

**Cour
Pénale
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**International
Criminal
Court**

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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 "Twelfth update report on the updated implementation plan", 27 December 2019, ICC-01/12-01/15-340-Conf

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

Legal Representatives of Applicants

Mr Mayombo Kassongo

Unrepresented Victims

Unrepresented Applicants for

Participation/Reparation

**Office of Public Counsel for
Victims**

Office of Public Counsel for the Defence

States' Representatives

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Mr Esteban Peralta Losilla

Victims and Witnesses Section

Mr Nigel Verrill

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

Mr Nouhoum Sangaré

I. BACKGROUND

1. On 12 July 2018, Trial Chamber VIII (“Trial Chamber”) issued a decision on the draft implementation plan (“Decision of the DIP”) wherein it laid down the features of the organisation of the screening process for individual applications for reparations,¹ and directed the Trust Fund for Victims (“Trust Fund”) to submit monthly update reports in relation to the Trust Fund’s progress during the reparations implementation stage of the present case.² On 4 March 2019, the Trial Chamber agreed to space the submission of such reports to a bimonthly basis.³

2. On 15 August 2018, 14 September 2018, 15 October 2018, 14 November 2018, 14 December 2018, 14 January 2019, 14 February 2019, 6 May 2019, 2 July 2019, 4 September 2019, and 25 October 2019, the Trust Fund filed its first,⁴ second,⁵ third⁶, fourth⁷, fifth⁸, sixth,⁹ seventh,¹⁰ eighth,¹¹ ninth,¹² tenth¹³ and eleventh¹⁴ update reports, respectively.

3. On 26 October 2018, the Trust Fund made a submission (“26 October 2018 Submission”) containing its interpretation of the legal criteria set by the Trial Chamber

¹ 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](#), paras 35-49.

² [Decision on the DIP](#), para. 22.

³ Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, ICC-01/12-01/15-324-Conf (“Decision on the UIP”) para. 104.

⁴ First monthly update report on the implementation plan, 15 August 2018, ICC-01/12-01/15-277-Conf (“First Monthly Report”).

⁵ 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”).

⁶ Third monthly update report on the updated implementation plan, 15 October 2018, ICC-01/12-01/15-288-Conf.

⁷ Fourth monthly update report on the updated implementation plan, 14 November 2018, ICC-01/12-01/15-299-Conf, with four confidential annexes (“Fourth Monthly Report”).

⁸ Fifth monthly update report on the updated implementation plan including information concerning further details relevant to the Board of Directors’ complement decision, with one confidential annex, 14 December 2018, ICC-01/12-01/15-305-Conf (“Fifth Monthly Report”).

⁹ Sixth monthly update report on the updated implementation plan, 14 January 2019, ICC-01/12-01/15-314-Conf.

¹⁰ Seventh monthly update report on the updated implementation plan, 14 February 2019, ICC-01/12-01/15-321-Conf (“Seventh Update Report”).

¹¹ Eighth update report on the updated implementation plan, 6 May 2019, ICC-01/12-01/15-321-Conf.

¹² Ninth update report on the updated implementation plan, with one confidential, *ex parte* annex, available to the Trust Fund, 2 July 2019, ICC-01/12-01/15-332-Conf (“Ninth Update Report”).

¹³ Tenth update report on the updated implementation plan, confidential *ex parte* available to the Legal Representative of Victims and the Registry, 4 September 2019, ICC-01/12-01/15-335-Conf-Exp (“Tenth Update Report”).

¹⁴ Eleventh update report on the updated implementation plan, Confidential *ex parte* available to the Legal Representative of Victims and the Registry, 25 October 2019, ICC-01/12-01/15-336-Conf-Exp (“Eleventh Update Report”).

in respect of individual reparations; and four annexes corresponding to the new draft application form for individual reparations and three models of *attestation*.¹⁵

4. On 2 November 2018, the Trust Fund filed its updated draft implementation plan (“UIP”).¹⁶
5. On 4 March 2019, the Trial Chamber approved the UIP.¹⁷
6. The Trust Fund hereby submits its twelfth update 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 and its annex as confidential for the reasons set out in the Trust Fund’s previous update reports.¹⁸

III. UPDATE REPORT OF 27 DECEMBER 2019

8. The present report covers the period from 26 October 2019. During the reporting period, the Trust Fund has significantly advanced in respect of individual and collective reparations.

A. Individual reparations awards

9. The Trust Fund has made significant progress in relation to the: (i) identification of potential beneficiaries and collection of applications forms alongside the Legal

¹⁵ Trust Fund for Victims, “Trust Fund for Victims’ submission of draft application form” with four confidential annexes, 26 October 2018, ICC-01/12-01/15-289-Conf. In its Fourth Monthly Report, the Trust Fund of 14 November 2018 made amendments to questions 4.2 and 4.3 of the draft application form, and to the *attestation de famille* taking into consideration LRV, “*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, paras 16-17, 21. On 21 November 2018, the Trial Chamber adopted the new application form for use during the implementation of reparations, subject to one amendment, *see* Trial Chamber, “Decision on TFV Submission of Draft Application Form”, 21 November 2018, [ICC-01/12-01/15-301](#). The Trust Fund filed the approved application form with the required amendment as a confidential annex in its Fifth Monthly Report of 14 December 2018.

¹⁶ Trust Fund for Victims, “Updated Implementation Plan”, ICC-01/12-01/15-291-Conf-Exp. A confidential redacted version was notified on 7 November 2018 (ICC-01/12-01/15-291-Conf-Red). A public redacted version was filed on 22 November 2018, *see* Public redacted version of “Updated Implementation Plan”, submitted on 2 November 2018, ICC-01/12-01/15-291-Conf-Exp”, ICC-01/12-01/15-291-Red2; and Lesser public redacted version of “Updated Implementation Plan” submitted on 2 November 2018 ICC-01/12-01/15-291-Conf-Exp, 14 October 2019, ICC-01/12-01/15-291-Red3.

¹⁷ Decision on the UIP; Public redacted version of Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, ICC-01/12-01/15-324-Red.

¹⁸ *See* First Monthly Report, para. 3; Second Monthly Report, para. 8.

Representative of Victims (“LRV”); and (ii) modalities for the disbursement of cash-payments.

A. Identification of potential beneficiaries and collection of applications

10. Following the mission to Timbuktu (see para 32) and pursuant to its agreement with the LRV, as reported in the Eleventh Report,¹⁹ the Trust Fund proceeded to identify potential beneficiaries of individual reparations.

11. Concerning the families associated with the Protected Buildings, the Trust Fund likewise proceeded to identify potential beneficiaries by cross-checking information from different sources, [REDACTED] [REDACTED], the Trust Fund invited female [REDACTED] to a workshop related to the maintenance and protection of the Protected Buildings. They were consulted and requested to assist in the identification of potential beneficiaries to ensure a gender-sensitive victim identification process which should lead to including all potentially eligible female victims.

12. At this stage, barring the discovery of new eligible branches of the families, the Trust Fund is close to completing the identification of members of the families associated with Baber Babédié, Ben Arragadi, Al Arawani, Al Kounti and Sidi Mahmoud Ben Omar Aquit mausoleums. Members of the families associated with the Alpha Moya, the El Micky, the Ahmed Fulane and the Attouaty mausoleums as well as the Sidi Yehia mosque remain to be comprehensively mapped. At this point, the Trust Fund has identified 132 individuals²⁰ but expects that a significant number of individuals will come forward in the course of January 2020.

13. The joint collection of applications with the LRV has also begun for Bamako-based potential beneficiaries. The Trust Fund wishes to inform the Trial Chamber that, while the collection of applications in Bamako and Timbuktu does not pose any particular challenge (other than those routinely reported in previous filings in respect of Timbuktu-based victims and provided that the Trust Fund succeeds in organising a second joint mission to Timbuktu in January 2020), the Trust Fund has located a number of people based in Niger, Mauritania and [REDACTED] (Mali) for which alternative ways of collecting their applications are being explored.

¹⁹ Eleventh Update Report, paras 14-16.

²⁰ Two of the 130 individuals were identified by the LRV.

14. Additionally, the Trust Fund is pleased to report to the Trial Chamber that the LRV complied with the agreed deadline and that all 409 applications pending are currently with the Victim Participation and Reparations Section (“VPRS”).

15. Regarding the 14 new applications jointly collected by the Trust Fund and the LRV, there are currently with the LRV team for consolidation, which will require their presence in Mali prior to the deadline of 4 March 2020.

16. After having identified all the masons and the guardians associated with the mausoleums in 2012, the Trust Fund convened a collective meeting with them [REDACTED], jointly with the LRV, to ensure that information about the individual reparations is properly understood and disseminated. [REDACTED]

17. In respect of the payment of the compensation award, as stated in the Eleventh Report, the Trust Fund assessed possible modalities of disbursement in light of the current social and security context in Mali. The Trust Fund met with a number of cash experts and financial institutions which allowed it to map the following options: (i) cash distribution hand to hand, (ii) payment through a bank account, and (iii) mobile money. In reviewing these modalities, the Trust Funds established the following assessment criteria: confidentiality, security, ability to access remote or unsecured areas, accountability, gender-sensitiveness, and acceptance by victims.

18. At this stage, and pending in-depth consultations with the LRV, the Trust Fund is inclined to rule out the two first options because the current security situation in Timbuktu does not allow for cash distribution hand to hand from the Trust Fund to the victims in a safe manner. Payment through a bank account appears not to be an adequate solution considering that many victims, especially women, do not have bank accounts. The Trust Fund would not be in a position to open bank accounts on their behalf as banking regulations require that the account holders do it personally.

19. Mobile money, also called cash-based transfer, is a secured way of transferring money to an individual via his/her cell-phone. The recipient can then retrieve the money in one of the available collection points, such as grocery stores or dedicated collection points disseminated throughout the city. Based on the established assessment criteria

(see para. 17 above), the Trust Fund has determined that cash-based transfer would be the best modality of payment in the current context. Cash-based transfers are widely used in Mali and have recently become a rather common tool used by the communities, as corroborated by several victims met during the reporting period. To certain extent, the Trust Fund has had the opportunity of testing this modality when reimbursing petty costs connected with its activities in the field, and did not encounter any objection or difficulties in using cash-based transfers. The Trust Fund has proposed to the LRV to have a meeting in early January 2020 to discuss this payment modality.

20. Should this modality be chosen, the Trust Fund would normally have to launch an open tender through the Procurement Unit to identify and select a partner to effectuate the payments. Considering the number of current ongoing Trust Fund's procurement procedures, the length of a competitive process, and in particular the importance to promptly deliver individual awards after eligibility decisions are final, the Trust Fund has identified an alternative procurement modality. This alternative consists in deferring to a procurement process that a [REDACTED] already conducted last year in Mali for the same type of service, resulting in the direct engagement a qualifying financial institution.

21. The Registry's Procurement Unit has confirmed the possibility of benefitting from a [REDACTED] as per Rule 110.18 of the ICC Financial Rules and Regulations. The Trust Fund is currently drafting the scope of work and the justification for the sole sourcing procedure which will be submitted to the Procurement Unit. Assuming such approval is granted and that the LRV supports this modality of payment, the Trust Fund will then contact the selected financial institution to request the submission of a proposal.

B. Collective reparations

22. In respect of the collective reparations, the Trust Fund informs the Chamber that: (i) on [REDACTED] November 2019, the Trust Fund organised a participative project development workshop in Bamako; (ii) [REDACTED]
[REDACTED], UNESCO informed the Trust Fund that it was ultimately not in a position to submit its proposal concerning the rehabilitation and maintenance of the Protected Buildings and requested an additional extension of the

deadline, now set at 10 January 2020; (ii) substantial progress was made in the selection of implementing partners for both the symbolic reparations and for moral harm and the Economic Resilience Facility (“ERF”); (iii) a request for funding has been submitted to the [REDACTED] in relation to the financing of the ERF.

In respect of the rehabilitation and maintenance of the Protected Buildings, the Trust Fund organised and led, in accordance with its operational standard practices, a workshop in Bamako between [REDACTED] November attended by UNESCO, representatives of the Government of Mali and selected victim representatives. The purpose of this workshop was to offer guidelines on the development of the proposal that UNESCO must submit to the Trust Fund. In so doing, the Trust Fund aimed at ensuring the quality of the incoming proposal, community ownership over the reparation measures, and understanding and acceptance of their objectives and parameters by key stakeholders. The workshop also managed to create a collaborative environment to familiarise all stakeholders who will be involved in the upcoming program with each other.

23. The workshop achieved the following objectives: (i) appreciate the function of the Trust Fund in regard to the collective reparations programme, (ii) situate the collective reparations programme concerning the maintenance and rehabilitation of Protected Buildings within the broader *Al Mahdi* reparations, (iii) understand the specific objectives pursued with the maintenance and rehabilitation of Protected Buildings, (iv) appreciate the implications of the judicial nature of this reparations programme, (v) facilitate a discussion on how to operationalise the scope of work in light of the governing principles of the *Al Mahdi* reparations proceedings among all stakeholders involved, (vi) agree on guidelines to deal with identified challenges (such as sharing of roles and responsibilities amongst the actors of the maintenance, inclusion of women, climate changes, security...) for UNESCO to include in its proposal; (viii) understand the general budgetary guidelines and the costs covered by the given budget; (ix) enable the exchange of views and recommendations.

24. Twenty-five key persons participated, namely [REDACTED] representatives of the families of the main Saints from the Protected Buildings ([REDACTED] women), [REDACTED] [REDACTED] two representatives of the Malian Government due to the participation of the Special Adviser to the Ministry of Culture [REDACTED]

██████████ in Timbuktu, and two UNESCO representatives. Given that most of the participants travelled ██████████, the Trust Fund experienced serious difficulties in arranging their transfer by air ██████████

██████████ ██████████ The participants were disembarked prior to take-off both on the way to Bamako as well as on the way back. Their return was postponed for five days, leading to criticism from the participants and to an increase of the Trust Fund's budget allocated to this activity.

25. Despite the logistic constraints, the victims who attended the workshop expressed their high levels of satisfaction for having been given the opportunity to participate and express their views, especially women. Discussions were documented by the Trust Fund and UNESCO. The Government of Mali expressed its support and its appreciation for having been associated with the workshop.

26. On 13 December, UNESCO informed the Trust Fund that, due to unforeseen circumstances the team faced in Mali, the proposal could not be submitted on 15 December 2019 as initially requested. ██████████

27. ██████████

██████████ that it will do so by 10 January 2020.²¹ Pending receipt of the proposal, The Trust Fund has nonetheless established a review committee in charge of reviewing the proposal to ensure it meets quality standards and the parameters of the Reparations Order. After this process, in application of the Financial Rules and Regulations, the proposal will be presented to the Procurement Review Committee for final approval.

28. In respect of the other collective measures, the Trust Fund recalls that, out of the ten and eight vendors that responded to the two calls on expressions of interest

²¹ ██████████

concerning the psychological support mechanisms²² and the ERF, respectively, the review committees deemed that five vendors were eligible for the psychological support projects, and three for the ERF. To avoid being left with very few to no partners capable of implementing the projects, the Trust Fund granted, via the Procurement Unit, an extra opportunity to all vendors who did not provide complete documentation in relation to (some of) the Trust Fund's eligibility criteria to submit extra documentation by 25 October 2019.

29. Several vendors resubmitted their documentation. However, both the Procurement Unit and the vendors encountered some difficulties with the sending/receiving of the additional information. The Trust Fund, via Procurement Unit, invited the vendors to resubmit their documentation by 14 November 2019. The extra documentation of the vendors was retrieved by the Trust Fund on 19 November 2019 allowing the Trust Fund to proceed to a second review. Seven vendors were deemed eligible for the psychological support projects and five for the ERF by the review committees.

30. Simultaneously, the Trust Fund finalised the respective scopes of work for these two collective awards and other programmatic documents. In early January 2020, the Trust Fund will send all the required documents to the Procurement Unit in order to issue the Request for Proposals needed to invite the eligible vendors to submit a project proposal.

31. The Trust Fund is actively engaged in securing additional funding to complement the payment of the reparations award. After several meetings and exchanges, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

²² Due to their interdependence with the measures ordered in respect of psychological support, the memorialisation measures have been encompassed in the same expression of interest.

C. Other tasks conducted in relation of the implementation of individual and collective measures

32. The Trust Fund is pleased to report that it undertook the following tasks in relation to the implementation of both individual and collective reparations: (i) a joint mission in Timbuktu with the LRV and the support of the Registry between [REDACTED] November 2019 ; and (ii) the engagement with the Malian authorities was strengthened as a result of a bilateral meeting with the Ministry of Justice during the Assembly of States Parties.

33. The Trust Fund conducted a mission in Timbuktu from [REDACTED] November 2019 in relation to the implementation of reparations awards in the *Al Mahdi* case where the LRV, his assistant, as well as the ICC Field Security Officer took part. This mission was the result of continuous efforts and repetitive attempts of the Trust Fund to travel to Timbuktu.

34. The Registry, [REDACTED] provided the Trust Fund with essential support to make this mission possible. The Trust Fund appreciates and thanks the Registry for the spirit of collaboration before, during and after the mission.

35. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

36. The long-awaited visit allowed the Trust Fund to engage with the authorities [REDACTED]. The meetings took place in town. The Trust Fund met with key stakeholders of individual reparations as well as

with different sectors of the Timbuktu community, [REDACTED]
[REDACTED]. The visit allowed the Trust Fund to explain the Reparations Order, its role in the implementation of the reparations plan, the various specific reparations measures, the on-going processes in relation to both the individual and collective measures, and eligibility criteria. The eligibility of women was stressed during each meeting.

37. The visit was an important step towards creating the space and conditions for the ownership and participation of the victims and their communities in the implementation process. All the persons encountered during the mission expressed their appreciation to the delegation for the visit in Timbuktu, deplored the absence of missions during a long period of time due to security constraints, and shared their full support to the reparation measures.

38. Considering the continuing need identified by the Trust Fund to go to Timbuktu regularly in order collect victims' applications, launch and monitor the collective reparations, [REDACTED]
[REDACTED]
[REDACTED].

39. Further, the Trust Fund is pleased to inform the Trial Chamber that a member of the Board of Directors, the Executive Director and the responsible Programme Manager had a meeting, in the margins of the Assembly of States Parties in The Hague, with the Ministry of Justice of Mali, [REDACTED] and other members of the Mali delegation to the Assembly. The Trust Fund shared with them the latest developments about the implementation of reparations. The Trust Fund and the Minister agreed to set up regular meetings in Bamako to gather the key ministries for reparations and ensure transparency and cooperation. The Minister of Justice reiterated its strong support to the activities of the Trust Fund in Mali and, in particular, in regard to the implementation of reparations awards in the *Al Mahdi* case.

40. Lastly, from a staffing point of view, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].

41. In addition and as previously reported, the Trust Fund is in the process of hiring a local contractor to be based in Timbuktu. [REDACTED]

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

IV. CONCLUSION

42. The Trust Fund requests that the Trial Chamber take note of the present report. The Trust Fund stands ready to further clarify any information provided in this document, or any other issue affecting the implementation phase of the present case.



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 27 December 2019
At The Hague, The Netherlands