

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 22 November 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 “Updated Implementation Plan”, submitted on 2 November 2018, ICC-01/12-01/15-291-Conf-Exp

Source: The Trust Fund for Victims

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I. EXECUTIVE SUMMARY

1. The present updated draft implementation plan (“Updated Implementation Plan” or “UIP”) contains detailed information concerning security and mitigation strategies, outreach strategy, individual awards for moral and economic harm, including method of payment, and all required details for projects – both approved and new proposals – to respond to the collective moral and economic harm of the case.

2. [REDACTED].

3. The Trust Fund proposes to award [REDACTED] as individual reparations for the moral harm to those whose ancestors’ burial sites were damaged in the attack. To arrive at this figure, the Trust Fund has used the parameters set by Trial Chamber VIII (“Trial Chamber”), the reparations principles set out by the Appeals Chamber in its amended reparations order in the *Lubanga* case (“*Lubanga* Reparations Principles”),¹ as well as Malian domestic law. As far as economic harm is concerned, [REDACTED] to those who meet the requisite exclusive link [REDACTED], as follows:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

4. The damage occasioned to the Protected Buildings is proposed to be addressed [REDACTED]. The envelope reserved for these measures amounts to [REDACTED].

5. In relation to the displaced population [REDACTED], the Trust Fund proposes to set aside [REDACTED]. Upon arrival, they would be able to benefit from the economic and moral collective measures taking place in Timbuktu. To account for economic collective harm, the Trust Fund proposes to set up [REDACTED].

¹ Reparations Order, [ICC-01/12-01/15-236](#), para. 26, referring to Annex A to “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-AnxA](#).

6. With respect to collective moral harm, the Trust Fund intends to arrange psychological support [REDACTED] to be delivered by [REDACTED] and [REDACTED], in order to allow victims to choose the method of support that best fits their needs. In order to address the pre-existing discriminatory situation of women, the Trust Fund intends to enable safe spaces [REDACTED], which will serve as a platform for women to express their views and emotions regarding Mr Ahmad Al Faqi Al Mahdi's ("Mr Al Mahdi") Crime. The estimated cost of the collective moral harm reparations is [REDACTED].

7. Concerning symbolic reparations, a joint ceremony with the Government of Mali and UNESCO – hosted by the former – will take place at a later stage [REDACTED]. After extensive consultations, the Trust Fund has decided to anchor memorialisation measures on the principle of "restorative agency" whereby the local community will be empowered to steer the process and decide for themselves whether and in what manner to memorialise their perception of the events in 2012 linked to Mr Al Mahdi's Crime. The Trust Fund continues to not deem it advisable to make further use of Mr Al Mahdi's apology. The envelope for symbolic reparations [REDACTED]. The proposals put forward in the present Updated Implementation Plan are the result of extensive research, careful consultations with Court's sections, relevant [REDACTED] and experts in pertinent areas, as well as in depth examination of victims' views and preferences expressed in their applications, communications to the LRV and to the Trust Fund [REDACTED].

II. BACKGROUND

8. On 27 September 2016, the Trial Chamber convicted Mr Al Mahdi, of the war crime of attacking protected objects, namely nine mausoleums and the door of one mosque in Timbuktu, Mali ("Protected Buildings"), between the dates of 30 June 2012 and 11 July 2012 ("Crime").²

9. On 17 August 2017, the Trial Chamber issued its "Reparations Order",³ in which it: (i) held Mr Al Mahdi liable for reparations in the amount of EUR 2,7 million;⁴ (ii) instructed the Trust Fund to submit a draft implementation plan ("DIP"); and (iii) noting Mr Al Mahdi's indigence, encouraged the Trust Fund's Board of Directors ("Board") to consider complementing the individual and collective awards pursuant to regulation 56 of the

² Judgment and Sentence, [ICC-01/12-01/15-171](#).

³ [Reparations Order](#).

⁴ [Reparations Order](#), para. 134.

Regulations of the Trust Fund (“Complement Request” and “TFV Regulations”, respectively).⁵

10. On 8 March 2018, the Appeals Chamber issued its judgment on the appeal by the LRV against the Reparations Order.⁶

11. On 30 April 2018, the Trust Fund submitted its DIP,⁷ to which the parties⁸ and VPRS⁹ submitted their observations.

12. On 12 July 2018, the Trial Chamber issued its decision on the DIP,¹⁰ wherein it directed the Trust Fund to submit monthly reports concerning the progress made in preparing an Updated Implementation Plan.¹¹

13. On 9 August 2018, the Trust Fund filed a request for clarification in relation to the exclusive link requirement relevant to the individual awards for economic harm,¹² which, on 31 August 2018, the Trial Chamber rejected.¹³

14. On 10 August, 10 September and 10 October 2018, respectively, VPRS filed its first,¹⁴ second¹⁵ and third¹⁶ reports on applications received for individual reparations.

⁵ [Reparations Order](#), para. 138.

⁶ Judgment on the appeal of the victims against the “Reparations Order”, ICC-01/12-01/15-259-Conf-Exp; a public redacted version was registered on 8 March 2018, [ICC-01/12-01/15-259-Red2](#).

⁷ Corrected version of Draft Implementation Plan for Reparations, ICC-01/12-01/15-265-Conf-Corr; a public redacted version was registered on 18 May 2018, [ICC-01/12-01/15-265-Corr-Red](#).

⁸ *Observations de la Défense sur le projet de plan de mise en œuvre des réparations*, ICC-01/12-01/15-265-Conf + Conf-Anx1 soumis par le Fonds au profit des victimes, 23 May 2018, ICC-01/12-01/15-268-Conf; a public redacted version was registered on 27 July 2018, [ICC-01/12-01/15-268-Red](#); *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l’Ordonnance de réparation en vertu de l’article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#).

⁹ Registry Observations on the Trust Fund for Victims’ Draft Implementation Plan for Reparations, 18 May 2018, ICC-01/12-01/15-267-Conf; a public redacted version was registered on 27 July 2018, [ICC-01/12-01/15-267-Red](#).

¹⁰ 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”).

¹¹ [Decision on Draft Implementation Plan](#), para. 22.

¹² Request for clarification of the eligibility criteria for individual reparations awards related to economic harm, ICC-01/12-01/15-274-Conf; a public redacted version was registered on 15 August 2018, [ICC-01/12-01/15-274-Red](#). On 14 August 2018, the LRV requested permission to file a response. See *Demande d’autorisation en réplique à la requête en clarification déposée par le Fonds au profit des victimes*, 14 August 2018, ICC-01/12-01/15-276-Conf. However, despite having a right to respond, the LRV did not ultimately file a response.

¹³ Decision on TFV Request for Clarification Regarding Individual Reparations for Economic Harm, [ICC-01/12-01/15-280](#).

¹⁴ First Registry Report on Applications for Individual Reparations, [ICC-01/12-01/15-275](#).

¹⁵ Corrigendum of “Second Registry Report on Applications for Individual Reparations”, 10 September 2018, [ICC-01/12-01/15-282-Corr](#).

¹⁶ Third Registry Report on Applications for Individual Reparations, [ICC-01/12-01/15-287](#).

15. On 15 August 2018, the Trust Fund filed its first monthly update report, including the notification regarding the Complement Request,¹⁷ to which the Defence filed observations.¹⁸

16. On 14 September 2018, the Trust Fund submitted its second monthly update report,¹⁹ to which, on 24 September 2018, the LRV responded,²⁰ and on 5 October 2018, the Defence responded.²¹

17. On 15 October 2018, the Trust Fund submitted its third monthly update report.²²

18. On 26 October 2018, the Trust Fund submitted the draft application form for individual reparations together with the legal criteria that must be applied throughout the screening process (“26 October Submission”).²³

19. The Trust Fund hereby submits its Updated Implementation Plan.

III. CLASSIFICATION OF THE PRESENT SUBMISSION

20. The Trust Fund has classified the present filing as confidential pursuant to regulation 23 *bis* (1) of the Regulations of the Court [REDACTED]. The Trust Fund will file a public redacted version of this submission as soon as possible.

IV. UPDATED SECURITY SITUATION, RISK ASSESSMENT AND MITIGATION STRATEGY

21. The Trust Fund recalls the proposals made in the DIP regarding the mitigating actions to be adopted to ensure the safe and timely implementation of the reparations awards ordered

¹⁷ First monthly update report on the implementation plan, including notification of the Board of Directors’ decision on the Trial Chamber’s Complement Request pursuant to regulation 56 of the Regulations of the Trust Fund for Victims, ICC-01/12-01/15-277-Conf; a public redacted version was registered on 27 August 2018, [ICC-01/12-01/15-277-Red](#) (“First Monthly Update Report”).

¹⁸ *Observations de la Défense sur le rapport mensuel ICC-01/12-01/15-277-Conf du Fonds au profit des victimes*, 4 September 2018, ICC-01/12-01/15-281-Conf.

¹⁹ Second monthly update report on the implementation plan with two confidential annexes, ICC-01/12-01/15-283-Conf.

²⁰ *Observations du Représentant légal sur le Second rapport mensuel d’activité du Fonds au profit des victimes et sur le processus de sélection des victimes aux réparations*, ICC-01/12-01/15-284-Conf.

²¹ *Observations de la Défense sur le deuxième rapport mensuel ICC-01/12-01/15-283-Conf du Fonds au profit des victimes et réponse aux observations ICC-01/12-01/15-284-Conf du représentant légal des victimes*, ICC-01/12-01/15-285-Conf.

²² Third monthly update report on the updated implementation plan, ICC-01/12-01/15-288-Conf (“Third Monthly Update Report”).

²³ Trust Fund’s submission of draft application form, ICC-01/12-01/15-289-Conf with four confidential annexes; a public redacted version was registered on 30 October 2018, [ICC-01/12-01/15-289-Red](#).

by the Trial Chamber in this case.²⁴ In the present submission, the Trust Fund has borne in mind the Trial Chamber's directive with regard to the need for discretion in the implementation of the reparative measures, whilst ensuring that the beneficiaries understand that such measures aim at repairing the harm suffered as a result of Mr Al Mahdi's Crime.²⁵

22. In preparation of the UIP, the Trust Fund requested an updated security assessment from the [REDACTED] tailored to take into account the reparations activities proposed by the Trust Fund, which is attached to this filing as annex 1. The Trust Fund has also consulted with [REDACTED]. Based on the results of these consultations, the Trust Fund will address in this section the main potential risks that have been identified, and the corresponding mitigating strategies that it proposes to adopt for the implementation of reparations.

23. [REDACTED]. Furthermore, the upcoming Confirmation of Charges for the *Al Hassan* case, scheduled for 6 May 2019, and other trial developments [REDACTED]. In addition, according to the Registry, [REDACTED].

24. [REDACTED].²⁶ [REDACTED].

25. In regard to the collective reparations, the Trust Fund recalls that, according to the Registry, [REDACTED]. Therefore, the Trust Fund has been in consultation with the Registry about [REDACTED]. However, in the design of the collective reparation awards proposed below, the Trust Fund has been mindful of the need of [REDACTED].

V. APPROACH ADOPTED BY THE TRUST FUND

26. During the drafting of the UIP, the Trust Fund has endeavoured to follow a consultative and cooperative approach with relevant stakeholders, including the Government of Mali and its relevant agencies, sections of the Court, [REDACTED] and experts. Leading up to this submission, the Trust Fund maintained regular contact with VPRS and the LRV,²⁷ and liaised with the Defence when appropriate.²⁸ The Trust Fund consulted the Court's units

²⁴ [Draft Implementation Plan](#), paras 45-57. The Trust Fund further recalls that the Trial Chamber took note of the potential security risks and mitigating actions that the Trust Fund proposed in its DIP to put in place relevant to the specific activities that the Trust Fund was either mandated to undertake or proposes in response to the implementation of the reparations awards. See [Decision on Draft Implementation Plan](#), paras 32, 78, 101.

²⁵ [Decision on Draft Implementation Plan](#), para. 101.

²⁶ [Decision on Draft Implementation Plan](#), para. 54.

²⁷ See e.g., [26 October Submission](#), paras 9, 52.

²⁸ See e.g., Third Monthly Update Report, para. 3.

whose areas of expertise are of relevance to the present implementation Plan, namely CAU, the Field Office, VWS, and the Public Information and Outreach Section.²⁹

27. With the Government of Mali, the Trust Fund has held high level meetings with the Prime Minister, the Minister of Justice and the Minister of Foreign Affairs in respect of the ceremony for the symbolic award. At the working level, the Trust Fund has consulted intensively with the [REDACTED] throughout the preparation period, as well as with the Ministry of Health.

28. [REDACTED], the Trust Fund maintains an ongoing engagement with [REDACTED] and [REDACTED] concerning the restoration of the Protected Buildings, the implementation of collective economic reparations, and the location and return of displaced victims, as appropriate.

29. To ensure that the proposals made have taken careful consideration of the wishes and concerns expressed by victims, the Trust Fund has closely examined the first batch of applications submitted while the trial was ongoing (139) as well as the subsequent 240 insofar as their views on potential specific activities under the collective reparations are concerned. The Trust Fund also examined the 13 annexes containing observations made by potential beneficiaries to the initial DIP submitted by the LRV.³⁰ [REDACTED], the Trust Fund held several meetings with victims, including organisation a/35140/16.³¹

30. In order to complement its in-house expertise, the Trust Fund reached out to several professionals of recognised aptitude in their field concerning certain aspects of the Reparations Order.³² The Trust Fund has taken their views into account when appropriate in the drafting of the present UIP, particularly in relation to the [REDACTED] and memorialisation measures.

31. The Trust Fund is confident that the present Updated Implementation Plan responds to the concerns and instructions contained in the Trial Chamber's July decision on the DIP. In respect of the individual reparations, the Trust Fund believes that the organisation of the

²⁹ See e.g., First Monthly Update Report, para. 12.

³⁰ *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#).

³¹ [REDACTED].

³² Their expertise includes psychology, anthropology, human rights, and the function of cultural heritage in post-conflict scenarios.

administrative screening will enable a fair and expeditious processing of the applications. The Trust Fund also believes that the quantum of awards proposed are as tailored as is realistically possible in a context where very little data are available. Further, in respect of the collective and symbolic reparations, the Trust Fund, on the basis of victim consultations, has identified specific projects and set forth concretely how their implementation is envisaged.

VI. UPDATED IMPLEMENTATION PLAN

A. INDIVIDUAL REPARATIONS: IDENTIFICATION OF NEW APPLICANTS

32. [REDACTED].³³
33. In accordance with the Chamber's order, [REDACTED].
34. The campaign is organised around three pillars: (i) [REDACTED]; (ii) [REDACTED]; and (iii) [REDACTED]. [REDACTED].
35. [REDACTED].³⁴ [REDACTED].
36. [REDACTED].
37. [REDACTED].³⁵ [REDACTED].
38. [REDACTED].
39. [REDACTED].
40. [REDACTED].³⁶ [REDACTED].³⁷

B. INDIVIDUAL REPARATIONS: MORAL HARM

1) Eligible victims: direct descendants

41. The Trust Fund will award individual reparations for moral harm to all applicants meeting the direct descendancy requirement, as set out in its 26 October Submission, unless instructed otherwise by the Trial Chamber.³⁸

³³ [Decision on Draft Implementation Plan](#), para. 32.

³⁴ Meeting between Trust Fund and LRV held on 24 October 2018.

³⁵ [REDACTED].

³⁶ Open source research, [REDACTED], show that a number of victims of the 2012 events in Timbuktu sought refuge in neighbouring countries. The Trust Fund believes that six months might not be sufficient to identify them and assist them in filling in the form.

³⁷ *Infra* paras 55, 79.

³⁸ [26 October Submission](#), paras 32-43.

2) Quantum

a) *Parameters established by the Trial Chamber*

42. The Trial Chamber clarified that “moral harm should be estimated without consideration of the economic situation of the local population.”³⁹ It also indicated that the awards must not be symbolic in character and should rather be framed as an actual compensation for the harm suffered.⁴⁰ The Trial Chamber did not object to awarding lump sums to individual victims, but ruled that the amount proposed by the Trust Fund in its DIP [REDACTED]⁴¹ needed to be reconsidered due to its lack of justification.⁴² The Trial Chamber gave no further parameters for the assessment of individual awards for moral harm.

b) *Factors considered by the Trust Fund*

(1) **Lubanga reparations principles**

43. The Trial Chamber endorsed the *Lubanga* Reparations Principles,⁴³ which acknowledge that “some forms of damage are essentially unquantifiable in financial terms”,⁴⁴ a truism that is on point in a case concerning cultural heritage. Compensation in instances where the harm is, by definition, unquantifiable should provide a form of “economic relief that is aimed at addressing, in a proportionate and appropriate manner, the harm that has been inflicted.”⁴⁵

44. The present form of economic relief sought through compensation does not aim to represent the full amount to which, *in abstracto*, victims could be entitled to, given that the Trust Fund must stay within the parameters of the EUR 2,7 million established as Mr Al Mahdi’s liability for reparations in this case, and that compensation should be considered “in view of the availability of funds.”⁴⁶

³⁹ [Reparations Order](#), para. 43, referring to Trial Chamber II, *Prosecutor v. Germain Katanga*, Order for Reparations pursuant to Article 75 of the Statute,, [ICC-01/04-01/07-3728-tENG](#), para. 189 (“*Katanga* Reparations Order”).

⁴⁰ [Decision on Draft Implementation Plan](#), para. 73.

⁴¹ [Draft Implementation Plan](#), paras 82-87.

⁴² [Decision on Draft Implementation Plan](#), para. 71.

⁴³ [Reparations Order](#), para. 26, referring to Annex A to “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-AnxA](#),

⁴⁴ [Lubanga Reparations Principles](#), para. 40.

⁴⁵ [Lubanga Reparations Principles](#), para. 40.

⁴⁶ [Lubanga Reparations Principles](#), para. 37.

(2) **Malian law**

45. Neither the Rome Statute or its instruments, applicable treaties, or the principles and rules of international law indicate appropriate compensatory amounts for harm. Article 21(1)(c) of the Statute allows resort to “the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.”

46. The Malian Criminal Code includes a provision on attacks against cultural heritage, but refers only to the general regime of obligations for establishing civil liability arising from the commission of a war crime.⁴⁷ While the Malian *Régime Général des Obligations* contains a chapter on civil liability,⁴⁸ it does not provide specific ranges or parameters to assess the value of reparations, and the Trust Fund has been unable to find case-law on this point.

47. Since “the attacks against the Protected Buildings lie at the heart of this case and form the basis for Mr Al Mahdi’s conviction”,⁴⁹ resort can be made to the Malian act concerning the protection and promotion of national cultural heritage (“Malian Cultural Heritage Act”).⁵⁰ According to this Act, [REDACTED].⁵¹ [REDACTED].

48. The Trust Fund is aware that, unlike the fine above, reparations at the Court are not punitive in character. However, the amounts set out in the Malian Cultural Heritage Act, which are based on the concept of individual responsibility, provide an indication of the monetary amount that would be imposed on an individual in Mali for altering or destroying protected objects belonging to national heritage.

49. The Trust Fund accordingly considers [REDACTED] provided by the Malian Cultural Heritage Act to be a valid parameter to take into account per Protected Building for its assessment of compensation for individual moral harm.

c) *Trust Fund’s Proposal on individual awards for moral harm*

50. The Trust Fund proposes [REDACTED] as the individual award for moral harm. The parameters and methodology to arrive at this figure are based on the *Lubanga* Reparations

⁴⁷ Republic of Mali, articles 27 and 31 (i) (7) of the [Loi n°01-079 du 20 août 2001 portant Code Pénal](#), 20 August 2001, on civil responsibility and attacks against cultural heritage, respectively.

⁴⁸ Republic of Mali, articles 113-162 of the [Loi n°87-31/AN-RM du 29 août 1987 fixant le régime général des obligations](#), 29 August 1987.

⁴⁹ [Reparations Order](#), para. 64.

⁵⁰ Republic of Mali, [Loi n°10-061 du 30 décembre 2010 portant modification de la Loi n°85-40/AN-RM du 26 juillet relative à la protection et à la promotion du patrimoine culturel nationale](#), 30 December 2010.

⁵¹ Articles 17 and 41 of the [Malian Cultural Heritage Act](#).

Principles, the Malian Cultural Heritage Act, information from the field and findings from the Judgment and Sentence and Reparations Order,⁵² are as follows:

- (a) As a starting point, the Trust Fund would rely on [REDACTED] imposed by the Malian Cultural Heritage Act, that is, [REDACTED] per destroyed object. [REDACTED]⁵³ in a carefully planned attack.⁵⁴
- (b) The sum of [REDACTED]. This amount should be further adjusted so that the final compensation award is proportionate to the harm caused by the Crime and the circumstances of the case.⁵⁵
- (c) The Malian Cultural Heritage Act refers to the protection and promotion of national cultural heritage, but makes no reference to objects belonging to international cultural heritage whereas, in the present case, the Trial Chamber found the international dimension of

⁵² The Trust Fund’s analysis of international and domestic jurisprudence has revealed that different human rights courts have awarded compensation for moral harm in cases with facts that resemble, to a greater or lesser extent, the nature of the individual moral harm at stake in the *Al Mahdi* reparations order. The Inter-American Court of Human Rights (“IACtHR”) has awarded this type of reparations in, for example, *Plan de Sánchez Massacre* (2004) where the community suffered an interruption of their funeral rites; in *Moiwana Community* (2005) resulting from the community’s inability to bury their loved ones in the traditional custom; in *Río Negro Massacres* (2012) where the victims lost contact with their most important sacred places and cemeteries; and in *Massacres of El Mozote and nearby places* (2012) where community members were unable to bury the remains of their loved ones in a way that aligned with their culture. The European Court of Human Rights (“ECtHR”) has similarly awarded reparations in *Catholic Archdiocese of Alba Iulia* (2012) and in *Association for solidarity with Jehovah Witnesses and others* case (2016) where the moral harm was based on the inability to fully practice one’s own religion. In *Islamic Community in Bosnia and Herzegovina (Mrkonjic Grad) v. Republika Srpska* (2003), the Human Rights Chamber for Bosnia and Herzegovina awarded compensation to the applicant organisation based on the destruction of religious buildings for business development purposes. The sums awarded to individual victims in these cases ranged from EUR 1,000 to 50,000 USD. However, these sums lumped together diverse types of moral harm and, sometimes, also incorporated pecuniary damages. None of the courts revealed the individual ranges and parameters used, which renders it impossible to discern what percentage of those amounts corresponds to the moral harm related to the disruption of burial sites and the like. In addition, the Trust Fund notes that the above human rights cases were conducted against the State and not individuals and aimed to repair the totality of the harm caused. While recognising the importance of these human rights cases, the Trust Fund concludes that the above ranges would grossly overstate the amount that would be appropriate to set in the present case. Therefore, after careful consideration, the Trust Fund has decided not to use them as a parameter. See IACtHR, *Plan de Sánchez Massacre v. Guatemala*, ‘Reparations Judgment’, 19 November 2004, [Series C, no. 116](#), para. 87; IACtHR, *Moiwana Community v. Suriname*, ‘Judgment’, 15 June 2005, [Series C, no. 124](#), para. 195; IACtHR, *Río Negro Massacres v. Guatemala*, ‘Judgment’, 4 September 2012, [Series C, no. 250](#), para. 87; IACtHR, *Massacres of El Mozote and nearby places v. El Salvador*, ‘Judgment’, 25 October 2012, [Series C, no. 252](#), para. 331; ECtHR, Court (Third Section), *Archidiocèse catholique d’Alba Iulia c. Roumanie*, ‘Judgment’, 25 September 2012, [application no. 33003/03](#), decision no. 5; ECtHR, Court (Second Section), *Association de solidarité avec les témoins de Jéhovah et autres c. Turquie*, ‘Judgment’, 24 May 2016, [application no. 36915/10 and 8606/13](#), para. 114; Bosnia and Herzegovina, Dom za ljudska prava za Bosnu i Hercegovinu [Human Rights Chamber for Bosnia and Herzegovina], *Islamic Community in Bosnia and Herzegovina (Mrkonjic Grad) v. Republika Srpska*, Decision on Admissibility and Merits, 22 December 2003, [no. CH/01/7701](#), para. 174.

⁵³ [Judgment and Sentence](#), para. 78.

⁵⁴ [Judgment and Sentence](#), para. 78.

⁵⁵ [Lubanga Reparations Principles](#), para. 37.

the Protected Buildings (epitomised by the world heritage status of almost all of them) was an important factor in its assessment of the gravity of the Crime.⁵⁶

(d) The definition of “cultural heritage” rests on the object’s importance for “*l’histoire, l’art, la pensée, la science et la technique*.”⁵⁷ This definition and, by implication, the fine attached to its damage or destruction, does not reflect the sentimental or emotional dimensions that an object may have. These values were nonetheless expressly recognised in the assessment of gravity where the Trial Chamber took into account that “the targeted buildings were not only religious buildings but had also a symbolic and emotional value for the inhabitants of Timbuktu”.⁵⁸

(e) Lastly, the Trial Chamber found that the discriminatory religious motive of Mr Al Mahdi was “undoubtedly relevant to its assessment of the gravity of the crime”,⁵⁹ whereas such motives appear not to be considered in the Malian Cultural Heritage Act.

51. For the reasons above, the Trust Fund proposes to multiply the sum of [REDACTED] four times to reflect, respectively, (i) the need for the award to represent a form of economic relief;⁶⁰ (ii) the international dimension of the cultural heritage destroyed; (iii) its symbolic and emotional features; and (iv) the religious discriminatory intent. The resulting figure is [REDACTED].

52. The Trial Chamber acknowledged at the time of issuing its Reparations Order that the victims “meeting its parameters for individual reparations are simply not known.”⁶¹ Currently, it is still unfeasible to know how many applicants would be entitled to monetary awards for moral harm, but the information collected from the field suggests [REDACTED].

53. [REDACTED].⁶² [REDACTED];⁶³ [REDACTED].⁶⁴

54. [REDACTED]. While the Trust Fund is currently not aware of whether this estimation is based on the broader concept of descendancy referred to in the 26 of October

⁵⁶ [Judgment and Sentence](#), para. 80.

⁵⁷ Article 2 of the [Malian Cultural Heritage Act](#).

⁵⁸ [Judgment and Sentence](#), para. 79.

⁵⁹ [Judgment and Sentence](#), para. 81.

⁶⁰ *Supra* para. 43.

⁶¹ [Reparations Order](#), para. 141.

⁶² L. Moffett, *Justice for Victims before the International Criminal Court* (Routledge, 1st ed., 2014), p. 169.

⁶³ Institut National de la Statistique du Mali, [Enquête Modulaire et Permanente auprès des Ménages, Rapport d’Analyse, Passages 1 - 4 \(avril 2016 – mars 2017\)](#). See *Tableau I-1: Dépenses annuelles de consommation par type de ménage*, p. 23.

⁶⁴ Report of the Trust Fund Mission to Mali [REDACTED] 2017.

Submission,⁶⁵ it would still regard this as a valid estimate. This is because, even with the requirement of “direct descendancy”, the inclusion of female-based lineage may lead to an increased number of qualifying victims.

55. In order to ensure that “[a]ll victims are to be treated fairly and equally”,⁶⁶ the [REDACTED]. Should funds remain from the individual moral harm envelope, the Trust Fund will reinvest them into the collective moral reparations awards.

56. In conclusion, the Trust Fund proposes an “individual moral harm envelope” of [REDACTED] each.

C. INDIVIDUAL REPARATIONS: ECONOMIC HARM

1) Eligible victims

57. The Trust Fund will award individual reparations for economic harm to all applicants meeting the exclusive link requirement, as set out in the 26 October Submission,⁶⁷ unless instructed otherwise by the Trial Chamber.

2) Quantum

a) *Parameters established by the Trial Chamber*

58. The Trial Chamber directed the Trust Fund to revisit its initial proposal [REDACTED] and specified that individual awards should be a form of actual compensation, rather than a symbolic sum.⁶⁸ [REDACTED].⁶⁹ Further, the Trust Fund was asked to take into account, [REDACTED].⁷⁰ [REDACTED].

b) *Other factors considered by the Trust Fund*

(1) Jurisprudence of the Court

59. The Trust Fund recalls that reparations should be implemented in a way that avoids reproducing underlying discriminatory practices and therefore in a gender-inclusive manner

⁶⁵ [26 October Submission](#), paras 33-35.

⁶⁶ [Lubanga Reparations Principles](#), para. 12.

⁶⁷ [26 October Submission](#), paras 18-26.

⁶⁸ [Decision on Draft Implementation Plan](#), paras 72, 73.

⁶⁹ [Decision on Draft Implementation Plan](#), paras 70, 71.

⁷⁰ [Decision on Draft Implementation Plan](#), para. 72.

that aims for gender parity where possible.⁷¹ Furthermore, individual reparations must be awarded in a way that avoids creating tensions and divisions within the local population.⁷²

60. In addition, the Trust Fund notes the persuasive jurisprudence of the Trial Chamber in the *Katanga* case, where the Trial Chamber determined that, unlike awards for moral harm, the assessment for economic harm should be grounded in the local economic context.⁷³ The Trust Fund respectfully submits that this jurisprudence should be applied in the present case.

(2) Objective criteria

61. While taking due notice of the victims' accounts of their losses, the general absence of ledgers or any sort of official record on the proceeds made by Protected Buildings and businesses has led the Trust Fund to take two sets of objective criteria into consideration: (i) information regarding salaries in Mali; and (ii) the cost of living in Timbuktu.

62. [REDACTED]⁷⁴ [REDACTED].⁷⁵ [REDACTED].

63. A 2001 study of the *Bureau International du Travail* provided an extensive survey of the average Malian salaries.⁷⁶ Although this study shows different salaries for men and women, the Trust Fund takes men's salaries as a reference for both genders, in conformity with the goal of gender-parity and the non-discrimination principle.⁷⁷ According to this study, [REDACTED]⁷⁸ [REDACTED].⁷⁹

64. The Trust Fund has also directly received information from two different sources,⁸⁰ [REDACTED].⁸¹

65. According to a 2017 UN study on household sizes around the world, a typical Malian family consists of 5.7 persons (*i.e.* six persons).⁸² [REDACTED].⁸³ [REDACTED].⁸⁴

⁷¹ [Lubanga Reparations Principles](#), paras 17, 18.

⁷² [Lubanga Reparations Principles](#), para. 33.

⁷³ [Katanga Reparations Order](#), para. 189.

⁷⁴ Republic of Mali, [Décret n° 2015-0363/P-RM du 19 mai 2015 fixant le salaire minimum interprofessionnel garanti](#), 19 May 2015.

⁷⁵ The daily wage is based on using an eight-hour work day.

⁷⁶ Bureau International du Travail, [Egalité de rémunération au Mali](#), August 2001 (“*Egalité de rémunération au Mali*”).

⁷⁷ [Lubanga Reparations Principles](#), paras 16, 18.

⁷⁸ [Egalité de rémunération au Mali](#), p. 3.

⁷⁹ [Egalité de rémunération au Mali](#), p. 7.

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² United Nations, Economic & Social Affairs, [Household Size and Composition Around the World 2017](#), p. 15.

⁸³ Institut National de la Statistique du Mali, [Enquête Modulaire et Permanente auprès des Ménages, Rapport d'Analyse, Passages 1 - 4 \(avril 2016 – mars 2017\)](#). See *Tableau 1-1: Dépenses annuelles de consommation par type de ménage*, p. 23.

66. [REDACTED]. However, beyond this, the Trust Fund notes that none of the victim-related documents it has received since the DIP contain statements concerning the average income lost due to the destruction of the Protected Buildings of [REDACTED].⁸⁵

c) Trust Fund's Proposal on individual awards for economic harm

67. The Protected Buildings generated different amounts of revenue due to, for example, their respective notoriety and differing numbers of visits that they attracted on a weekly basis.⁸⁶ The same observation can be made in relation to businesses that exclusively depended on the Protected Buildings. However, given the widespread lack of ledgers, the Trust Fund finds impractical to try to determine a hierarchical and [REDACTED].

68. For that reason and the need to avoid generating tension and jealousy among victims,⁸⁷ the Trust Fund proposes [REDACTED].

69. [REDACTED].⁸⁸

70. [REDACTED]⁸⁹ [REDACTED],⁹⁰ [REDACTED].

71. The methodology to arrive at the above range of individual awards for economic harm is as follows:

(a) The Trust Fund considers that an appropriate compensation proportional to the economic harm caused and the circumstances of the case would be one based [REDACTED]. This is because, while not reflecting the entire period of time before the Protected Buildings were rebuilt, it is nonetheless a significant sum, while also taking into account that the Trust Fund's proposal must stay within the limit of EUR 2,7 million reflecting the totality of Mr Al Mahdi's liability for all of the reparations awarded in this case, and the need to base compensation on the availability of funds.⁹¹

⁸⁴ Consultation n.1, p. 8; [REDACTED].

⁸⁵ See e.g. *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#), annexes A to M.

⁸⁶ See, e.g., Annex III to the Transmission of One Public Version and Two Confidential Versions of Experts' Reports pursuant to the Trial Chamber's Order of 11 July 2017, [ICC-01/12-01/15-214-AnxIII-Red2](#).

⁸⁷ Consultation n.2 with expert specialised in the politics of heritage management, received by the Trust Fund on 17 September 2018 ("Consultation n.2"), p. 7; See *supra* para. 59.

⁸⁸ [Decision on Draft Implementation Plan](#), para. 72.

⁸⁹ See *supra* para. 66.

⁹⁰ See *supra* paras 64, 65.

⁹¹ [Lubanga Reparations Principles](#), para. 40.

(b) Given that the Protected Buildings generated varying sums of revenue and that the potential beneficiaries [REDACTED].

72. [REDACTED],⁹² [REDACTED].⁹³

73. [REDACTED].

74. [REDACTED];⁹⁴ [REDACTED].⁹⁵ [REDACTED]⁹⁶ [REDACTED]⁹⁷

75. In short, [REDACTED]:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

76. In light of the currently unknown number of eventually successful applications and the variance of economic awards, the Trust Fund intends to reserve [REDACTED].

77. If, on average, each successful applicant was entitled to [REDACTED] of economic award (corresponding to the basic rate [REDACTED]), the Trust Fund would have enough resources to [REDACTED]. The Trust Fund considers this estimation to be reasonable given that, on average, around [REDACTED] would be directly associated with each one of the mausoleums, such [REDACTED].⁹⁸ When [REDACTED].

78. Similar to the individual moral harm envelope, to ensure that “[a]ll victims are to be treated fairly and equally”,⁹⁹ the Trust Fund intends to reserve [REDACTED]. Should funds remain from the individual economic harm envelope, the Trust Fund will reinvest them into the economic moral reparations awards.

⁹² See *supra* para. 69.

⁹³ See *supra* para. 64.

⁹⁴ United Nations, Economic & Social Affairs, [Household Size and Composition Around the World 2017](#), p. 15.

⁹⁵ Institut National de la Statistique du Mali, [Enquête Modulaire et Permanente auprès des Ménages, Rapport d’Analyse, Passages 1 - 4 \(avril 2016 – mars 2017\)](#). See *Tableau 1-1: Dépenses annuelles de consommation par type de ménage*, p. 23.

⁹⁶ L. Moffett, *Justice for Victims before the International Criminal Court* (Routledge, 1st ed., 2014), p. 169.

⁹⁷ Report of the Trust Fund Mission to Mali of [REDACTED] 2017.

⁹⁸ Report of the Trust Fund Mission to Mali of [REDACTED] 2017. During the mission, a group of victims was asked: “who are the people intervening in and around the mausoleums?” See also *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l’Ordonnance de réparation en vertu de l’article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#), Annex H, question 8 where the victims mention [REDACTED] different categories of persons associated with mausoleums.

⁹⁹ [Lubanga Reparations Principles](#), para. 12.

79. Similar to the individual moral harm envelope, any amount that will not have been used at the end of the disbursement period will be reinvested in the collective economic reparations awards.

1) Enhanced awards

80. If an individual establishes that his or her direct economic harm derives from more than one Protected Building, the Trust Fund proposes that [REDACTED].¹⁰⁰

2) Payment considerations

81. [REDACTED]¹⁰¹ [REDACTED],¹⁰² [REDACTED].¹⁰³ [REDACTED].¹⁰⁴ [REDACTED].¹⁰⁵ [REDACTED].

82. The Trust Fund understands that when minors are entitled to individual reparations, the award should be administered in the minor's best interest by the same person who presented the application on his or her behalf. The Trust Fund will [REDACTED].

83. The Trust Fund notes that the LRV has expressed the need to prioritise awards for specific individuals.¹⁰⁶ In this regard, TFV Regulations provide that the Board may decide to prioritise disbursement of awards for sub-groups of victims in urgent need.¹⁰⁷ The Trust Fund therefore proposes that the LRV informs the Trust Fund of which beneficiaries are in urgent need of verification and disbursement – and why – allowing the Trust Fund to take a

¹⁰⁰ However, if an individual is considered a victim of both direct moral and economic harm, he or she will receive two different awards as this is a difference in kind of harm, not of degree.

¹⁰¹ [Decision on Draft Implementation Plan](#), para. 78.

¹⁰² See *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#), Annex B, p. 7; Annex K, p. 7; Annex M, p. 7.

¹⁰³ See *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#), Annex A, p. 4; Annex C, p. 7; Annex E, p. 7; Annex F, p. 7; Annex G, p. 7.

¹⁰⁴ Consultations conducted by the Trust Fund with [REDACTED], on 7 September 2018. The Trust Fund stands ready to assume these transaction costs as they are administrative in character. However, it would like to remark that this may lead to a highly personalised and thus complex reimbursement scheme since the transaction costs are deducted from the holder's own account.

¹⁰⁵ Meeting between Trust Fund and LRV, held on 24 October 2018.

¹⁰⁶ Meetings between Trust Fund and LRV, held on 8 and 24 October 2018.

¹⁰⁷ Regulation 65 of the Regulations of the TFV Regulations "Taking into account the urgent situation of the beneficiaries, the Board of Directors may decide to institute phased or priority verification and disbursement procedures. In such cases, the Board of Directors may prioritize a certain sub-group of victims for verification and disbursement".

prioritisation decision. The decision on whether and how to prioritise the beneficiaries in question will be communicated to the LRV and VPRS simultaneously, so that the latter can proceed accordingly in its preliminary analysis.

VII. COLLECTIVE REPARATIONS

A. OVERVIEW

84. The Trial Chamber ordered collective reparations to address (i) the damage caused to the Protected Buildings; (ii) consequential economic harm; and (iii) moral harm caused to the population of Timbuktu in general.¹⁰⁸ It requested the Trust Fund to include all requisite details, that is, objectives, outcomes sought, necessary activities as well as identification of implementing partners, timeline, budget and staffing, if applicable, and the harm caused by the Crime that the project was intended to address.¹⁰⁹ The Trial Chamber directed the Trust Fund to make clear during the implementation that the project at stake was a reparative measure by, for example, involving victims in their design,¹¹⁰ and approved the monitoring mechanism devised with regard to all types of collective reparations.¹¹¹

85. As to concrete categories of victims, the Trial Chamber requested the inclusion of measures for the displaced population, including a decision on the involvement of organisation a/35140/16,¹¹² and the prioritisation of collective economic reparations targeted at women, and the elderly.¹¹³

86. The Trial Chamber foresaw that the modalities of reparations would have a mutually reinforcing character in that “addressing the discrete moral harm may have residual effects that ameliorate the discrete forms of economic harm and vice versa.”¹¹⁴ The Trust Fund wishes to remark that, while the modalities proposed below are presented in separate headings, in practice, some of them have double purpose, and others have residual effects on others. For instance, [REDACTED] would indirectly enable the [REDACTED] held for such purpose which, in turn, would allow the population of Timbuktu to come together thereby boosting community pride. Likewise, as acknowledged by the Trial Chamber, “[t]hose

¹⁰⁸ [Reparations Order](#), paras 67, 83, 90.

¹⁰⁹ [Decision on Draft Implementation Plan](#), paras 12, 100.

¹¹⁰ [Decision on Draft Implementation Plan](#), para. 106.

¹¹¹ [Decision on Draft Implementation Plan](#), para. 107.

¹¹² [Decision on Draft Implementation Plan](#), paras 103, 104.

¹¹³ [Decision on Draft Implementation Plan](#), para. 105.

¹¹⁴ [Reparations Order](#), para. 139.

destroying cultural heritage seek to disrupt the social fabric of societies”.¹¹⁵ By the same token, the Trust Fund considers that, helping to rebuild the social industry of Timbuktu will increase the maintenance capacity of the Protected Buildings since they largely rely on donations from the local population who, in turn, would see their ability to earn income increased due to, for example, the remuneration given [REDACTED]. In addition, the population’s ability to once again generate income [REDACTED] would enhance their psychological well-being since, as expressed by two victims: [REDACTED]¹¹⁶ Conversely, the projects envisaged to address collective moral harm (*e.g.* engagement of [REDACTED] and provision of psychological support [REDACTED]) would not only help to enhance the moral resilience and diminish the sense of protection lost by the population, but also help them to resume their daily activities and their level of motivation to work and partake in the economic resilience activities.

B. COLLECTIVE REPARATIONS: DAMAGE TO PROTECTED BUILDINGS

1) Approved measure: improvement of protection and maintenance of Protected Buildings

a) Rehabilitation of doors, windows and enclosures

87. The Trust Fund would like to note that the rehabilitation of doors and windows of the mausoleums has already been carried out by UNESCO,¹¹⁷ but the same is not true with respect to the cemeteries that house several mausoleums and thus, constitute their enclosure. In this context, the Trust Fund would like to propose two specific projects: the rehabilitation of the cemetery walls, and the plantation of trees around the Protected Buildings or the cemeteries where they are situated.

88. The Trust Fund wishes to note that its proposal for this measure has been developed in close consultation with representatives of [REDACTED]. It is envisaged that the proposed activities will be carried out in the framework of [REDACTED] upon approval of the implementation plan. The Trust Fund notes that the costs of administration and of the necessary expertise to oversee and exercise quality control and assurance in relation to the

¹¹⁵ [Reparations Order](#), para. 14.

¹¹⁶ *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l’Ordonnance de réparation en vertu de l’article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#), [REDACTED], p. 8.

¹¹⁷ Meeting between [REDACTED] Trust Fund and [REDACTED].

proposed activities are not included in the budget cost presented below, as they do not directly go to the benefit of victims. However such costs must be considered to be an essential element of the overall initiative. It is the intent of the Trust Fund [REDACTED] to jointly assure the mobilisation of these costs enabling the effective implementation of the proposed measures.

(1) Rehabilitation of cemetery walls

89. The objective of this measure is to secure the enclosure of the Protected Buildings by reinforcing eroded and rebuilding collapsed walls, draining water, removing accumulated trash and reinstalling main gates where missing, as appropriate. The outcome sought with this measure is building a protecting barrier to safeguard the Protected Buildings against unwanted human access, elements such as water, wind, creeping vegetation as well as domestic animals that use the land as pasture grounds thereby degrading the area.

90. The necessary activities involve, in relation [REDACTED], fixing the stone coating of the entrance gate, replacing the [REDACTED] that have been stripped by the wind, ridding the [REDACTED], and rebuilding the parts of the wall that have collapsed.¹¹⁸

91. In relation to [REDACTED] enclosure, the activities proposed [REDACTED] has collapsed and, possibly, the [REDACTED] part of the enclosure that is about to fall as well, removing a [REDACTED] causing stagnated water to sag, reinforcing the bases of walls that have been eroded as a result of rainwater, repairing superficial cracks along the enclosure wall appear as a result of external pressure from the wind that causes structural shifts,¹¹⁹ and [REDACTED].¹²⁰

92. With regards to the enclosure of [REDACTED] cemetery, the necessary activities revolve around reinforcing those wall bases that have been eroded by rain and accumulated water, rebuilding collapsed portions of the [REDACTED] walls, draining obstructed rainwater that is causing humidity, fungus and green moss, and removing mounds of trash that favour the stagnation of water.¹²¹

¹¹⁸ The assessment of damage is based on the UNESCO, Diagnostic report on heritage property in northern Mali, Phase III - UNESCO, August-November 2017, pp. 56-59; and [REDACTED] (“[REDACTED]”).

¹¹⁹ UNESCO, Diagnostic report on heritage property in northern Mali, Phase III - UNESCO, August-November 2017, pp. 63- 65.

¹²⁰ Based on [REDACTED].

¹²¹ UNESCO, Diagnostic report on heritage property in northern Mali, Phase III - UNESCO, August-November 2017, pp. 69-72.

93. With respect to the [REDACTED], the activities to strengthen its enclosure must reinforce all wall bases that have been eroded due to sand movements, drain and recanalise obstructed rainwater, removing of piles of trash, rebuilding [REDACTED] collapsed wall [REDACTED],¹²² [REDACTED].¹²³

94. No external staff will need to be recruited for this measure since the rehabilitation would be carried out [REDACTED]. Following the advice of one of the consulted experts, the Trust Fund needs to make sure that they are [REDACTED].¹²⁴ In fact, [REDACTED] would remain at the core of this process, as they have already done from its inception in relation to the assessment of damage. [REDACTED]. [REDACTED],¹²⁵ [REDACTED].

95. Concerning the budget, the current ceiling estimation for the rehabilitation of the Protected Buildings is at around [REDACTED].¹²⁶ An updated study and quote will be necessary upon approval of these rehabilitation activities, which will be borne by the Trust Fund. Additionally, the Trust Fund would reserve [REDACTED] for remuneration purposes. In total, this measure is estimated at [REDACTED].

96. Due to its specific nature, the Trust Fund would need to count with [REDACTED]. [REDACTED]. The timeline for the work required for rehabilitating walls, [REDACTED].

(2) Planting of trees and living hedge

97. The outcome sought for this activity is minimising the threats posed by desertification, strong winds and sand movement. This measure would entail planting the appropriate tree species (*i.e. prosopis juliflora, calotropis procera*, cram-cram and moringa) and living hedge as a dune fixation technique [REDACTED].

98. The estimated quote for this activity is [REDACTED],¹²⁷ and includes the price of wheelbarrows, shovels and pipes, trees, living hedges, as well as the drilling of wells and water networks. [REDACTED].

¹²² UNESCO, Diagnostic report on heritage property in northern Mali, Phase III - UNESCO, August-November 2017, pp. 76-79.

¹²³ [REDACTED].

¹²⁴ Consultation n.1, p. 4.

¹²⁵ See *e.g. Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/12-01/15-236), Avec 13 Annexes confidentielles ex parte réservées au Fonds au profit des victimes*, 30 May 2018, ICC-01/12-01/15-271-Conf; a public redacted version was registered on 19 July 2018, [ICC-01/12-01/15-271-Red](#), annex A, p. 4, Annex F, p. 2

¹²⁶ UNESCO, Diagnostic report on heritage property in northern Mali, Phase III - UNESCO, August-November 2017.

¹²⁷ [REDACTED].

99. While it is expected that a call for expressions of interest to carry out this project will attract the attention of several economic interest groups and service providers, [REDACTED]. [REDACTED]¹²⁸ and, for the wider audience, [REDACTED]. The timeline to carry out the plantation of trees and living hedges is of [REDACTED].

(3) Improved lighting

100. The Trust Fund proposes to install lighting to improve day and night-time visibility around the mausoleums with the aim of deterring crime,¹²⁹ increasing community pride and confidence, and prompting greater use of public space. According to some of the victims consulted, [REDACTED],¹³⁰ lighting is needed around the cemeteries that house mausoleums, as well as around [REDACTED].

101. The budget for this activity is [REDACTED] approximately,¹³¹ and it should [REDACTED] to carry out from the moment that a contract is signed with one implementing partner of which candidates already exist. The Trust Fund's enquiries have shown that solar panels can be installed, leading to the self-sustainability of the project. [REDACTED].

102. The Trust Fund would like to note that the lighting activity bears connections with both guarantees of non-repetition and the general aim of improving moral resilience within the context of collective reparations. As to the former, improvement in lighting "can act as a catalyst to stimulate crime reduction through a change in the perceptions, attitudes and behaviour of residents and potential offenders."¹³² Public lighting leads to greater use of the space which, naturally, intensifies surveillance and strengthens informal social control. While the effects on crime reduction through public lighting cannot be guaranteed, the outcome is likely to be greater if the previous lighting condition was poor.¹³³ As to moral resilience,

¹²⁸ [REDACTED].

¹²⁹ On the effects of improved lighting over crime rates: See P. Farrington and B. C. Welsh, "[Effects of improved street lighting on crime: a systematic review](#)", Home Office Research Study 251 (2002); see also K. Pease, '[A review of street lighting evaluations: crime reduction effects](#)', in K. A. Painter and N. Tilley (eds.) *Surveillance of Public Space: CCTV, Street Lighting and Crime Prevention* (Criminal Justice Press, 1999), p. 47; and J. E. Eck, '[Preventing Crime at Places](#)', in L. W. Sherman, D. C. Gottfredson, D. L. MacKenzie, J. E. Eck, P. Reuter and S. D. Bushway (eds.), *Preventing Crime: What Works, What Doesn't, What's Promising*, (National Institute of Justice, 1997), p. 573.

¹³⁰ [REDACTED]; Meeting with a group of victims [REDACTED].

¹³¹ Estimation based on inquiries made by the Trust Fund on the Field in September 2018.

¹³² D. P. Farrington and B. C. Welsh, "[Effects of improved street lighting on crime: a systematic review](#)", Home Office Research Study 251 (2002), p. 3.

¹³³ See J. E. Eck, '[Preventing Crime at Places](#)', in L. W. Sherman, D. C. Gottfredson, D. L. MacKenzie, J. E. Eck, P. Reuter and S. D. Bushway (eds.), *Preventing Crime: What Works, What Doesn't, What's Promising*, (National Institute of Justice, 1997), p. 46; and D. P. Farrington and B. C. Welsh, "[Effects of improved street lighting on crime: a systematic review](#)", Home Office Research Study 251 (2002), p. 5.

lighting leads to the feeling that an area is improving and cared for, which can in turn boost community confidence, optimism and cohesiveness.¹³⁴

(4) Surveillance

103. The Trust Fund understands that the combined effect of the works to reinforce the enclosures of the mausoleums, the plantation of trees and hedges and the public lighting project will contribute to a change in the routine activity patterns by increasing the flow of pedestrians who, in turn, would become spontaneous capable guardians. As explained below, the Trust Fund plans to provide [REDACTED] enable periodic surveillance and rapid response capacity, which should add to the culture of increased surveillance.

b) *Support to the [REDACTED]*

104. The Trust Fund intends to enhance the logistical support [REDACTED] by providing two motorbikes and a set of plastic chairs. The budget for this measure is of [REDACTED] approximately corresponding to [REDACTED].¹³⁵ The Trust Fund believes that support [REDACTED] will ultimately benefit the community of Timbuktu by ensuring better protection of the Protected Buildings on the one hand ([REDACTED]), and by providing the necessary basic infrastructure to host meetings and trainings for the community of Timbuktu ([REDACTED]) on the other.

105. A special condition will be attached to this measure. In line with the wish expressed by LRV concerning the need to conduct symbolic ceremonies with the Government of Mali and UNESCO only after individual reparations have begun to be awarded, the Trust Fund stresses that this [REDACTED] will be provided only after [REDACTED].

c) *Capacity building of the [REDACTED]*

106. The Trust Fund proposes conducting three workshops through [REDACTED] in order to enhance the [REDACTED], [REDACTED]. The workshops are intended for [REDACTED] [REDACTED]. Based on past trainings [REDACTED], the cost of a workshop is [REDACTED] approximately, which means that the budget for this activity [REDACTED].

107. The workshops will be coordinated [REDACTED], with proven experience in [REDACTED]. [REDACTED]:

¹³⁴ D. P. Farrington and B. C. Welsh, "[Effects of improved street lighting on crime: a systematic review](#)", Home Office Research Study 251 (2002), pp. 33, 36.

¹³⁵ Email from [REDACTED] on 24 September 2018.

- (i) Hands-on work in groups [REDACTED];
- (ii) thematic presentations on [REDACTED] (in the local language and French);
- (iii) creation of practical records [REDACTED]; and
- (iv) hands-on work on [REDACTED].

2) New proposed measure: [REDACTED] maintenance of the Protected Buildings

108. The Trust Fund intends to enable the customary annual maintenance of the Protected Buildings that were damaged or destroyed by Mr Al Mahdi [REDACTED]. The outcome sought [REDACTED] would be twofold: allowing the preventive maintenance of the affected sites by keeping them in a satisfactory state of conservation while minimising the risks of deterioration; and indirectly enabling the community to perpetuate a living tradition associated with the work of the mausoleum and mosque. If celebrated, it would improve the community's moral resilience given that the fund may enable them to reinstate a tradition that – akin to therapy – contributes to helping families of saints and the communities of Timbuktu to re-emerge from the trauma caused by the destruction of the Protected Buildings [REDACTED].¹³⁶

109. Before the Crime, the maintenance of the Protected Buildings was managed through donations of private individuals from the community and the provision of materials collected by the family responsible for the mausoleum. However, since 2012, as a result of the attacks on the mausoleums and the growing impoverishment of the population which ensued, it has become difficult to maintain the Protected Buildings. [REDACTED]. The Trust Fund would thus like to [REDACTED]. In line with the principle according to which “[r]eparations need to support programmes that are self-sustaining,”¹³⁷ the Trust Fund envisages that, in combination with the economic projects to address collective harm, after the three year life-span of the fund, the affected families and community should be in a better position to support the maintenance of the Protected Buildings by themselves.

110. In relation to the budget, [REDACTED]¹³⁸ and, [REDACTED],¹³⁹ concerning all Protected Buildings but one, [REDACTED]. A detailed break-down of the costs is presented in annex 3 to the present filing.

¹³⁶ Several consulted victims have expressed the view that the [REDACTED].

¹³⁷ [Lubanga Reparations Principles](#), para. 48.

¹³⁸ UNESCO, *Guide d'Entretien des Mausolées Reconstitués et Réhabilités de Tombouctou*, 2016.

111. Rounded up, the overall estimated cost for the maintenance fund to operate for three years is [REDACTED].

112. [REDACTED].

3) New proposed measure: [REDACTED]

113. [REDACTED],¹⁴⁰ [REDACTED].¹⁴¹ [REDACTED].

114. [REDACTED]¹⁴² [REDACTED].

115. The [REDACTED]. Should there be any remnant of money in the above calculations, it would be reinvested in the [REDACTED] the maintenance of the Protected Buildings.

C. COLLECTIVE REPARATIONS: ECONOMIC HARM

116. The Trial Chamber ordered collective reparations for the consequential economic loss suffered by the community of Timbuktu, which may include “a ‘microcredit system’ that would assist the population to generate income, or other cash assistance programmes to restore some of Timbuktu’s lost economic activity”.¹⁴³ The Trial Chamber approved activities intended at enhancing the economic resilience of the community of Timbuktu, specifically, improving revenue of victims from economic activities, including agriculture, trade, services, small and light industry and handicrafts.¹⁴⁴ Lastly, the Trial Chamber instructed the Trust Fund to make efforts to take into account residents from Timbuktu [REDACTED] as a consequence of the Crime.¹⁴⁵

1) New proposed measure: assistance for the return of victims to Timbuktu

117. The Trust Fund has received indications according to which some of the displaced victims, currently residing in Bamako, wish to return to Timbuktu but that their economic situation prevents them from doing so.¹⁴⁶

¹³⁹ [REDACTED].

¹⁴⁰ [Judgment and Sentence](#), para. 63.

¹⁴¹ [Decision on Draft Implementation Plan](#), para. 106.

¹⁴² This amount has been suggested by [REDACTED] during a meeting with the [REDACTED].

¹⁴³ [Reparations Order](#), para. 83.

¹⁴⁴ [Decision on Draft Implementation Plan](#), para. 99.

¹⁴⁵ [Decision on Draft Implementation Plan](#), paras 102, 103.

¹⁴⁶ *See e.g.* Report of the Trust Fund Mission to Mali of [REDACTED] 2017. The Trust Fund also held meetings with groups of victims [REDACTED].

118. The Trust Fund proposes to award an envelope to cover transportation costs for displaced individuals wishing to return to Timbuktu. The outcome sought is to provide relief for the economic – and moral – harm suffered by giving victims the means to choose whether to make a living [REDACTED] (by resorting to the assistance of the fund described above) or to return to Timbuktu (by resorting to the return envelope).

119. The necessary activities involve the identification of victims wishing to return to Timbuktu ([REDACTED]) and the provision of an envelope for transportation costs. To this end, The Trust Fund has reached an agreement [REDACTED] will facilitate the transfer of beneficiaries identified by the Trust Fund in consultation with the LRV. As regards refugees from the community of Timbuktu, [REDACTED]. As regards internally displaced persons in Mali, [REDACTED],¹⁴⁷ [REDACTED]. Further to information [REDACTED] and in order to harmonise the approach with existing practice, the Trust Fund has decided to reserve an amount of [REDACTED] per person to support the return to Timbuktu. Accordingly, an envelope of [REDACTED] has been set aside for this measure, which will be available for [REDACTED]. To further incentivise a return to Timbuktu, returnees will have [REDACTED]. Any remnant of the returnee programme budget will be redeployed to collective reparations for economic harm during the last six months of implementation.

2) Approved measure: activities to improve the economic resilience of the community of Timbuktu – the Economic Resilience Facility

120. The events of 2012 have led to the collapse of the tourism sector in Timbuktu and to economic hardship for a significant portion of the Timbuktu community, including the internal diaspora. Since then, the community has had to rely on crop and livestock farming, light industry and small trade.¹⁴⁸ Community members [REDACTED] experience difficulties to set up economic activities due to a lack of financial resources, such as starting capital.¹⁴⁹ The Trust Fund has endeavoured to find a comprehensive collective measure to redress the economic harm suffered by the community of Timbuktu as well as one that would give victims ownership over the proposed measure. The Trust Fund suggests setting up an

¹⁴⁷ Institut National de la Statistique du Mali, *Enquête Modulaire et Permanente auprès des Ménages, Rapport d'Analyse, Passages 1 - 4 (avril 2016 – mars 2017)*. See Tableau 1-1: Dépenses annuelles de consommation par type de ménage, p. 23.

¹⁴⁸ [REDACTED].

¹⁴⁹ [REDACTED].

Economic Resilience Facility, [REDACTED],¹⁵⁰ to support economic initiatives proposed by members of the Timbuktu community. The ERF is to operate [REDACTED]. The outcome sought with this measure is to enhance the economic resilience of the community of Timbuktu by offering financial support and related advisory services to members of community, tailored to their needs and capacities.

121. The set-up of the ERF is to reflect the different categories of beneficiaries that it should serve within the Timbuktu community, ranging [REDACTED]. This approach aspires to three important outcomes: (i) ensure maximum accessibility for the economically diversified group of potential beneficiaries within the Timbuktu community; (ii) ensure access for socially and economically vulnerable groups of potential beneficiaries, such as women and the elderly; and (iii) enable the upward ‘graduation’ of ERF beneficiaries, if desired, from the informal to the formal economy and strengthen the volume of the economic activities.

122. Moreover, explicitly enabling ERF access for savings and loans groups as well as for locally existing associations aims to bring out additional reparative outcomes of a moral quality, which in the experience of the Trust Fund’s implementation practice elsewhere may well enhance social interaction, individual and group well-being as well as the dignity of participating beneficiaries. Each beneficiary category under the ERF shall have a specific procedural path, entry requirements, tailored advisory services packages as well as maximum investment amounts.

123. The advisory services component is to provide technical support throughout the process of engagement with the ERF. Advisory services will include technical support to gain access to the ERF, in regard of filling in the requisite application form and/or the development of an adequate business plan accompanying the form. Successful applicants becoming beneficiaries of the ERF will be eligible to receive further advisory services, as desired, in various domains relevant to their economic initiatives, including basic accounting and administrative skills, responding to local and regional market circumstances and trends, developing sound investment and business management strategies, and registration and tax issues. To the extent possible, advisory services are to be sourced from the current business community of Timbuktu, if necessary supported by trainers and occasional consultants, thus ensuring their relevance and acceptance within the current economic environment, as well as

¹⁵⁰ By setting [REDACTED], the Trust Fund would be fulfilling its obligation to take into account the situation [REDACTED] as per the Chamber’s instruction. See [Decision on Draft Implementation Plan](#), paras 102, 103.

further boosting the socio-economic integration and economic resilience of ERF beneficiaries.

124. The advisory services component is not necessarily linked to financial support and may be accessible for applicants as a stand-alone offering to support ongoing economic initiatives. In this way, the advisory services component is envisaged to strengthen the viability and the sustainability of the economic initiatives undertaken with the support of the ERF and to contribute to the longer-term economic resilience of the Timbuktu community affected by the Crime.

125. To be eligible to access the ERF, an applicant or group of applicants must belong to the community of Timbuktu, including the internal diaspora resulting from the Crime. The ERF will give priority consideration to applicants [REDACTED]. [REDACTED].

126. During the take-off phase of establishing the ERF, the Trust Fund will work in close consultation with the LRV [REDACTED], its purpose, eligibility criteria and application procedure. [REDACTED].

127. The Trust Fund, in consultation with the LRV, has pre-identified the following types of economic activities that the ERF may support: small trade (*inter alia* grains, local food or livestock); crop farming (*inter alia* vegetables and cereals); livestock farming (*inter alia* cattle and fish); handicraft (*inter alia* textile production, hairdressing and various construction and repairs); and activities contributing to the preservation of the material and immaterial cultural heritage of Timbuktu.

128. In regard of the final, newly proposed type of economic activity to be supported by the ERF, the Trust Fund would like to draw the attention of the Trial Chamber to the circumstance that Protected Buildings are surrounded by areas (*marâchages*) where the local population is farming. The Trust Fund understands that this activity contributes to the protection of the Protected Buildings by the presence of farmers around them, thereby providing a form of social surveillance. The Trust Fund believes that those who want to engage in this type of activities related to the material maintenance of cultural heritage should have access to the ERF. In addition, the ERF may consider activities related to the maintenance of traditional architecture pertaining to the city's cultural heritage, as well as celebratory cultural activities related to the annual maintenance cycle of the Protected Buildings.

129. The list of types of economic activities to be considered by the ERF is illustrative and should be read bearing in mind the specific market circumstances in both cities, which the Trust Fund to date has not been able to research in further detail. As part of the process of establishing the ERF, the Trust Fund undertakes to conduct a baseline market study in consultation with the relevant stakeholders, [REDACTED].

130. The organisational set-up of the ERF is to avoid conflict of interest and the risk of irregularities, by separating roles and responsibilities in regard of intake of, and decision making on applications from the advisory services. Both are distinct processes that require central management at the ERF to ensure proper and effective use of human and financial resources, in compliance with the Trust Fund's standards of internal control. The Trust Fund [REDACTED] will exercise direct supervision and quality control of the ERF, including the final review and approval of economic activities selected by the ERF for funding and/or advisory services.

131. The ERF will be required to provide quarterly narrative and financial reports, including on the monitoring of the economic activities of the beneficiaries receiving financial and advisory support from the ERF. The ERF's quarterly reporting will inform the Trust Fund's progress reporting to the Trial Chamber, which is expected to be accessible to the LRV and other parties, as well as to the relevant government agencies. As per its standard business practice, the Trust Fund will (i) conduct irregular spot checks of the ERF's administrative records, (ii) ensure an independent annual audit of the ERF, and (iii) include the ERF in the independent evaluation of the Al Mahdi reparations awards programme.

132. The daily management and operation of the ERF will be contracted to a competent partner. The Trust Fund has explored a number of options available to identify and select the most appropriate partner to operate the ERF [REDACTED]. The consideration of options is informed by the need as well as the opportunity, as understood by the Trust Fund, to maximise the potential to benefit from ongoing similar local initiatives, while at the same time remaining cognisant of the particular and exclusive qualities that the ERF must possess in view of the judicial parameters of the Reparations Order.

133. The Trust Fund partner to manage the ERF should feature distinct qualities: a track record of successfully operating [REDACTED], enjoying the trust and confidence of the Timbuktu community; a sound understanding of the concept of economic resilience in relation to a community having suffered significant economic and moral harm from

international crimes; preferably a track record of managing a facility blending financial support and advisory services, separately managed and adapted to the needs of different categories of beneficiaries and their varying economic skills and needs; a track record of consulting and cooperating with government agencies in order to ensure the relevance and sustainability of economic activities.

134. Partnership options include an arrangement with (i) an international organisation [REDACTED]; (ii) an non-governmental organisation with a track record of prior contracting by an international organisation for similar activities, which according to the Court's Financial Regulations and Rules may allow entering into an agreement directly;¹⁵¹ (iii) a non-governmental organisation selected through an international competitive bidding procedure. Available time has not allowed to fully explore the different partnership avenues. However, [REDACTED]. Following the eventual approval of the implementation plan, the Trust Fund commits to keep the Trial Chamber informed about the conduct and conclusion of the partner identification process.

135. The Trust Fund has set aside an envelope of [REDACTED] for this measure. A detailed breakdown of the costs is presented in annex 3.

136. As illustrated in the budget, the administrative costs related to the setting up and management of the ERF, as well as the provision of occasional expertise and training, will be borne by the Trust Fund from other resources and thus are not included in the programme budget. The ERF will operate over [REDACTED], with a possibility to extend to [REDACTED] should the security situation warrant delays or interrupt the deployment or functioning of the facility, or should not all resources have been spent.

137. The Trust Fund wishes to recall to the Trial Chamber the information provided in the First Monthly Update report about the policy decision of the Board in regard of the allocation of the administrative cost related to the implementation of reparations awards.¹⁵² In the present UIP, this approach has resulted in the exclusion, from the budgets of proposed collective measures such as the Improvement of Protection and Maintenance of Protected Buildings and the ERF, of costs related to management and administration, as well as consulting, quality control and monitoring and evaluation activities. In contrast, direct

¹⁵¹ Rules 110.17(a)(iii) and 110.18(a) of the Financial Regulations and Rules.

¹⁵² See for the legal reasoning of this decision Trial Chamber II, *Prosecutor v. Thomas Lubanga Dyilo*, Notification of the Board of Directors' decision on the Trial Chamber's supplementary complement request pursuant to regulation 56 of the Regulations of the Trust Fund for Victims, 2 October 2018, [ICC-01/04-01/06-3422](#), paras 1-8.

services to beneficiaries, such as the advisory services proposed to be provided under the ERF or the proposed psychological support services, are included in the reparations programme budget.

D. COLLECTIVE REPARATIONS: MORAL HARM

138. The Trial Chamber has awarded collective reparations for the moral harm suffered by the community of Timbuktu, *i.e.* mental pain, anguish and disruption of culture of the Timbuktu community as a whole and found that the organisation of a psychological aid and counselling programme would be consistent with this ruling.¹⁵³

139. The Trial Chamber approved measures intended at improving the moral resilience of the community of Timbuktu. All of the following measures are new and therefore have not yet been approved by the Chamber. They address emotional distress in different elements of society and provide measures to improve moral resilience. They also reflect local culture and customary practices unless these are discriminatory or exclusionary and they include a gender-sensitive approach to the protection of cultural heritage and to the combating of its destruction recognising that women and girls may face gender-specific risks, challenges and discrimination in gaining access to and defending cultural heritage.

1) Community therapy through sermons broadcast on radio

140. The Trust Fund has endeavoured to find an all-encompassing collective measure to redress the mental pain/anguish and disruption of culture caused to the Timbuktu community as a whole. To this end, the Trust Fund entertained the possibility of using scheduled radio broadcasts to provide group therapy to the population that would involve a discussion and advice session [REDACTED]. Initially, the Trust Fund devised sermons where [REDACTED] would have encouraged his listeners to forgive others in order to overcome the psychological distress caused by the attacks of 2012.

141. However, there is an inherent tension between the implementation of all-encompassing measures to redress moral harm which, as ordered by the Trial Chamber, need to make clear to the victims that they are reparative of Mr Al Mahdi's Crime, and the dire security situation in Timbuktu. Following expert security advice as well as that of the LRV,

¹⁵³ [Reparations Order](#), paras 90, 92.

the Trust Fund has come to the conclusion that community therapy through radio broadcast is not feasible [REDACTED].

2) Psychological support [REDACTED]: [REDACTED] and [REDACTED]

142. The Trust Fund proposes implementing a programme of psychological support, [REDACTED]. The outcome sought by this measure is the improved psychological resilience of the victims.

a) [REDACTED]

143. The necessary activities for this rehabilitation programme [REDACTED] involve [REDACTED]. The [REDACTED] will be provided with regular training and capacity-building by the implementing partner, will work with [REDACTED], who will encourage [REDACTED] to refer traumatised people to [REDACTED] for more specific support. Information from an international organisation in Mali shows that [REDACTED]. [REDACTED].

144. In [REDACTED], the Trust Fund will [REDACTED] to design a programme providing psychological support to the displaced victims, including [REDACTED] a/35140/16. The victims will be admitted to the programmes of psychological support after an [REDACTED]. The psychological support will require the recruitment of a [REDACTED], who will be based [REDACTED]. [REDACTED].¹⁵⁴ [REDACTED].

145. Accordingly, the total envelope for this comprehensive programme of psychological support will amount [REDACTED].

b) [REDACTED]

146. Upon suggestion of the LRV, the Trust Fund has explored the option to have [REDACTED] provide the psychological support in *lieu* or in addition to the [REDACTED]. After careful consideration, the Trust Fund has elected to support this measure, in addition to [REDACTED]. Indeed, the Trust Fund has received information from the field according to which the overwhelming majority of individuals attending psychological consultations [REDACTED]. Lastly, the Trust Fund understands that [REDACTED] while the individuals [REDACTED] do not have access to this form of support [REDACTED]. Accordingly, the Trust Fund believes that it is appropriate and necessary to provide this option [REDACTED],

¹⁵⁴ Information provided by an international organisation on 28 September 2018.

who in addition to being displaced have more difficulties to access [REDACTED]. The Trust Fund will rely on the LRV to identify [REDACTED]. [REDACTED]. Information retrieved from the field shows that [REDACTED].

147. The Trust Fund believes that the support to [REDACTED] can only be provided in addition to the support to [REDACTED]. This is so because, first, [REDACTED] a/35140/16 itself requested an aid and counselling programme, as underlined by the Trial Chamber.¹⁵⁵ Second, some of the victims consulted expressed a certain level of distrust [REDACTED]. Lastly, all members of the community of Timbuktu, including those who do not feel [REDACTED], are eligible for this measure and should be provided with options suitable to them.

3) **Creation of women and girls' safe spaces: [REDACTED]**

148. In line with the Trial Chamber's direction that "reparations must be implemented in a gender and culturally sensitive manner which does not exacerbate – and in fact addresses – any pre-existing situation of discrimination preventing equal opportunities to victims"¹⁵⁶ the Trust Fund has endeavoured to consult with women to propose a reparation measure susceptible to address the specificity of the harm they suffered as the result of the Crime.

149. Upon consultations with women, the Trust Fund has identified the need for "safe spaces" – formal or informal – where women and girls, the intended beneficiaries, feel physically and emotionally safe. While the name "safe space" is a term of art, the concept emerged during consultations with women who spoke about the need [REDACTED].¹⁵⁷ The [REDACTED].

150. The [REDACTED] women and girls can partake in group therapy in the form of [REDACTED]. With cultural heritage as the gravitational centre of these discussions, [REDACTED]. As such, this measure may also turn into a community-awareness programme that promotes Timbuktu's unique cultural heritage, which the Trial Chamber devised in the context of collective reparations for economic harm.¹⁵⁸

151. The Trust Fund intends to support [REDACTED]. Consultations have shown [REDACTED] an adequate occasion [REDACTED].

¹⁵⁵ [Reparations Order](#), para. 92.

¹⁵⁶ [Reparations Order](#), para. 105.

¹⁵⁷ Meeting with a group of victims [REDACTED]. The LRV also referred to the importance of this measure in the meeting held between him and the Trust Fund on 24 October 2018.

¹⁵⁸ [Reparations Order](#), para. 83.

152. The Trust Fund will support this initiative by identifying a [REDACTED]. Based on field information, a lump sum payment of [REDACTED]. [REDACTED]. For the time being, the Trust Fund has secured an envelope of [REDACTED]. The expected cost of the moderators [REDACTED]. Additionally, the Trust Fund proposes to secure a contingency fund envelope of [REDACTED]. [REDACTED]. [REDACTED]. Should these costs not be incurred by the Trust Fund, the remnant of this envelope will be invested in the continuation of the programme [REDACTED] or redeployed towards the ERF.

153. [REDACTED].

154. Lastly, the Trust Fund wishes to draw the Trial Chamber's attention to the fact that this measure is closely interwoven with the measure proposed to repair the economic harm (*i.e.* the ERF). Indeed, [REDACTED].

155. The estimated total cost of the collective reparations for moral harm is [REDACTED].

VIII. SYMBOLIC REPARATIONS

156. The Trial Chamber considered that collective reparations for moral harm could also include symbolic measures, such as a forgiveness ceremony or a memorial to give public recognition of the harm suffered by the Timbuktu community and those within it (memorialisation measure).¹⁵⁹ Additionally, the Chamber directed the Trust Fund to propose a specific project for the award of a symbolic euro to the Malian State and the UNESCO, taking into account the views of the LRV that it should not be held until [REDACTED].¹⁶⁰

A. SYMBOLIC AWARD CEREMONY

157. The Trust Fund envisages a joint ceremony for the symbolic awards to the Government of Mali and UNESCO, hosted by the former. The Trust Fund extends its gratitude to the Prime Minister of the Government of Mali for his written engagement to organise the event, jointly with UNESCO. The event is to be hosted by the President of the Republic of Mali (*see* annex 2).

158. The Trust Fund shares the view of the LRV that the celebration of a ceremony prior to the commencement of the distribution of the individual awards would be ill-advised as this may cause offense in the community of Timbuktu primarily harmed by the Crime. The Trust

¹⁵⁹ [Reparations Order](#), para. 90.

¹⁶⁰ [Decision on Draft Implementation Plan](#), paras 109, 110.

Fund has agreed with the Government of Mali and UNESCO to hold the ceremony after [REDACTED].

159. Additionally, to secure the involvement of victims and give them a sense of ownership, the Trust Fund proposes to invite [REDACTED]. The Trust Fund will cover the cost of [REDACTED], as well as accommodation in [REDACTED]. The estimated total cost of transportation and accommodation in [REDACTED] for two nights (including a *per diem*)¹⁶¹ would amount to [REDACTED].

B. MEMORIALISATION MEASURES

160. Given that memorialisation is frequently resorted to in post-conflict scenarios to channel grief and/or resilience, the Trust Fund has carefully considered the possibility of a memorial given that the feeling of humiliation, shock and shattered faith was widespread.¹⁶² In fact, Mr Al Mahdi's Crime affected the city's heritage in a manner that was tangible, immediate and visual but, most of all, it "affected the intangible meanings and associations linked to such heritage."¹⁶³ As such, the Trust Fund understands a memorial to be of very delicate nature because it would similarly affect both dimensions and offer a narrative of how the community perceived and reacted to the event.¹⁶⁴ When the Trust Fund enquired with groups of victims about such perception and reaction, their responses were divided. For example, some would like to have a monument in Timbuktu as a reminder of all the events of 2012, while others would prefer just a remembrance day commemorating the destruction of the mausoleums in Timbuktu.¹⁶⁵ Those in favour of a monument even suggested the creation of a centre inspired by the Kigali Genocide Memorial Centre that was set up in the context of the Rwandan genocide in 1994.¹⁶⁶

161. The Trust Fund considers it would be inappropriate to choose between these two proposals or to take any decision concerning memorialisation measures for that matter. As

¹⁶¹ The information from the field retrieved [REDACTED].

¹⁶² See e.g. First Transmission and Report on Applications for Reparations with 136 confidential *ex parte* annexes, Registry and Legal Representative of the Victims only, a/35000/16, ICC-01/12-01/15-200-Conf-Anx5-Red-tENG, a/35000/16, ICC-01/12-01/15-200-Conf-Anx5-Red-tENG, p. 2; a/35002/16, ICC-01/12-01/15-210-Conf-Anx6-Red-tENG, p. 2; a/35049/16, ICC-01/12-01/15-200-Conf-Anx42-Red-tENG, p. 2; a/35063/16, ICC-01/12-01/15-200-Conf-Anx56-Red-tENG, p. 2; a public redacted version was registered on 16 December 2016, [ICC-01/12-01/15-200](#).

¹⁶³ M. L. S. Sørensen and D. Viejo-Rose, *War and Cultural Heritage: Biographies of Place* (Cambridge University Press, 2015), p. 7.

¹⁶⁴ M. L. S. Sørensen and D. Viejo-Rose, *War and Cultural Heritage: Biographies of Place* (Cambridge University Press, 2015), pp. 1, 7.

¹⁶⁵ Meeting with a group of victims held [REDACTED].

¹⁶⁶ Meeting with a group of victims held [REDACTED]; interview conducted with [REDACTED].

warned by two of the consulted experts in the politics of heritage management, a top-down decision would do more harm than good because the memorialisation project could be accused of partiality.¹⁶⁷ This is because any memorialisation project implies a series of decisions crucial to the post-conflict narrative: whether or not to memorialise, what to memorialise (the destruction, the reconstruction or something else),¹⁶⁸ and how to do it. Based on past experiences in the area, one of the experts warned that the funding associated with such project could lead to rumours of corruption, misuse of local culture, and accusations of gatekeeping by those considered as the heritage elite.¹⁶⁹ All of this could result in the popular rejection of the measure which, in turn, would raise the levels of dissatisfaction and be ultimately counterproductive to the goal of enhancing moral resilience.

162. The Trust Fund has thus explored a measure leading to memorialisation that rests on the principle of “restorative agency”¹⁷⁰ whereby the local community will be empowered to steer the process of memorialisation and decide for themselves whether, what and how should be memorialised. To do this, “it is essential to develop a format that is in accordance with the customs, rules and practices.”¹⁷¹ [REDACTED].¹⁷² [REDACTED].¹⁷³ [REDACTED].

163. [REDACTED] freedom to discuss and decide, the Trust Fund would require that the proposals put forward respond to the nature of the harm caused by Mr Al Mahdi’s Crime. [REDACTED].

164. [REDACTED].

165. The Trust Fund reserves [REDACTED] for this memorialisation measure, corresponding [REDACTED], including the displaced group. [REDACTED].

166. The Trust Fund foresees that, [REDACTED] concrete proposals to be transmitted to the Trust Fund within a year of such approval.

¹⁶⁷ Consultation n.2, pp. 5-6.

¹⁶⁸ Consultation n.2, p. 3: “[w]hile memorialising the *destruction* may not be the most constructive way forward the fact that these sites were destroyed should not be ignored as though it had never happened, that only serves to make those who see themselves as victims of the destruction feel neglected. Memorialising the *reconstruction* is only useful if this process was undertaken by the affected community and can thus become a symbol of resilience and unity rather than of the international community.”

¹⁶⁹ Consultation n.1, pp. 4, 5.

¹⁷⁰ Consultation n.2, p. 3.

¹⁷¹ Consultation n.2, p. 3.

¹⁷² The group should be facilitated by an adult, like a teacher or a parent.

¹⁷³ While the Trust Fund takes note of the Trial Chamber’s remarks on the sanctification of the Protected Buildings ([Decision on the Draft Implementation Plan](#), para.98), it wishes to explain that, including in the period after the submission of the DIP, some victims expressed the wish to resacralise the Protected Buildings under the understanding that this should be done without a third-party interference. Therefore, it is foreseeable that a resacralisation measure may be proposed as a form of memorialisation.

167. **Mr Al Mahdi's apology** - The Trust Fund has examined further ways to use Mr Al Mahdi's apology, as directed by the Trial Chamber.¹⁷⁴ However, a significant amount of victims express reservations concerning Mr Al Mahdi's apology and others reject it in full.¹⁷⁵ For this reason, the Trust Fund continues to not deem advisable to make further use of Mr Al Mahdi's statement.

IX. OTHER MATTERS

A. FUNDING

168. In respect to the Trial Chamber's instruction in relation to the Board's decision on the Trial Chamber's Complement Request pursuant to Regulation 56 of the TFV Regulations,¹⁷⁶ the Trust Fund has no further development to report since the submission of the First Monthly Report. As indicated, the Board of Directors decided to allocate EUR 1,35 million towards the *Al Mahdi* Complement Request and to recover the eventual administrative costs incurred by the Trust Fund's implementing partners from the reparations reserve.¹⁷⁷ The Trust Fund continues its fundraising efforts to collect additional resources up to EUR 2,7 million. In light of the expected timeline of the implementation of the reparations (minimum three years), the Trust Fund is confident that additional resources will be secured. The Trust Fund will keep the Trial Chamber apprised of any developments.

B. REPORTING

169. In the decision on the DIP, a monthly reporting mechanism to the Trial Chamber was instituted.¹⁷⁸ The Trust Fund stands ready to keep the Trial Chamber apprised of the deployment of the reparations on a regular basis, but would respectfully request that the reporting period be set at every three months. This will help avoid diverting scarce resources from the implementation of the reparations. Moreover, the proposed quarterly reporting sequence will correspond with the anticipated reporting routines of the Trust Fund's implementing partners, facilitating a cohesive and consistent reporting regime for the implementation phase in accordance with regulations 58 and 72 of the TFV Regulations. The Trust Fund undertakes to notify the Trial Chamber, outside of the agreed regular reporting

¹⁷⁴ [Reparations Order](#), para. 71.

¹⁷⁵ Report of the Trust Fund Mission to Mali of [REDACTED] 2017.

¹⁷⁶ [Decision on Draft Implementation Plan](#), para. 75.

¹⁷⁷ [First Monthly Update Report](#), paras 15, 17.

¹⁷⁸ [Decision on Draft Implementation Plan](#), para. 22.

routine, about any significant incident or development impacting the implementation of the reparations awards, in order to timely consult on possible mitigation or corrective measures requiring the approval of the Trial Chamber. Likewise, the Trust Fund will stand ready to address any query or concern to be raised by the Trial Chamber at its convenience.

C. OVERSIGHT

170. The oversight of the implementation of the reparations programme will be the responsibility of the Trust Fund's [REDACTED], who will also be in charge of [REDACTED], as approved by the Trial Chamber.¹⁷⁹

D. COOPERATION

171. The Trust Fund extends its gratitude to the Government of Mali and hopes of further fruitful cooperation. In particular, the Trust Fund has identified the following areas for further cooperation: (i) ensuring that no local taxes or fees are imposed with respect to the individual and collective reparations awards; (ii) providing a physical space for conducting the workshops to enhance the professional capacity of [REDACTED], free of cost; (iii) cooperating with the Trust Fund in the market study that will take place to [REDACTED], as well as with necessary services, free of cost, [REDACTED] seeking formal business registration or requiring assistance in taxation related matters; enabling the conclusion of agreements with institutions in the [REDACTED]; lending a physical space for the meetings [REDACTED]; and (iv) facilitating the administrative procedures, formalities and operational cost related to organisation of the symbolic award ceremony.

172. The Trust Fund would respectfully suggest that the Government of Mali be invited to submit observations on the present UIP, particularly in terms of the above identified areas of cooperation, or any other measure of cooperation it would wish to propose, within the same time frame of 30 days allowed for the parties to present observations.

173. Upon receipt of the observations of the parties and the Government of Mali, the Trust Fund would be able to inform the Trial Chamber within a relatively short period of time of its views on the feasibility, viability and cost of proposed adjustments to the UIP, in order not to delay the approval and implementation process.

¹⁷⁹ [Decision on Draft Implementation Plan](#), para. 91.

X. CONCLUSION

174. The Trust Fund is confident that the present UIP is comprehensive and responsive to the Trial Chamber's directions. At all times, it has endeavoured to strike a balance between redressing the enhanced level of moral and economic harm suffered directly by a select group of victims, and the need to repair the greater collective harm caused to the Protected Buildings and the community of Timbuktu. This is apparent in the allocation of envelopes of [REDACTED]. While the allocation of funds for each type of collective harm varies, the Trust Fund notes that the envisaged projects are part of the same whole in that they largely have a mutually reinforcing character.

175. The reparations measures proposed are intended to be deployed over a period of three years, [REDACTED], thereby reaching the maximum number of beneficiaries of individual, collective and symbolic reparations.

176. The costs of the proposed reparations measures is broken down as follows:

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

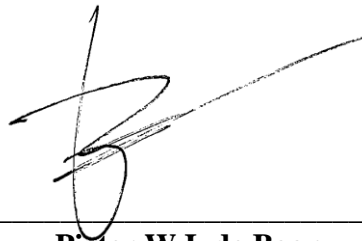
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED]

177. The Trust Fund has incorporated prioritisation considerations concerning the disbursement of individual awards and, following the Trial Chamber's instructions, concerning the collective economic reparations. The Trust Fund has dedicated special attention to the internally displaced population in regard of the [REDACTED] and of the collective economic awards to either allow their return to Timbuktu, or enable a morally and economically viable existence [REDACTED]. [REDACTED] a/35140/16 has been involved at different levels throughout the modalities of collective reparations.

FOR THE FOREGOING REASONS,

The Trust Fund respectfully requests the Trial Chamber to:

- (i) approve the present UIP;
- (ii) set the reporting period of the update reports at every three months; and
- (iii) invite the relevant authorities of Mali to submit observations.



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 22 November 2018

At The Hague, The Netherlands