

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **20 July 2020**

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*

Confidential

With one confidential annex

**Trust Fund's response to LRV's third request for review of administrative
decisions**

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**

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States' Representatives

REGISTRY

Registrar

Mr Peter Lewis

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**Victims Participation and Reparations
Section**

Mr Philipp Ambach

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Mr Nouhoum Sangaré

I. BACKGROUND

1. On 12 July 2018, Trial Chamber VIII (“Trial Chamber”) issued a decision on the draft implementation plan (“Decision on the DIP”) wherein it laid down the features of the organisation of the screening process for individual applications for reparations, set 4 March 2020 as the deadline for its completion.¹ On 4 March 2019, the Trial Chamber approved the Trust Fund updated implementation plan.²
2. On 17 March 2020 and on 16 April 2020, the Trust Fund, in line with the VPRS recommendations, notified the LRV and the Defence of 12 positive decisions (“first batch”) and 79 negative decisions (“second batch”), respectively.
3. On 29 April 2020, the LRV submitted a request for review of all 79 negative decisions of the second batch (“First LRV Request”).³ On 15 May 2020, the Trust Fund submitted its response (“Trust Fund Response to First LRV Request”).⁴
4. On 18 May 2020, in line with the VPRS recommendations, the Trust Fund notified the LRV and the Defence of 82 negative administrative decisions (“third batch”).⁵
5. On 2 June 2020, the LRV submitted a request for review of all 82 administrative decisions (“Second LRV Request”).⁶ On 4 June 2020, the Trust Fund submitted its response.⁷

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 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](#)

³ *Demande de réexamen par la Chambre de la Décision du Fonds relative à l'éligibilité des victimes aux mesures de réparations*, ICC-01/12-01/15-360-Conf-Exp with Confidential Annex A (Confidential redacted version notified on 18 May 2020).

⁴ Trust Fund for Victims’ response to the Legal Representative of Victims’ request for review of administrative decisions on victims’ eligibility, ICC-01/12-01/15-361-Conf with one confidential *ex parte* annex (“Trust Fund Response to First LRV Request”). On 22 May 2020, the LRV submitted a reply (*Observations du Représentant légal sur la Réponse du Fonds au profit des victimes contre le réexamen sollicité des demandes de réparations individuelles*, ICC-01/12-01/15-362-Conf with confidential *ex parte* annex). On the same day, by way of email, the Trust Fund informed the Trial Chamber that it does not intend to surreply.

⁵ The decisions and underlying materials have been notified as annexes to the Trust Fund for Victims’ response to the Legal Representative of Victims’ second request for review of administrative decisions on victims’ eligibility, ICC-01/12-01/15-364-Conf.

6. On 19 June 2020, in line with the VPRS recommendation, the Trust Fund notified the LRV and the Defence of 75 negative decisions (“fourth batch”).⁸

7. On 3 July 2020, the LRV submitted a request for review of 54 administrative decisions from the fourth batch (“Third LRV Request”).⁹

II. CLASSIFICATION OF THE PRESENT SUBMISSION

8. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report as in line with the confidential classification of the Third LRV Request.¹⁰ A public redacted version will be filed as soon as feasible.

III. OBSERVATIONS ON THE REQUEST

1) Introduction

9. The LRV seeks to contest an eclectic collection of 54 decisions,¹¹ belonging to different categories, which are set out in **Annex 1**, namely: (i) all except 6 decisions belonging the first category;¹²(ii) all except 13 decisions belonging to the second category;¹³ all decision belonging to the third category, all except 2 decisions belonging

⁶ *Deuxième demande de réexamen par la Chambre des décisions administratives du Fonds au profit des victimes relatives à l'éligibilité des victimes aux mesures de réparations*, ICC-01/12-01/15-363-Conf with Annex A.

⁷ Trust Fund for Victims' response to the Legal Representative of Victims' second request for review of administrative decisions on victims' eligibility, ICC-01/12-01/15-364-Conf with three confidential *ex parte* annexes (“Trust Fund Response to Second LRV Request”). On 5 June 2020, the LRV submitted a reply (*Observations du Représentant légal sur la « Trust Fund for Victims' response to the Legal Representative of Victims' second request for review of administrative decisions on victims' eligibility »*). On 9 June 2020, by way of email, the Trust Fund informed the Trial Chamber that it does not intend to respond to the reply.

⁸ See Annex 1 (decisions), Annex 2 (applications) and Annex 3 (VPRS recommendations) to the Fifteenth Update Report.

⁹ *Deuxième demande de réexamen par la Chambre des décisions administratives du Fonds au profit des victimes relatives à l'éligibilité des victimes aux mesures de réparations*, ICC-01/12-01/15-367-Conf with one confidential annex.

¹⁰ See First Monthly Report, para. 3; Second Monthly Report, para. 8.

¹¹ While the Request indicates that 55 decisions are contested, a close review of the Annex shows that the contestation of the decision pertaining to applicant a/35114/16 appears twice. As a result the Request appears to pertain to 54 decisions.

¹² a/35109/16 (no. 30), a/35116/16 (no. 36), a/35129/16 (no. 49), a/35130/16 (no. 50, which has due to a clerical error the number a/35120/16 in the decision, which is the correct number for decision no. 40) , a/35132/16 (no. 52), et a/40013/17 (no. 64).

¹³ a/35084/16 (no. 25), a/35110/16 (no. 31), a/35113/16 (no. 33), a/35131/16 (no. 51), a/35133/16 (no. 53), a/35134/16 (no. 54) a/35135/16 (no. 55), a/35137/16 (no. 57) a/35138/16 (no. 58), a/35139/16 (no. 59), a/40015/17 (no. 66), a/40022/17 (no. 72) et a/40000/17 new a/50000/20 (no. 73).

to the fourth category and all additional decisions.¹⁴ As the Appeals Chamber held that the Trial Chamber may also *proprio motu* review the administrative decisions of the Board of Directors of the Trust Fund,¹⁵ the arguments of the Trust Fund extend to all 75 decisions.

2) *Third LRV Request*

10. The LRV submits as annex the 54 individual requests for review as well as a main supplementary submission relevant to all requests (*memoire global ampliatif*).

11. In addition to the arguments included in the individual requests, the LRV argues that the Trust Fund deliberately maintains confusion between the context of the submission of the files and the context of insecurity in Timbuktu and that he is of the view that moral and economic harm are the only ones giving rise to individual reparations.¹⁶ Second, the LRV argues that the Trust Fund maintains confusion on the system of proof and recourse to indicia to prove descentance.¹⁷ Third, on the issue of attestations, the LRV refers to previous submissions.¹⁸

12. The Trust Fund notes in relation to the LRV's arguments in the individual requests that even if the application does not include a single attestation supporting an ancestral link, the LRV raises the argument that the Trust Fund does not respect official authorities of Mali.¹⁹ The Trust Fund submits that it has no basis in a request for review of decisions referring to applications without attestations.

3) *Arguments*

13. All applications in the fourth batch were transmitted to the Trust Fund by VPRS on 3 June 2020 with negative preliminary recommendations by VPRS, specifying that the files were incomplete. The Trust Fund notes that the VPRS distinguishes between incomplete files without any attestations supporting an ancestral or exclusive link on the one hand and incomplete files with attestations, which are not signed by authorities recognized by the Trust Fund, on the other.

¹⁴ a/35027/16 (no.12) et a/35028/16 (no. 13).

¹⁵ Judgment on the appeal of the victims against the "Reparations Order", 8 March 2018, ICC-01/12-01/150258-Red2, para. 69.

¹⁶ Request, paras 21-22.

¹⁷ Request, paras 23-24.

¹⁸ Request para 25.

¹⁹ See as an example the request for review of the decision on Victim a/35009/16 (no. 5); due to a clerical error, the Trust Fund's administrative decision no. 5 describes the victim as "a/35009", omitting the number 16.

14. While the former category of applications (nearly half of them) could have been rejected as inadmissible and the latter category dismissed *in limine*, the Trust Fund analysed – in the interests of the applicants and like with any previous batch – the content of all documents submitted to it, including when the supporting documents were not on the jointly agreed templates and did not readily appear as relevant to demonstrate the direct ancestral or exclusive link requirement.²⁰ By way of example, this batch of applications contained *attestations de sepulture*, a model of attestation that has never been discussed. Yet, the Trust Fund reviewed them with a view of determining whether they could support a claim of a direct ancestral link. However, none of the applications submitted could reasonably give rise to a positive administrative decision.

15. The Trust Fund would have welcomed that the LRV had submitted any additional reasons in support of the individual applications, preferably before or latest upon having received the negative preliminary assessment of VPRS. However, despite the VPRS's assessment 'incomplete', the LRV did not provide such information.

16. The Trust Fund notes that the LRV does not submit any additional facts or reasons in support of the applications to the Trial Chamber or argues that the applicants without attestations would be in a position to produce them. Instead, the main argument focuses on the authorities not recognized by the Board of Directors. He avers that this is a violation of international law and that the Board of Directors exceeded its powers in that respect. However, he does not suggest a methodology how the Trust Fund or the Court would establish that these authorities are in a position of certifying an applicant's ancestral or exclusive link with a Protected Building. Even more so, the LRV participated in the training of authorities and resorted to them to seek attestations for the applicants.

17. Although the arguments raised in this Third LRV Request are a combination of those raised in the First and Second LRV Request, the difference between the fourth batch and the second and third batches is that instead of an *attestation de filiation* the supporting material is mainly an *attestation de lien de parenté*. The document was used to connect two persons, one of them the applicant, to a Saint.

18. In respect of the LRV's legal argument, the Trust Fund notes that if statements about a person's ancestral link with a Saint of Protected Buildings fell within the usual range of certifications of state authorities, the Trust Fund would neither have been

²⁰ See Trust Fund Response to First LRV Request, para. 50.

required to issue a specific document for that purpose, i.e. *attestation de filiation*, nor would it have had to take recourse to a safeguard list of certifying authorities capable of producing such attestations. The argument relevant to customary international law therefore is irrelevant in this context. The Trust Fund recalls that the community in Timbuktu has shown not only a keen interest in who the Trust Fund and the Court as a whole will recognize as a descendant, but the communities of the relevant Protected Buildings also know the individuals related to the Building. Even though the decisions will remain confidential, the social fabric is such that it will be known to whom the Court accorded individual reparations.

19. The Trust Fund recalls in this context that the main area of discretion that the Trial Chamber accorded to the Board of Directors of the Trust Fund in issuing the administrative decisions lied in the determination of the ancestral and/or exclusive link to the Protected Building and that the debate was definitely concluded in the Decision on the DIP in respect of the determination of the ancestral link.²¹ The Trust Fund respectfully submits that the Trust Fund's approach to that determination was procedurally fair and reasonable for the arguments set out in particular in the Trust Fund Response to First LRV Request.²² Should the Trial Chamber nevertheless find that the approach was procedurally unfair or unreasonable, the Trust Fund respectfully requests the Trial Chamber that the Trust Fund be accorded the opportunity to consult with the communities of the Protected Buildings before a determination, in consultation with the LRV, of any additional authorities in order to ensure that the Court's decision will be well accepted within the community.²³

20. In respect of the fourth batch, the Trust Fund also remarks that a considerable part of the applications includes only attestations from the period before the relevant decisions of the Trial Chamber on individual reparations were issued. Even though the Trial Chamber held that the applicants were not required to fill in a different application form, and the Board of Directors took this into account in their assessment of the

²¹ With regard to the ancestral link, in the Decision on the DIP, para. 67 ruled that those eligible for individual reparations as a result of moral harm suffered must be descendants in *direct* kinship. With regard to the exclusive link, *see* Decision on TFV Request for Clarification Regarding Individual Reparations for Economic Harm, 31 August 2018, ICC-01/12-01/15-280. A number of applications on the basis of economic harm suffered were jointly collected by the LRV and the Trust Fund.

²² Trust Fund Response to First LRV Request, paras 17-20, 28-35.

²³ See also Trust Fund Response to First LRV Request, para. 52.

applications, the Trust Fund notes that the LRV had ample opportunity to produce any additional attestations in support of the applicants' claims.

21. The Trust Fund notes that in certain individual cases, an applicant may have difficulties receiving a certification from a person on the safeguard list, e.g. in case of family disputes. The Trust Fund submits that it is the task of the LRV to bring any issues relevant thereto to the attention of the Board of Directors, which will take any individual circumstances into account.

22. In relation to the *attestation de lien de parenté*, the Trust Fund submits as a second argument that the identity of the many different individuals who signed them has not been disclosed to the Trust Fund at any time between 2018 and 2020. As set out in paragraphs 17-20 of the Trust Fund Response to First LRV Request, the LRV had many different opportunities to address the Trust Fund and add names to the list of authorities and invite them to join the trainings. Considering the specific task of the Trust Fund to execute the Trial Chamber's order within its imposed specifications, the Trust Fund could not rely on these attestations without any further explanation provided by the LRV as to the circumstances of signing these attestations, which often do not even contain an official stamp, the name of the certifying person or the identity information of the other person to whom the applicant is alleged to be related.

23. In addition, the Trust Fund incorporates its arguments raised in the Trust Fund Response to First LRV Request,²⁴ considering the LRV also incorporates its earlier arguments. The Trust Fund recalls in particular the following submissions: (i) the general background of the reparations proceedings;²⁵ (ii) that the standard of proof and system of attestations was approved by the Trial Chamber as early as July 2018;²⁶ (iii) that in the absence of any application forms transmitted by the LRV on account of alleged difficulties to find certifying authorities, the Trust Fund, jointly with the LRV, identified and trained a number of recognised figures of authorities, to whom the LRV

²⁴ Trust Fund for Victims' response to the Legal Representative of Victims' request for review of administrative decisions on victims' eligibility, ICC-01/12-01/15-361-Conf with one confidential *ex parte* annex. On 22 May 2020, the LRV submitted a reply (*Observations du Représentant légal sur la Réponse du Fonds au profit des victimes contre le réexamen sollicité des demandes de réparations individuelles*, ICC-01/12-01/15-362-Conf with confidential *ex parte* annex). On the same day, by way of email, the Trust Fund informed the Trial Chamber that it does not intend to respond to the reply.

²⁵ [Trust Fund Response to First LRV Request](#), paras 8-20.

²⁶ [Trust Fund Response to First LRV Request](#), paras 28-35.

could resort to seek attestations;²⁷ and (iv) that the LRV ran the names of his 409 clients to this figures of authorities and that only 8 names were recognised by them..²⁸

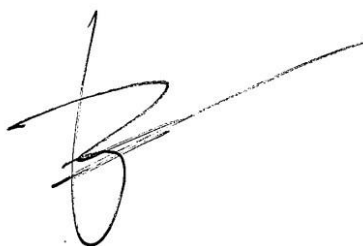
24. In sum, the Trust Fund respectfully submits that the decisions of the Board of Directors were reasonable and that the Board of Directors did not commit a procedural or legal error in any of the 54 contested decisions, but also not in any of the 75 decisions of the fourth batch.

25. As a final point, the Trust Fund recalls that 570 applications arrived in The Hague in June that will be processed over the next months. The Trust Fund hereby recalls as set out in the last report to the Trial Chamber that the Board of Directors will issue decisions on the fifth batch latest on 22 July 2020. Two more batches of the first 409 applications are expected on a rolling basis thereafter.

RELIEF SOUGHT

26. The Trust Fund respectfully requests the Trial Chamber to reject the Third LRV Request and to uphold the 75 administrative decisions of the fourth batch and in particular the 54 decisions under review based upon Third LRV Request.

27. In the alternative, should the Trial Chamber reverse the administrative decisions and require the inclusion of additional authorities on the safeguard list, the Trust Fund respectfully requests the Trial Chamber to be given the opportunity to, in particular, consult with the affected communities of the Protected Buildings before including additional persons on the safeguard list.



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 20 July 2020

At The Hague, The Netherlands

²⁷ [Trust Fund Response to First LRV Request](#), paras 30-33.

²⁸ [Trust Fund Response to First LRV Request](#), paras 34-35 and 51-54.