Trust Fund serves this partnership role for all cases resulting in a conviction and an order for reparations that emanate from the various Trial Chambers at the Court. Currently, in addition to the present proceedings, there are three other cases at various stages of reparations proceedings. This relationship is thus at an institutional level and should not, the Trust Fund respectfully submits, to be construed as the same as the parties of each case, who are, along with the relevant Trial Chamber, those most intimately familiar with the specific facts and circumstances of the particular case.

8. The Trust Fund notes that its primary role in reparations proceedings is as the implementing agency¹⁰ of awards for reparations to the Court as a whole and that its mandate as the implementing agency relates to the stage after it has been seized of an order for reparations issued by a Trial Chamber.¹¹ The sequencing set out in the applicable legal

01/15-178, para. 4; Decision on Application by the United Nations Educational, Scientific and Cultural Organization ('UNESCO') to Submit *Amicus Curiae* Observations, ICC-01/12-01/15-180, para. 4.

¹⁰ The Trust Fund notes that, under the applicable legal framework, a Trial Chamber may proceed under rule 98 (1) of the Rules and not make the awards "through" the Trust Fund, in which case the role of the Trust Fund would not include the preparation of a draft implementation plan or being tasked with the implementation of the awards. Given that the Trial Chamber invited the Trust Fund to make submissions on reparations in this case, the present submissions are premised on the assumption that the eventual order for reparations would be made pursuant to one or more of the provisions of rule 98 (2) to (4) of the Rules.

¹¹ See Regulations of the Trust Fund for Victims, regulation 50 (b), providing that: "For the purposes of these regulations, the Trust Fund shall be considered to be seized: [...] (b) When the Court makes an order for reparations against a convicted person and orders that the award be deposited with or made through the Trust Fund in accordance with rule 98, sub-rules 2 to 4 of the Rules of Procedure and Evidence." See also Appeals Chamber, Decision on the admissibility of the appeals against Trial Chamber I's "Decision establishing the principles and procedures to be applied to reparations" and directions on the further conduct of proceedings, 14 December 2012, ICC-01/04-01/06-2953 (hereinafter "*Lubanga* Reparations Admissibility Decision"), paras 53 ("The Appeals Chamber considers that, under the statutory framework for reparations [...] reparations proceedings can be divided into two distinct parts: 1) the proceedings leading to the issuance of an order for reparations; and 2) the implementation of the order for

framework relevant to when the Trust Fund's implementing activities are activated reflects the institutional partnership between the Court and the Trust Fund and also provides a clear delineation between the judicial-based proceedings relevant to reparations, including the appellate process, which falls fully within the competence and expertise of the relevant Chambers, and the subsequent administrative and programmatic processes of implementation, which falls within the competence, specialized expertise, experience and knowledge of the Trust Fund.¹²

9. Furthermore, once an order for reparations, including as a necessary element the amount of liability, has been issued, the Trust Fund's ability to serve as a funding agency comes into play by virtue of regulation 56 of the Regulations of the Trust Fund, which permits the Board of Directors, at its discretion, to complement the payment of awards for reparations following the Trust Fund being seized of the order for reparations pursuant to regulation 50 (b) of the Regulations of the Trust Fund. As is discussed further below, the Trust Fund's complement may be used for purposes of the payment of awards issued under rule 98 (3) or (4) of the Rules. The Trust Fund recalls that the funds available for a potential complement are derived from voluntary donations to the Trust Fund and not, for example, by a shared assessed contribution by the States Parties to the Trust Fund's reparations reserve. This demonstrates that the Trust Fund was not set up to by the Assembly of States Parties to serve as a "guarantor" of reparations awards,¹³ which would be contrary to the notion of individual liability that underpins the Court's *raison d'être* and which extends to reparations.¹⁴

reparations, which the Trust Fund may be tasked with carrying out."), 55 ("The second part of the reparations proceedings consists of the implementation phase, which is regulated primarily by article 75 (2) of the Statute and rule 98 of the Rules of Procedure and Evidence. If the Trial Chamber has ordered that reparations be made through the Trust Fund pursuant to rules 98 (3) and 98 (4) of the Rules of Procedure and Evidence, or that the award for reparations be deposited with the Trust Fund pursuant to rule 98 (2) of the Rules of Procedure and Evidence, the Trust Fund plays an important role in this phase and the Regulations of the Trust Fund apply. In this respect, the Appeals Chamber notes that, under the Regulations of the Trust Fund, an order for reparations has to be issued in order to seize the Trust Fund and allow it to undertake implementation activities in relation to reparations.").

¹² See, for a further discussion of this institutional partnership *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trust Fund, Observations relevant to reparations, 31 October 2016, ICC-01/05-01/08-3457 (hereinafter "Trust Fund's Observations in the Bemba case"), paras 56-62, under the heading "Applicable legal framework".

¹³ See *The Prosecutor v. Thomas Lubanga Dyilo*, Transcript of hearing of 13 October 2016, ICC-01/04-01/06-T-368-Red-ENG (hereinafter "*Lubanga* Public Reparations Hearing"), p 27, lines 5- 10. See also, for a discussion of the factors relevant to the Board of Directors' decision of whether to complement an award, Trust Fund's Observations in the Bemba case, paras 72-76.

¹⁴ See Assembly of States Parties, Resolution ICC-ASP/10/Res. 3, *Reparations*, adopted at the 7th plenary meeting, on 20 December 2011, by consensus, stating that the Assembly of States Parties "[s]tresses that as liability for

10. At the pre-order for reparations stage of the proceedings, in the Trust Fund's view, its primary role should be understood as an advisory body to assist the Trial Chamber as needed on the principles, procedure, and implementation modalities of reparations on the basis of its mandates and accountability to States, as well as its institutional experience, networks and multidisciplinary expertise and competencies. The Trust Fund has a body of expertise and experience, developed from its assistance mandate work and now from participating in four separate reparations proceedings following criminal convictions at the Court, from which the Trial Chamber may draw important lessons learned and insights as it considers how to best formulate an order for reparations that is responsive to the harms and reparative needs of the victims and the specific circumstances of the case at hand.

11. Further, the Trust Fund has an institutional interest in ensuring that reparations principles and those aspects of the eventual order for reparations that may impact upon the procedure and implementation of reparations are established in a manner that allows for an efficient, operationally and financially feasible, and victim-centred implementation process.

12. At this stage of proceedings, it is for the Trial Chamber, based primarily on the submissions of the parties and participants, along with any expert or *amicus curiae* submissions, to determine which harms resulted from the crime for which Mr Al Mahdi was convicted, as well as which types and modalities of reparations are most appropriate to remedy those harms. The Trust Fund does not consider that it is its role to advocate for any particular determinations in this respect on the basis of the particular facts of the present case.

13. The Trust Fund's submissions are therefore limited to those issues arising from the Judgment and Sentence which may require clarification in the order for reparations in order to ensure that the Trust Fund is able to prepare a draft plan and ultimately implement that order in line with what was intended by the Trial Chamber. The Trust Fund considers that it is more efficient to raise these issues in advance of the issuance of the order for reparations, rather than potentially risking delay and the need for revision following the submission of the Trust Fund's draft implementation plan, which, according to the Regulations of the Trust Fund and

reparations is exclusively based on the individual criminal responsibility of a convicted person under no circumstances shall States be ordered to utilize their properties and assets, including the assessed contributions of States Parties, for funding reparations awards [...]" Available at: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/Resolutions/ICC-ASP-10-Res.3-ENG.pdf

as is further discussed below, must be approved by the Trial Chamber before the actual implementation may begin.

14. The Trust Fund therefore suggests that its role at this stage of proceedings is primarily to address how certain issues that may be decided upon in the order for reparations could potentially affect the efficient and timely implementation of that order, as well as to highlight any issues for which the Court's legal framework relevant to reparations is set out in the Regulations of the Trust Fund,¹⁵ which are the applicable legal instrument at the implementation stage of reparations following the Trial Chamber's issuance of the order for reparations.¹⁶

15. Finally, the Trust Fund wishes to express its appreciation for the Trial Chamber's invitation to submit general submissions in the present reparations proceedings. In this regard, the Trust Fund notes that it is making these submissions without having yet had the opportunity to review the *Amicus Curiae* Observations or the Expert Reports, which, in the Trust Fund's view, may contain important information potentially relevant to the implementation stage of the proceedings. The Trust Fund also observes that it is not included in the invitation to make further submissions on the Expert Reports, *Amicus Curiae* Observations, and general submissions of the parties and participants.¹⁷

16. The Trust Fund would welcome, if the Trial Chamber considers it appropriate, the opportunity to make discrete further submissions on any issues raised in these other filings that may potentially impact upon the implementation stage of the proceedings, particularly in so far as the information contained therein may serve as a useful point of reference for the Trust Fund to further expand upon or refine various aspects of its present submissions, with

¹⁵ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth Session, 28 November to 3 December 2005, ICC-ASP/4/Res.3. Available at: https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-ASP4-Res-03-ENG.pdf

¹⁶ See in this regard, *Lubanga* Reparations Admissibility Decision, paras 52 (holding that the Regulations of the Trust Fund are an instrument to the Rome Statute), 55 ("If the Trial Chamber has ordered that reparations be made through the Trust Fund pursuant to rules 98 (3) and 98 (4) of the Rules of Procedure and Evidence, or that the award for reparations be deposited with the Trust Fund pursuant to rule 98 (2) of the Rules of Procedure and Evidence, the Trust Fund plays an important role in this phase and the Regulations of the Trust Fund apply."). See also 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, 3 March 2015, ICC-01/04-01/06-3129 (hereinafter "*Lubanga* Reparations Appeals Judgment"), para. 148 (a) ("The Appeals Chamber has recognized that the Regulations of the Trust Fund are an instrument to the Rome Statute for purposes of interpreting provisions related to reparations awarded through the Trust Fund").

¹⁷ See Reparations Calendar, para. 2 (vi), limiting these submissions to the "parties".

the ultimate aim of providing the Trial Chamber with a more precise and comprehensive overview of how implementation may take place, depending on the determinations made in the order for reparations. Further, as is discussed in more detail below, such submissions could potentially be combined with an update to the Trial Chamber on the feasibility of it ordering an award for reparations pursuant to rule 98 (4) of the Rules.

III. Observations of the Trust Fund

17. Given that these reparations proceedings are only at the initial stage, the Trust Fund has limited its submissions to the following seven topics: 1) eligibility criteria of victims; 2) identified communities and the harm they have suffered; 3) Mr Al Mahdi's possible participation in the reparations awards; 4) an explanation of the rule 98 (4) process; 5) potential funding sources for awards for reparations and the implications therefrom regarding the types of reparations ordered; 6) information relevant to the Trust Fund's presence in the Republic of Mali (hereinafter "Mali"); and 7) an explanation of other various matters only relevant to the implementation stage of proceedings.

18. Finally, taking into account that the not yet submitted Expert Reports are to address the nature and scope of the harms caused by Mr Al Mahdi's crime, including the monetary value,¹⁸ the Trust Fund has not included this topic in its general submissions. However, the Trust Fund would point out that it has made submissions, in the context of reparations proceedings in other cases before the Court, in relation to this issue with respect to the relevance of information that is determined only at the implementation stage of proceedings.¹⁹ To the extent that such submissions may be of assistance in the present proceedings, the Trust Fund incorporates them by reference, rather than repeating them in full herein.

A. Eligibility criteria for victims

19. As a preliminary matter, the Trust Fund notes that the deadline for submitting applications for reparations was set to 16 December 2016²⁰ and thus has not yet expired. The Trust Fund's submissions under this heading are therefore without prejudice to any possible applications that may allege harms that do not currently appear to be at issue in this case. In

¹⁸ See Reparations Calendar, para. (2) (i).

¹⁹ See e.g. Trust Fund's Observations in the *Bemba* case, paras 55-66, 72-87.

²⁰ See Reparations Calendar, para. (2) (iv).

this regard, the Trust Fund notes that, based on its review of the Judgment and Sentence and the available public trial documents, there does not appear at present to be any alleged harm to, for example, any individual/s who attempted to intervene to prevent the destruction of the ten protected buildings.²¹ Furthermore, the Trust Fund currently does not have access to the confidential decisions on victim participation, or the underlying applications, and therefore is not aware of the exact nature of the harms alleged or their alleged link to the crime for which Mr Al Mahdi was convicted.

20. Notwithstanding the above, the Trust Fund observes that, in the Judgment and Sentence, the Trial Chamber identified three communities of victims as having suffered harmed by the crime for which Mr Al Mahdi was convicted, holding that the “destruction [of the protected buildings] does not only affect the direct victims of the crimes, namely the faithful and inhabitants of Timbuktu, but also people throughout Mali and the international community”.²²

21. First, the Trust Fund would respectfully submit that the victim community of the inhabitants of Timbuktu should be understood to already include the eight admitted participating victims,²³ comprising 3 admitted as natural persons under rule 85 (a) of the Rules (though the Trust Fund notes that they sought to be admitted as organisations)²⁴ and 5 admitted as organisations under rule 85 (b) of the Rules.²⁵ In this respect, the Trust Fund observes that the Trial Chamber held, in the context of assessing the gravity of the crime for purposes of sentencing, that “the victims in the present case” suffered “moral and economic harm”,²⁶ and that, based on the publically available decisions on victim participation, at least

²¹ However, the Trust Fund notes the testimony that “the people of Timbuktu protested against the destruction” of the protected buildings, which raises at least the possibility that such harm did occur. *See* Judgment and Sentence, para. 80. *See also* para. 38 (i), (iv), where the description of the commission of the attacks includes reference to armed security ensuring the protection of those actively carrying out the destructions.

²² Judgment and Sentence, para. 80.

²³ *See* Judgment and Sentence, para. 6.

²⁴ Public redacted version of ‘Decision on Victim Participation at Trial and on Common Legal Representation of Victims’, 8 June 2016, ICC-01/12-01/15-97-Red (hereinafter “First Decision on Victim Participation”).

²⁵ Public redacted version of ‘Second Decision on Victim Participation at Trial’, 12 August 2016, ICC-01/12-01/15-156-Red.

²⁶ *See* Judgment and Sentence, para. 108. The Trust Fund notes that this holding is footnoted to an expert report to which it currently does not have access and was not able to review for purposes of these submissions. Should the Trust Fund be granted access to this expert report at some point in the future, it would appreciate the opportunity to make further submissions, if warranted, in regards to the information contained therein. *See* in this regard the Trust Fund’s general position on having the opportunity to make further submissions in this case, *supra* paras 15-16.

some of the participating victims equally allege suffering “personal economic and moral harm”.²⁷

22. The Trust Fund is not aware of whether the participating victims have or may still request individual reparations²⁸ for the harm they allegedly suffered. In this regard, the Trust Fund wishes to be clear that it fully acknowledges that it is for the Trial Chamber to determine the appropriate type/s of reparations to be ordered in the present case. As such, it makes no submissions as to whether individual reparations should be potentially ordered to a sub-set of victims in this case.

23. However, the Trust Fund would highlight the following holding of the Appeals Chamber in the context of its judgment on reparations in the *Lubanga* case: “[A] decision not to award reparations on an individual basis does not prejudice the individuals who filed individual reparations requests with respect to their eligibility to participate in any collective reparations programme”.²⁹ Furthermore, in the context of the *Lubanga* case, the Trust Fund would also recall that the Appeals Chamber included an instruction to the Trust Fund to take into account the views of the participating victims for purposes of the Trust Fund designing its collective reparations awards to be proposed in the draft implementation plan for approval by the Trial Chamber.³⁰ In this regard, the Trust Fund wishes to assure the Trial Chamber of its intention,

²⁷ First Decision on Victim Participation, para. 34.

²⁸ The Trust Fund would like to clarify that it does not mean to suggest that only victims who participated at trial are eligible for individual reparations, which is a matter that the Appeals Chamber has already decided. *See Lubanga* Reparations Appeals Judgment, para. 148 (f). In this regard, the Trust Fund observes that there may be other similarly situated individuals or organisations that submit an application for individual reparations in these proceedings or, should the Trial Chamber consider it appropriate in this case, that are included, but not identified, in the order for reparations in an award pursuant to rule 98 (2) of the Rules. *See*, for a discussion in this regard, Trust Fund’s Observations in the *Bemba* case, paras 27-33. The Trust Fund notes that, under this latter scenario, the identification of these individuals and/or organisations and the verification of their eligibility according to the legal criteria established in the Trial Chamber’s order for reparations would be carried out in an administrative process by the Trust Fund Secretariat and the Board of Directors pursuant to regulations 60 to 65 of the Regulations of the Trust Fund. *See Lubanga* Reparations Appeals Judgment, paras 143, 147 (d), 167 (“The Appeals Chamber also notes that the Regulations of the Trust Fund provide for the inclusion of unidentified beneficiaries into a reparations programme and for their identification only at the implementation stage [...]).

²⁹ *Lubanga* Reparations Appeals Judgment, para. 155.

³⁰ *Lubanga* Reparations Appeals Judgment, para. 204 (“Finally, the Appeals Chamber notes that the victims in the present case submitted their views regarding the appropriate modalities of reparations and proposed potential awards and programmes for reparations awarded on a collective basis. While the views of these victims are not to be prioritised over the views of other victims that the Trust Fund will communicate with during the consultation stage prior to it submitting its draft implementation plan, the Appeals Chamber considers it appropriate to include in the amended order for reparations an instruction to the Trust Fund that it should also take these proposals into account with respect to the nature of the awards for reparations that it will determine” (footnotes omitted).

in the case that only collective reparations are ordered, to design a collective reparations programme that would have aspects responsive, to the extent possible, to the harms suffered by the participating victims, as well as its willingness to consult with the Legal Representative on this topic.

24. In relation specifically to those victims admitted to participate as organizations under rule 85 (b) of the Rules, the Trust Fund recalls that, under the principle entitled “Modalities of reparations”, the *Lubanga* Trial Chamber established that: “Restitution may also be apposite for legal bodies such as schools or other institutions”.³¹ In this regard, the Trust Fund notes that this principle was not applied in the *Lubanga* case, but is of potential relevance to the current case. The Trust Fund furthermore recalls that, in the *Lubanga* reparations judgment, The Appeals Chamber held that “[p]rinciples should be general concepts that, while formulated in light of the circumstances of a specific case, can nonetheless be applied, adapted, expanded upon, or added to be future Trial Chambers”.³²

25. The Trust Fund submits that the Trial Chamber may wish to consider whether, first, the principle relevant to legal entities such as organizations needs to be further refined or adapted based on the specific circumstances of the *Al Mahdi* case and, second, whether it wishes to apply that principle in the order for reparations.

26. In the Trust Fund’s view, the modality of restitution, combined with one of the alleged harms it is intended to remedy in this case (economic loss), could suggest that individual awards for reparations may be appropriate for this sub-category of victims. The Trust Fund does not mean to suggest that economic harm as such is necessarily best remedied by the modality of restitution on an individualised basis for all victims. For persons, harms caused by this crime may be more appropriately remedied by other modalities or a collective award that has a transformative aim (such as vocational training and micro-loan programs that would permit the person to generate income). However, these modalities, or their provision on a collective basis, are not necessarily applicable for non-person victims such as organizations.

³¹ Appeals Chamber, Order for Reparations (amended), Annex A to *Lubanga* Reparations Judgment, ICC-01/04-01/06-3129-AnxA (hereinafter “*Lubanga* Amended Order for Reparations”), para. 36. *See also* Principle 1. Beneficiaries of reparations, para. 8, affirming that, as provided in rule 85 (b) of the Rules of Procedure and Evidence, reparations may be granted to legal entities.

³² *Lubanga* Reparations Appeals Judgment, para. 55. *See also* *Lubanga* Amended Order for Reparations, para. 5.

27. The Trust Fund considers it important to raise this matter because its ability to implement individual reparations awards to this potential sub-category of victims (or more generally to victims in this case) is contingent on the source of the available resources to pay for the awards for reparations, an issue which is discussed in more detail later below.

28. Next, in relation to potentially ordering an award for reparations to a community, the Trust Fund recalls that, in the judgment on reparations in the *Lubanga* case, the Appeals Chamber held that:

[C]ertain crimes may have an effect on a community as a whole. The Appeals Chamber considers that, if there is a sufficient causal link between the harm suffered by members of that community and the crimes of which [the convicted person] was found guilty, it is appropriate to award collective reparations to that community, understood as a group of victims. Therefore, an award of collective reparations to a community is not necessarily an error.³³

29. Given that the harm caused to the three above-mentioned communities was taken into account in assessing the gravity of the crime for which Mr Al Mahdi was convicted³⁴ and thus the requisite causal link has already been established in the context of sentencing, the Trust Fund proceeds on the assumption that these three communities are eligible for reparations with regard to the requirement of establishing a causal link.

30. However, with regard to the temporal scope of the crime, defined as “between around 30 June 2012 and 11 July 2012”,³⁵ and how this may impact eligibility for reparations, the Trust Fund submits that different considerations may be of relevance, depending on the nature of the harm alleged and the modality of reparations ordered.³⁶

31. First, the Trust Fund suggests that clarification may be needed in the order for reparations as to whether the temporal scope of the crimes is of relevance for purposes of whether an individual is considered a part of one of the identified communities. In this regard, while fully respecting that this is a matter for the Trial Chamber to ultimately decide, the

³³ *Lubanga* Reparations Appeals Judgment, para. 212.

³⁴ See Judgment and Sentence, para. 80.

³⁵ See Judgment and Sentence, paras 10, 38.

³⁶ For example, if the harm is defined as lost earnings and the modality of reparations is compensation, including potentially on an individual basis, the temporal scope of the crime may be relevant to an eligibility assessment.

Trust Fund respectfully submits that the overlapping nature of the identified communities and the fact that the identified harms to these communities are arguably continuing and still ongoing suggest that it is not necessary for an individual to demonstrate, for example, that they resided in Timbuktu when the attacks occurred, but rather that any individuals *currently* residing in Timbuktu should be considered a part of the community for purposes of reparations.

32. Furthermore, the Trust Fund notes that the non-material harms caused to these communities also suggest that modalities of collective reparations of a symbolic or commemorative nature may be appropriate in this case. The Trust Fund respectfully submits that these modalities may equally imply that the temporal scope of the crime should not be relevant to the participation of individuals in such collective reparations programmes. In the Trust Fund's view, similar considerations may be applicable in terms of the material (economic) harm suffered, depending on how that harm affected the community. The Trust Fund reiterates that it is for the Trial Chamber to decide this issue. The Trust Fund raises this matter because it considers that clear instructions in this regard in the order for reparations would be of assistance to it for purposes of designing and implementing such collective awards, if in fact so ordered.

B. The identified communities and the harm suffered

33. The Trust Fund notes that, in the Judgment and Sentence, the Trial Chamber established that all three identified communities (the people of Timbuktu as direct victims, the people of Mali, and the international community) attached emotional and symbolic value to the protected buildings and thus suffered moral harm from their destruction.³⁷ Specific to the people of Timbuktu, the Sentence details the deeply felt religious value attached by the local population to the protected buildings.³⁸ The Trust Fund also observes that the Trial Chamber took into account the discriminatory religious motives of Mr Al Mahdi, in his role as a part of the Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM) administrations.³⁹ The Trust Fund understands this aspect of the discriminatory religious motive of the crime to be limited

³⁷ Judgment and Sentence, para. 80.

³⁸ Judgment and Sentence, para. 78.

³⁹ Judgment and Sentence, para. 81.

to the population of Timbuktu. At the same time, the Trust Fund observes that the Trial Chamber noted the expert testimony given in relation to the important role that Timbuktu played in “the expansion of Islam in the region”.⁴⁰ Furthermore, the Trust Fund notes the Trial Chamber’s formulation of the direct victims in this case as “the faithful *and* inhabitants of Timbuktu”⁴¹ (emphasis added), which could indicate that “the faithful” may encompass a community not limited to the inhabitants of Timbuktu.

34. Thus, in brief, the Trust Fund would welcome clarification from the Trial Chamber as to whether the moral harm suffered by the broader Malian population and the international community includes a socio-religious attachment to the protected buildings, which thus may be an aspect of a reparative programme aimed to address the corresponding moral harms suffered by these communities.

C. Mr Al Mahdi’s possible participation in the reparations awards

35. The Trust Fund submits that Mr Al Mahdi’s participation in any reparations awards is dependent upon his willingness to participate and, most importantly, whether his participation is desired by the victims. Should there be a positive indication on both sides, the Trust Fund will consult with *inter alia* counsel for Mr Al Mahdi, the Legal Representative, and the people of Timbuktu in order to ensure that any participation on Mr Al Mahdi’s part is carefully designed in such a manner that it is acceptable, meaningful, and of reparative value to the victims. The Trust Fund considers that it would be of assistance in terms of eventually designing such awards if the Trial Chamber could already elicit information in this regard from the participants in the case, to the extent possible, during these reparations proceedings.

D. The option of an award for reparations pursuant to rule 98 (4)

36. In its judgment on reparations in the *Lubanga* case, the Appeals Chamber established that, as one of the five required elements of an order for reparations, a Trial Chamber “must specify, and provide reasons for, the type of reparations ordered, either collective, individual

⁴⁰ Judgment and Sentence, para. 78.

⁴¹ See Judgment and Sentence, para. 80.

or both, pursuant to rules 97 (1) and 98 of the Rules of Procedure and Evidence”.⁴² In the Trust Fund’s view, the “type” of reparations refers to whether reparations are awarded on an individualized basis, on a collective basis, *or to an intergovernmental, international or national organization*.

37. Rule 97 (1) of the Rules provides that: “Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both”.

38. Rule 98 (3) of the Rules provides that: “The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate”.

39. Rule 98 (4) of the Rules provides that: “Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.” The text of regulation 75 of the Regulations of the Trust Fund, corresponding to rule 98 (4) of the Rules, makes clear that the awards fulfilled by an organization under this provision may include both individual and collective.

40. In relation to how these provisions should be interpreted within the legal framework for reparations and as a matter of statutory construction, the Trust Fund submits that the meaning of a “type” of reparations award should encompass reparations awarded through the Trust Fund to an organization pursuant to rule 98 (4) of the Rules. Second, the Trust Fund submits that reparations awarded pursuant to rule 98 (4) of the Rules are not an alternative to awards for individual and/or collective reparations. Rather, the Trust Fund submits that it falls within the Trial Chamber’s discretionary authority under these provisions to determine that it is appropriate to order any combination of individual reparations, collective reparations, and reparations to a rule 98 (4) organization. The Trust Fund notes that, in all three options listed in rule 98 (provisions (2), (3) and (4)), corresponding to Chapters III, IV and V of the Trust Fund Regulations, respectively, it is the Trust Fund who remains the primary agency accountable to the Court for the implementation of the awards.

⁴² *Lubanga Reparations Appeals Judgment*, para. 1 (KEY FINDINGS).

41. The Trust Fund would highlight that one of the important differences between awards ordered pursuant to rules 98 (2) and/or (3) and those ordered pursuant to rule 98 (4) relates to the timing of the selection of the organization, which has implications in terms of steps that must be undertaken by both the Trial Chamber and the Trust Fund in advance of the issuance of an order for reparations in order to preserve the Trial Chamber's option to decide to make an award under that provision.

42. In this regard, under the Regulations of the Trust Fund applicable to rules 98 (2) and (3), the Trust Fund would only begin the procurement process to select the locally-registered organizations that will implement the awards, which is carried out under the Trust Fund's supervision and monitoring, after the order for reparations has been issued and the draft implementation plan has been approved by the Trial Chamber. Differently, for rule 98 (4) awards, the organization is named in the order for reparations itself. In this regard, the text of rule 98 (4) stipulates that the organization must be "approved by the Trust Fund". It further provides that the award can be ordered by the Trial Chamber "[f]ollowing consultations with interested states and the Trust Fund". Finally, the Trial Chamber may decide whether the award that is to be fulfilled by the "rule 98 (4) organization" is to be characterized as individual or collective and the relevant Regulations of the Trust Fund (regulations 59-68 for individual awards and regulations 69-72 for collective awards) apply *mutatis mutandis*.

43. With respect to what factors the Trust Fund may take into account for purposes of deciding to approve an organization, the Trust Fund considers that from an operational perspective, in order for any organization to be able to successfully deliver the implementation of a rule 98 (4) of the Rules reparations award, the organization must fulfill certain operational and technical requirements that are necessary in terms of entering into an agreement with the Trust Fund. Further, the Trust Fund would need to verify: (i) that potentially eligible organizations can in fact be engaged in accordance with rule 98 (4) of the Rules as well as the Regulations of the Trust Fund; and (ii) whether the transactional costs of a rule 98 (4) agreement, including the organization's programme and staffing costs, are appropriate in light of the overall value of the eventual awards.

44. Finally, the organization would need to have proven experience of working to provide relevant and suitable forms of redress to the affected individuals or communities at issue in the particular case. In this regard, a rule 98 (4) reparations awards may be a desirable option

in circumstances where an organization exists that has an outstanding and very specialized expertise in addressing a particular form of harm that gives rise to reparation proceedings.

45. The Trust Fund notes that, in the *Al Mahdi* case, almost all of the protected buildings that were destroyed were designated World Heritage sites. In light of this, the Trust Fund considers, at this very preliminary stage, that there may be aspects of the order for reparations that could be best fulfilled by a rule 98 (4) organization that has specialized expertise in dealing with these types of sites, as well as with communities whose local economies may depend in part on such sites.

46. Accordingly, the Trust Fund suggests that it begin discussions with various stakeholders, including the legal representative of victims in this case, in order to determine whether there is a potentially suitable organization. The Trust Fund also wishes to express its willingness to make itself available to the Trial Chamber for any consultations with the government of Mali in this regard. The Trust Fund will update the Trial Chamber on any developments and would appreciate if the Trial Chamber could provide it with an estimated timeframe, once one is known, for when the Trial Chamber considers that the discussions and consultations should be completed in case it wishes to include a rule 98 (4) award in the eventual order for reparations.

47. As a last point, the Trust Fund would also like to take this opportunity to explain in more detail how the rule 98 (4) process would proceed at the implementation stage, meaning after the award has been ordered. Regulations 73 to 75 of the Regulations of the Trust Fund provide that, when an order for reparations has been made pursuant to rule 98 (4), the draft implementation plan submitted to the Trial Chamber for approval shall set out: a) the concerned organization(s) and a summary of their relevant expertise; b) a list of specific functions that the concerned organization(s) is/are to undertake in the fulfillment of the Court's order; and c) a memorandum of understanding or other contractual terms between the Trust Fund and the concerned organization setting out the roles and responsibilities and monitoring and oversight. If the Trust Fund enters into such an arrangement, the Secretariat oversees the work of the concerned organization in fulfilling the Court's order, subject to the overall oversight of the Court.

E. The potential funding sources for awards for reparations

48. The Trust Fund recalls that reparations flow from the criminal conviction. Accordingly, as has been confirmed by the Appeals Chamber, they are the sole liability of the convicted person. That notwithstanding, there are two potential sources for funding the implementation of reparation awards: firstly, resources stemming from the convicted person; and secondly, resources that the Trust Fund at the discretion of its Board of Directors may make available according to regulation 56 of the Regulations of the Trust Fund.

49. Regulation 56 of the Regulations of the Trust Fund allows the Trust Fund “to complement the resources collected through awards for reparations”. Regulation 56, second sentence requires the Trust Fund to manage its available funds with a view to being in a position to “provide adequate resources to complement payments for awards” under rule 98 (3) and (4) of the Rules, taking into account other ongoing legal proceedings that may require such funding and without prejudice to the needs of the Trust Fund’s assistance mandate.

50. Based on the language in regulation 56 of the Regulations of the Trust Fund, the Trust Fund has consistently argued in reparations proceedings in other cases before the Court that its funds may only be used to complement collective reparation awards in the sense of rule 98 (3) or awards to an organization in the sense of rule 98 (4) of the Rules.

51. Consequently, the implementation (i.e. payment of) any order for individual reparations awards in the sense of either rule 98 (1) or (2) is dependent upon assets of Mr Al Mahdi being available. The Trust Fund wishes to be clear that Mr Al Mahdi is also liable and thus responsible for the payment of any reparations awards under rule 98 (3) or (4) of the Rules. However, as mentioned above, the Trust Fund has the ability to complement those payments, in consideration of any assets already recovered from Mr Al Mahdi or anticipated asset recovery by the Court, thus allowing the implementation of all or some of the awards to take place without delay.

52. In the Trust Fund’s view, it is important to clarify the financial situation of Mr Al Mahdi prior to issuing the order for reparations, particularly if the Trial Chamber is considering ordering individual reparations awards.

F. The Trust Fund's presence in Mali

53. Unlike in the Democratic Republic of the Congo and Uganda, the Trust Fund currently has no presence in Mali under its assistance mandate. However, the Trust Fund is actively considering, subject to a needs assessment being carried out, launching activities under its assistance mandate in Mali, security situation and financial resources of the Trust Fund permitting. Such activities would not be tied to this case or any criminal case before the Court and would need the approval of the relevant Pre-Trial Chamber before any assistance activities could begin. If the Trust Fund were to begin activities under its assistance mandate, these could take place prior, during, or after the implementation of reparation awards in this case.

G. Other matters relevant to the implementation stage of reparations proceedings

54. Finally, the Trust Fund considers that it may be of assistance to the Trial Chamber if the Trust Fund already at this early stage provides more information in relation to certain matters that will take place during the implementation stage. Given the heightened activity around reparations that the Court and the Trust Fund have recently become engaged in, the Trust Fund has had the opportunity to further develop its views on how the implementation of orders for reparation would occur in practice and welcomes the opportunity to share these with the Trial Chamber in the hopes that this will lead to a stronger partnership between the Court and the Trust Fund, with mutual respect for the important roles each play in making the promise of reparative justice a meaningful reality for victims of crimes under the jurisdiction of the Court.

55. Below, the Trust Fund addresses the following topics: 1) the administrative screening process for collective reparations awards, including the role of the convicted person in this regard; 2) the two-step approval process of the draft implementation plan; and 3) the procedural implications if only initial partial funding is available.

1. The administrative screening process for collective reparations awards

56. Prior to discussing how a screening process may be carried out for collective reparations awards, the Trust Fund would first like to point out that collective awards do not *per se*

require a screening process. In this regard, the Trust Fund notes that the legal rationale for a screening process relates mainly to collective reparations awards that involve service based programmes that require distinguishing eligible victims from the broader community of which they are a part. Contrarily, certain collective reparations awards to a community, particularly those that are of a symbolic or commemorative nature, need not require any screening process at all. In this regard, the Trust Fund recalls that, in the *Lubanga* case, its symbolic reparations plan, as a component of the comprehensive collective reparations awards proposed in the Draft Implementation Plan, was approved by Trial Chamber II without any requirement of an eligibility screening process, as the symbolic reparations measures are available to the entire community as such.⁴³

57. Given the crime for which Mr Al Mahdi was convicted, the types of harms caused, and that these harms are described as occurring at the community level and affecting the entire community as a whole, the Trust Fund considers that this issue may be of particular relevance to the *Al Mahdi* case and would request that the Trial Chamber consider whether and, if so, for which collective awards a screening process is required, including the legal criteria to be applied by the Trust Fund in that regard.

a) The proposed administrative process

58. The Trust Fund notes that there is no overarching requirement that individuals be identified or have their eligibility determined in a judicially-based process for purposes of a Trial Chamber issuing an order for reparations.⁴⁴ In this regard, in the *Lubanga* judgment on reparations, the Appeals Chamber established that the fifth required element of an order for reparations was that the order “must either identify the victims eligible for reparations, *or* set out the criteria of their eligibility for reparations”.⁴⁵

⁴³ See *The Prosecutor v. Thomas Lubanga Dyilo*, Trust Fund, Public Redacted version of Filing regarding symbolic collective reparations projects with Confidential Annex: Draft Request for Proposals, ICC-01/04-01/06-3223-Conf, 19 September 2016, ICC-01/04-01/06-3223-Red; Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations, 21 October 2016, ICC-01/04-01/06-3251.

⁴⁴ See *Lubanga* Reparations Judgment, para. 167 (“The Appeals Chamber also notes that the Regulations of the Trust Fund provide for the inclusion of unidentified beneficiaries into a reparations programme and for their identification only at the implementation stage [...]”).

⁴⁵ *Lubanga* Reparations Judgment, paras 1 (Key Findings), 205.

59. With respect to collective awards, the Trust Fund notes that, unlike the procedure set out for individual awards,⁴⁶ its Regulations are silent in relation to how eligibility is to be determined. In the context of the *Lubanga* reparations proceedings, the Trust Fund has had the opportunity to further develop its position in this regard, which is presented in summary form in the following paragraph.

60. In brief, the Trust Fund envisions an administrative screening process for collective reparations awards that is modeled, with certain modifications, on the procedure laid out in regulations 60-65 of the Regulations of the Trust Fund pertaining to individual awards. In this regard, the Trust Fund submits that a verification process of each individual beneficiary by its Board of Directors (as provided for under regulations 63 and 64 for individual reparations awards) is not appropriate or operationally feasible for collective reparations awards. Furthermore, the Trust Fund notes that the administrative procedure adopted by resolution by the States Parties does not include the involvement of legal support to potential beneficiaries at the implementation stage of reparations. While noting this absence, the Trust Fund nevertheless considers that there may be a need for legal advice and support to any potential beneficiaries, concerning their general right to reparations and in particular to those who do not pass the Trust Fund's administrative screening. The Trust Fund proposes that this could be achieved through a robust administrative appeals process whereby the Trust Fund Board of Directors shall establish and be advised by an independent review panel regarding these cases. The Trust Fund would keep the Trial Chamber fully apprised of this review process and its outcomes as part of the regular implementation reports it will submit in accordance with regulation 57 of the Trust Fund Regulations.

b) The role of the convicted person in regard of victims screening

61. As a preliminary matter, the Trust Fund submits that, where the Trial Chamber identifies individual reparations award beneficiaries in the order for reparations pursuant to requests brought under rule 94 of the Rules, the convicted person's role is set out in rule 94 (2) of the Rules. Thus, the convicted person has the right to be notified of the requests and to make

⁴⁶ *Supra* footnote 28.

submissions thereon in line with article 75 (3) of the Statute prior to the Trial Chamber issuing an order for reparations on those requests.

62. Contrarily, where the Trial Chamber does not identify individual beneficiaries or enter findings on individual claims for reparations in the order for reparations, but instead sets out the criteria for eligibility under either regulations 60-65 of the Regulations of the Trust Fund (individual awards to unidentified individuals under rule 98 (2)) or regulation 69 (collective reparations pursuant to rule 98 (3)),⁴⁷ the convicted person may challenge the criteria on appeal⁴⁸ and may make observations on the proposed⁴⁹ eligibility screening process that the Trust Fund will include in its draft implementation plan. Thus, the convicted person is able to challenge the criteria established by the Trial Chamber as well as the manner in which the criteria will be applied by the Trust Fund. The Trust Fund underlines in this regard that the proposed eligibility screening process forms a part of its draft implementation plan and is thus subject to approval by the Trial Chamber before implementation may begin. Accordingly, the convicted person will have the opportunity to raise any concerns regarding the proposed screening process with the Trial Chamber before any approval is given.

63. The Trust Fund respectfully submits that the above process is fully in line with the applicable legal framework for reparations awards where individual victims are not identified in the order for reparations, and operationally and financially feasible, while also ensuring that the eligibility criteria set out in the order for reparations are fully respected in the implementation of the reparations awards. Furthermore, as held by the Appeals Chamber,⁵⁰ the processes laid out in the Regulations of the Trust Fund are not contrary to the rights of the convicted person, in that, in addition to being able to challenge the criteria on appeal, this administrative process: (i) is subject to review and comment by the convicted person at the

⁴⁷ See *Lubanga* Reparations Appeals Judgment, paras 148 (b) (“The Trial Chamber is not required in all circumstances (the Court “may”) to decide upon the scope and extent of any damage, loss or injury in relation to individual requests filed under rule 94 [...]”), 147 (d) (“The Regulations of the Trust Fund provide for: 1) the possibility for it to be seized of an order for reparations where it would determine whether a particular individual was eligible to receive an award for reparations or to participate in a collective award.”).

⁴⁸ See *Lubanga* Reparations Appeals Judgment, para. 166.

⁴⁹ See *Lubanga* Amended Order for Reparations, para. 66 (“The Trust Fund shall provide Mr Lubanga with the opportunity to review its *proposed* screening process of victims at the implementation stage” (emphasis added)). See also *Lubanga* Reparations Appeals Judgment, paras 165-168.

⁵⁰ See *Lubanga* Reparations Judgment, para. 168.

process level before implementation begins and (ii) fully respects the monitoring and oversight role of the Trial Chamber at the implementation stage of reparations.

2. The two-step approval process of the draft implementation plan

64. The Trust Fund considers that it may be helpful to the Trial Chamber for it to explain in more detail the various steps that occur during the implementation stage of reparations relevant to the design and implementation of the awards.

65. First, the Trust Fund recalls that the implementation stage of reparations is triggered by it being seized of an order for reparations. As is set out in the Regulations of the Trust Fund, the Trust Fund is then tasked with preparing a draft implementation plan. Given that this is a “draft” and therefore must still be approved by the Chamber, the request for project proposals (RFP) process will not yet have taken place. Thus, the draft implementation plan will not already contain specific selected projects. Rather, the Trust Fund will submit a detailed programmatic framework, including the objectives, outcomes, and necessary activities that comprehensively respond to all of the modalities for reparations, and which the Trust Fund considers can realistically be implemented within the amount of liability imposed, that are contained in the order for reparations.⁵¹

66. Following the Trial Chamber’s approval of the programmatic framework, this framework will then be transformed into a call for proposals, to be submitted by locally-registered service providers. The submitted project proposals will provide further details to the project framework based on the applicants' knowledge, their experience and their local standing. Successful proposals will be further refined by the Trust Fund's staff, including by suggestions and adaptations necessary to make the projects comprehensively responsive to the overall objectives of the reparations awards. The selected projects will then require the review and approval of the Trust Fund’s Board of Directors prior to being shared with the Trial Chamber for its approval.

67. In the Trust Fund’s view, the Trial Chamber's approvals at these two key moments will serve the dual purpose of, one, ensuring that the awards are responsive to the reparations

⁵¹ See, for further information on an integrated programmatic framework versus a specific project within that framework, *The Prosecutor v. Thomas Lubanga Dyilo*, Trust Fund, Additional Programme Information Filing, 7 June 2016, ICC-01/04-01/06-3209 (hereinafter “Trust Fund’s 7 June 2016 Filing”), paras 33-36.

order and, as such, to the types and scope of harms, as well as the modalities to remedy those harms, identified by the Chamber in that order for reparations; and, two, the procedure will be conducive to establishing a meaningful and effective partnership between the Court and the Trust Fund in mutual respect of each other's roles and responsibilities according to the Rome Statute's regulatory framework.

68. The Trust Fund's programmatic framework is purposefully designed to be adaptive and flexible, thereby permitting the shifting of resources (always within the absolute cap of the amount of liability imposed) to respond to the specific needs of the victim beneficiaries.⁵² Thus, it is not the case that, if a specific project comes in under budget, this amount of money would somehow "reduce" the amount of liability. Rather, the Trust Fund would redirect these savings into expanding other projects and potentially launching additional projects within the programmatic framework laid out in the draft implantation plan that was approved by the Trial Chamber. In this regard, the Trust Fund wishes to make clear that the entirety of the "liability envelope" will be exhausted by utilizing adaptive programming within the parameters of the modalities for reparations awarded in the order for reparations.

3. Availability of only initial partial funding and the Trust Fund's complement

69. The final matter that the Trust Fund would like to call to the Trial Chamber's attention is the potential that the financial resources that will be *de facto* available to implement the order for reparations, i.e. any resources from Mr Al Mahdi, in addition to any eventual complement provided by the Trust Fund, may fall below the amount of liability for the reparations that the Court establishes against Mr Al Mahdi. The Trust Fund recalls that the Board of Directors would only take a decision relevant to whether to complement an award *after* the order for reparations has been issued and the limitation of the Trust Fund's complement to awards under rules 98 (3) and (4) of the Rules. Accordingly, the Trust Fund considers that an indication from the Trial Chamber in the order for reparations regarding a preference, if any, whether certain awards should be prioritized would be of assistance to the Trust Fund, particularly for purposes of preparing the draft implementation plan.

⁵² See in this respect Trust Fund's 7 June 2016 Filing, paras 39-40.

70. In this respect, the Trust Fund would also like to take this opportunity to explain what would take place procedurally if this scenario were to occur. Once seized pursuant to regulation 50 (b) of the Regulations of the Trust Fund, the Trust Fund would prepare a draft implementation plan responding to all of the types and modalities of reparations awarded in the order for reparations that it considers it can implement within the total amount of liability, bearing in mind the potential number of victims who may benefit from the awards and relevant administrative costs. The draft implementation plan would also be structured to take into account any preferences expressed by the Trial Chamber regarding which awards should be implemented first.

71. Separately, the Board of Directors would also, after being seized and taking into account the initial resources available from the convicted person, make a decision as to whether to complement the payment of any awards under rule 98 (3) or (4) of the Rules. Furthermore, as the Trust Fund has indicated in other cases,⁵³ the amount of a complement under regulation 56 of the Regulations of the Trust Fund may be increased by the Board of Directors at a later point in the implementation process due to *inter alia* successful fundraising efforts for the awards contained in the order for reparations.

72. Finally, recalling the provisions of articles 75 (4) and 93 (1) (k) and regulation 117 of the Regulations of the Court,⁵⁴ the Trust Fund notes the possibility that additional assets of the convicted person that may be used for purposes of reparations may become available at a later point in time. In this scenario, these assets would also go towards funding any awards for which financing was not initially available.

IV. Conclusion

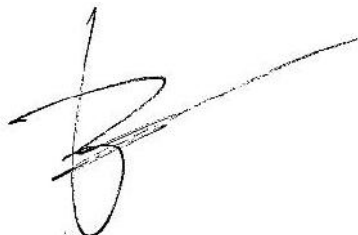
73. The Trust Fund appreciates the opportunity to make these general submissions in the present reparations proceedings and wishes to reiterate its willingness to make further submissions on any issue discussed herein or any other that the Trial Chamber considers may be of assistance to it during these proceedings.

⁵³ *Lubanga* Public Reparations Hearing, p. 29, l. 15-21; Trust Fund's Observations in the *Bemba* case, para. 76.

⁵⁴ See in this regard *Lubanga* Appeals Reparations Judgment, paras 102-104.

FOR THE FOREGOING REASONS

The Board of Directors respectfully submits its general observations on the reparations proceedings.

A handwritten signature in black ink, consisting of a stylized 'P' and 'W' followed by a long horizontal stroke.

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

Dated this 2 December 2016

At The Hague, The Netherlands