

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 14 November 2018

Date of submission: 8 September 2021

**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 "Fourth monthly update report on the updated implementation plan", submitted on 14 November 2018, ICC-01/12-01/15-299-Conf, with four annexes**

**Source:** The Trust Fund for Victims

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

**Office of the Prosecutor**

**Counsel for the Defence**

Mr Mohamed Aouini

**Legal Representatives of Victims**

Mr Mayombo Kassongo

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for**

**Office of Public Counsel for  
Victims**

**Participation/Reparation**

**States' Representatives**

**Office of Public Counsel for the Defence**

## **REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

## I. BACKGROUND

1. On 12 July 2018, Trial Chamber VIII (“Trial Chamber”) issued its decision on the Trust Fund for Victims’ (“Trust Fund”) draft implementation plan in the present case,<sup>1</sup> wherein it directed the Trust Fund to submit monthly update reports, starting on 15 August 2018, in relation to the Trust Fund’s progress in preparing an updated draft implementation plan (“UIP”). The Trial Chamber specified that each monthly update report should contain “concrete information on the actions taken in respect of each of the reparations modalities with timelines, objectives and staffing.”<sup>2</sup>
2. On 15 August 2018, 14 September 2018 and 15 October 2018, respectively, the Trust Fund filed its first,<sup>3</sup> second<sup>4</sup> and third<sup>5</sup> monthly update reports. The Defence submitted observations on the third monthly update report on 5 November 2018.<sup>6</sup>
3. On 26 October 2018, the Trust Fund filed the draft application form, together with the legal criteria to be applied throughout the process (“26 October Submission”).<sup>7</sup> The LRV responded on 7 November 2018 (“LRV Observations”).<sup>8</sup>
4. On 2 November 2018, the Trust Fund filed the UIP.<sup>9</sup>
5. On 13 November 2018, the VPRS filed its fourth report on applications received for individual reparations.<sup>10</sup>
6. The Trust Fund hereby submits its fourth monthly update report. During the reporting period, activities in the field and in The Hague have revolved around the

<sup>1</sup> Public redacted version of “Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations”, 12 July 2018, [ICC-01/12-01/15-273-Red](#) (“Decision on Draft Implementation Plan”).

<sup>2</sup> [Decision on Draft Implementation Plan](#), para. 22.

<sup>3</sup> First monthly update report on the implementation plan, 15 August 2018, ICC-01/12-01/15-277-Conf (“First Monthly Report”).

<sup>4</sup> Second Monthly Update report on the implementation plan, 14 September 2018, ICC-01/12-01/15-283-Conf, with two confidential annexes (“Second Monthly Report”).

<sup>5</sup> Third monthly update report on the updated implementation plan, ICC-01/12-01/15-288-Conf (“Third Monthly Report”).

<sup>6</sup> *Observations de la Défense sur le troisième rapport mensuel ICC-01/12-01/15-288-Conf du Fonds au profit des victimes*, 5 November 2018, ICC-01/12-01/15-292-Conf.

<sup>7</sup> Trust Fund for Victims’ submission of draft application form, 26 October 2018, ICC-01/12-01/15-289-Conf, with four confidential annexes.

<sup>8</sup> *Observations du Représentant légal sur la soumission du projet de formulaire de demande de réparation et de ses annexes par le Fonds au profit des victimes*, 7 November 2018, ICC-01/12-01/15-294-Conf.

<sup>9</sup> Updated Implementation Plan, ICC-01/12-01/15-291-Conf-Exp. A confidential version was notified on 7 November 2018 (ICC-01/12-01/15-291-Conf-Red).

<sup>10</sup> Registry, “Fourth Registry Report on Applications for Individual Reparations”, 13 November 2018, ICC-01/12-01/15-298.

finalisation of the UIP, which required, in the field, an intensification of activities to secure some agreements under discussion and, in The Hague, the finalisation of certain aspects related to the individual awards. Other activities connected to the UIP, but not appearing therein (e.g. follow-up consultations on the application form), are described in the present report.

## II. CLASSIFICATION OF THE PRESENT SUBMISSION

7. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report as confidential in line with the reasoning for its previous update reports.<sup>11</sup> No information is deemed necessary to redact from the parties.<sup>12</sup>

## III. UPDATE REPORT OF 14 NOVEMBER 2018

### A. Field activities – Progress on Collective Reparations, Preparation of Outreach Campaign and Collaboration with Malian authorities

8. During the period covered by this report, the Associate Field Programme Officer temporarily based in Bamako (“AFPO”) held meetings with various organisations – national and international – and local service providers with expertise in areas relevant to the implementation of foreseeable collective reparations concerning the Protected Buildings, as well as economic and moral harm. In the second half of October, high level meetings took place between a Trust Fund delegation, including a Member of the Board of Directors, the Executive Director and the AFPO, and the Malian Minister of Justice, Prime Minister and Minister of Foreign Affairs, to discuss the prospects of the implementation of reparations in *Al Mahdi* and in particular of the ceremony for the symbolic awards. The Trust Fund is preparing an invitation for expressions of interest to pre-qualify potentially eligible service providers for selected parts of the collective reparations measures. The pre-qualified organisations will be provided with a request for proposals, once a final scope of work is established on the basis of the eventually approved UIP.

9. As a follow-up to the submission of the UIP, the AFPO, together with one legal staff member present in Bamako during week 46, are holding meetings with Malian

<sup>11</sup> First Monthly Report, para. 3; Second Monthly Report, para. 8; and Third Monthly Report, para. 13.

<sup>12</sup> [Decision on Draft Implementation Plan](#), para. 22.

authorities in order to explore concrete avenues for collaboration and starting the ground work of the outreach campaign.

## **B. Activities in The Hague – Screening Process**

10. During the reporting period, activities revolved around the preparation of the application form, the template for supporting documents and the definition of legal criteria to be applied throughout the screening process, which culminated in the 26 October Submission. The Trust Fund wishes to express its gratitude to VPRS and the LRV for the continued communication and cooperation ahead of the preparation of this submission.

11. Since the 26 October Submission, a few developments have occurred. First, the Trust Fund obtained the French translation of the draft form and of the *attestation d'activité et de revenu*. They are appended to the present report,<sup>13</sup> with minor modifications to the draft form appearing in colour.<sup>14</sup>

12. Second, the Trust Fund had constructive exchanges with VPRS during which VPRS sought concrete clarifications on several issues.<sup>15</sup> While these clarifications were initially given orally, the Trust Fund takes the opportunity to put them on the record for the complete information of the parties and the Trial Chamber.

### **a) Beneficiaries of reparations for economic harm**

13. As described in detail in the 26 October Submission, the Trust Fund will award individual reparations for economic harm to those fulfilling the exclusive link requirement. An *attestation d'activité et de revenu* will serve as proof.<sup>16</sup> The Trust Fund clarifies that for the assessment of the exclusive link requirement, the applicant does not need to demonstrate that his income dropped by ■% as a result of Mr Al Mahdi's crime. A qualitative assessment that his revenue drastically reduced would be sufficient.<sup>17</sup> In this respect, if an applicant indicates that his total revenue dropped by ■%, the Trust Fund considers that it fulfils the criterion.

<sup>13</sup> Annex 1 is the French translation of the form and annex 2 is the French translation of the *attestation d'activité et de revenu*.

<sup>14</sup> For instance, the Trust Fund has included the LRV suggestion to clarify question 4.2 by adding “*au titre du prejudice économique*”.

<sup>15</sup> Email sent from VPRS to the Trust Fund on 12 November 2018 at 15:42.

<sup>16</sup> 26 October Submission, paras 18-26.

<sup>17</sup> 26 October Submission, para. 26.

14. The attestation needed to support an application for economic harm is the *attestation d'activité et de revenu* and, in case of scaled awards, an accompanying *attestation de famille* concerning the relationship between the main applicant and family members and their involvement in the maintenance of the Protected Buildings. The Trust Fund wishes to clarify that only official authorities and traditional leaders would be in a position to sign *attestation d'activité et de revenu*, provided they establish their identity and how they know the veracity of the information they are attesting to. However, for attestation concerning family members and their involvement in the Protected Buildings, given the more generic character of this information, the Trust Fund is open to admit *attestation de famille* signed by a witness able to establish his or her identity and how he or she knows the veracity of the information provided.<sup>18</sup> This is because, in the course of its recent consultations, the Trust Fund has determined that the nature of the information to be attested to is such that official authorities are often not better placed than other members of the community.

15. Finally, the Trust Fund wishes to inform the Trial Chamber that it has no objection to the modifications proposed in the LRV Observations in respect of the family members of those meeting the exclusive link requirement. These changes have been incorporated in the form and the corresponding attestation.<sup>19</sup>

#### **b) Beneficiaries of reparations for moral harm**

16. As described in detail in the 26 October Submission, the Trust Fund will award individual reparations for economic harm to those fulfilling the direct descendancy requirement, for which an *attestation de filiation* will be required.<sup>20</sup> As pointed out by the LRV, all parties and participants agreed on an interim *attestation de filiation* on 29 August 2018.<sup>21</sup> On 18 October 2018, the Trust Fund was made aware of the LRV's broad interpretation of direct descendancy as "*filiation spirituelle*".<sup>22</sup> This, in the Trust Fund's opinion, blurs the boundaries of the concept of "descendancy", let alone that of "direct". With this new information on record, the Trust Fund deemed it necessary to

<sup>18</sup> See 26 October Submission, para. 30.

<sup>19</sup> Specifically, question 4.2 about the name and function of the family member has been removed from the form and included in the *attestation de famille* (as per LRV Observation, paras 16 and 21). The wording of the new 4.2 question has been enhanced to clarify that the information sought is whether they have, or intend to, request individual reparations for *economic harm* (as per LRV Observation, paras 17 and 25). Finally, the *attestation de famille* (Annex 3) also contains the specification that it can be signed by a witness (see 26 October Submission, para. 30).

<sup>20</sup> 26 October Submission, paras 32-40.

<sup>21</sup> LRV Observations, paras 33-34, 39.

<sup>22</sup> LRV email to Trust Fund on 18 October 2018 at 15:29.

amend the *attestation de filiation* to ensure that only those who are direct descendants within the legal meaning of the expression endorsed by the Trust Fund will have access to individual moral awards. The Trust Fund's position is currently before the Trial Chamber and the Trust Fund does not deem it appropriate or necessary to make any further observations on this issue. Should the Trial Chamber decide that the Trust Fund's position is too narrow, the Trust Fund will comply and amend the *attestation de filiation* accordingly to reflect a broader understanding.

17. The Trust Fund understands that for the limited period of two months running from 29 August to 26 October 2018, the LRV collected supplementary documents on the basis of his interpretation of direct descendancy. Should the Trial Chamber determine that the Trust Fund's interpretation is the most appropriate, the Trust Fund hopes that the LRV will be in a position to identify those who meet the criteria of direct descendancy and to submit the necessary supplementary documents.

18. In this respect, the Trust Fund welcomes VPRS' suggestion to clarify what proof is expected from each category of beneficiary. Accordingly, the Trust Fund has adjusted the *attestation de filiation* so as to make the required proof even clearer to applicants and to the LRV,<sup>23</sup> and has prepared a schematic overview of who is authorised to fill out and sign attestations.<sup>24</sup> In sum, an applicant belonging to the prominent family must produce an *attestation de filiation* signed by an "authority", that is, either an official authority or a traditional leader, provided they have established their identity and how they know the veracity of the information they are attesting to. In the case of an applicant claiming direct descendancy not belonging to the recognised prominent family, he or she may present an *attestation de filiation* signed instead by a recognised member of the prominent family or, in the alternative, supply documents proving direct kinship.<sup>25</sup>

19. The interpretation of "direct descendancy" and the consequent "bottom-up approach" endorsed by the Trust Fund to identify direct descendants in the field<sup>26</sup> entail that, as far as individual awards for moral harm are concerned, establishing who the recognised prominent families are is pivotal for the screening process to unfold. If the

<sup>23</sup> The form has been adjusted by adding a clarification, as follows in the underlined text: "Nous, (*Nom, Prénom*) ... agissant en qualité de (autorité ou membre de la grande famille des descendants du Saint) ... attestons ce qui suit.

<sup>24</sup> *Infra* para. 20.

<sup>25</sup> 26 October Submission, paras 39, 40.

<sup>26</sup> 26 October Submission, para. 36.

Trial Chamber supported such interpretation and approach, the Trust Fund will compile a list of the recognised prominent families per mausoleum, in collaboration with experts and the LRV, as appropriate.

**c) Administration of evidence**

20. The Trust Fund has also taken note of some clarifications sought in respect of the required supporting documents and wishes to reiterate its position on the record. Information from the field as well as publicly available judicial records<sup>27</sup> have shown the extreme difficulties encountered in finding authorities available and capable of filling in applications as well as the generalised lack of records. For this reason, the Trust Fund has considered it necessary to adopt a flexible approach that ensures that the screening process is feasible, while maintaining its integrity. As a result, the Trust Fund considers that the system of attestations can function with applicants producing an attestation signed by one person only, as long as the following formalities are met:

- *Attestation d'activité et de revenu*: to be signed by either an official authority or traditional leader only,
- *Attestation de famille*: to be signed by an official authority, traditional leader or witness.
- *Attestation de filiation*: for members of “prominent families”, it needs to be signed either by an official authority or a traditional leader. For members outside the “prominent family”, the *attestation* may also be signed by a member of the recognised “prominent family”, or be accompanied by documentation showing direct descendancy.<sup>28</sup>

21. In order to ensure the integrity of the process, the Trust Fund would require proof of identity and an explanation concerning how the individual signing the attestation is capable of confirming the veracity of its content (e.g. consultation of records, first-hand knowledge). In the case of official or traditional authorities, this information may be supplied only once per authority and would be deemed to cover all attestation signed by that same person. In the case of witnesses, the proof of identity and the explanation need to figure in each attestation made in favour of an applicant. For the

<sup>27</sup> See e.g. Registry’s Report on Proof of Identity Documents Available in Mali and Transmission of Proposed Application Forms for Rule 85(b) RPE Victims and Groups of Victims, 18 May 2018, ICC-01/12-01/18-33-AnxI.

<sup>28</sup> 26 October Submission, paras 39, 40.

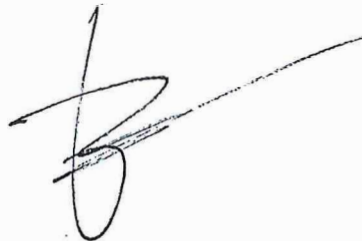


applications already assessed by VPRS, as indicated in the 26 October Submission,<sup>29</sup> the LRV may supply this information by email if necessary to ease the process.

22. The feasibility of the system devised for applicants to establish their eligibility criteria will be tested in the field. If necessary, the Trust Fund may make adjustments in communication with all actors concerned. Likewise, the Trust Fund may adjust its criteria, should it discover new relevant information.<sup>30</sup> VPRS has sought clarification concerning when the criteria would be considered to be final by the Trust Fund since this information also affects their preliminary assessment. The Trust Fund takes note of this request and will liaise with VPRS in due time with the pertinent clarification.

#### IV. CONCLUSION

23. The Trust Fund stands ready to further appraise the Trial Chamber in relation to the information provided in this monthly report or any other issue affecting the implementation phase of the present case.



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

Dated this 14 November 2018  
At The Hague, The Netherlands

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<sup>29</sup> 26 October Submission, para. 50.

<sup>30</sup> 26 October Submission, para. 26.