

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **2 September 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

Trust Fund's submission on the amendment of the screening process

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

Counsel Support Section

Mr Peter Lewis

Mr Esteban Peralta Losilla

Victims and Witnesses Section

**Victims Participation and Reparations
Section**

Other (Country Office)

Mr Philipp Ambach

I. PROCEDURAL HISTORY

1. On 17 August 2017, Trial Chamber VIII (“Trial Chamber”) issued its Reparations Order,¹ in which it *inter alia* directed the Trust Fund for Victims (“Trust Fund”) to develop an eligibility screening mechanism² and gave guidelines as to its design.³
2. On 12 July 2018, the 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.⁴
3. On 4 March 2019, the Trial Chamber approved the Trust Fund’s updated implementation plan basis (“Decision on the UIP”) and indicated that all victims must be identified and their applications collected within one year (that is by 4 March 2020).⁵
4. On 24 February 2020, the Trial Chamber extended this deadline to 4 May 2020, indicating however its “expectation to issue any and all individual reparations reviews by early March 2021”.⁶
5. On 29 April 2020, in response to the COVID-19 outbreak, the Trial Chamber extended the deadline further until certain conditions are met permitting the resumption of activities in Mali. In doing so, the Trial Chamber indicated that it was mindful of the impact that this extension may have on the early March 2021 deadline and for this reason directed the Trust Fund and the LRV to keep on working on finding mitigating solutions.⁷
6. From January 2020 onwards, the Trust Fund issued 398 administrative decisions. The Trust Fund’s decisions on the 16 applications remaining from the Group

¹ ICC-01/12-01/15-236.

² Reparations Order, [ICC-01/12-01/15-236](#), para. 144 (*see also* paras 141-143, justifying the need to develop such a mechanism).

³ Reparations Order, [ICC-01/12-01/15-236](#), paras 145-146

⁴ 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.

⁵ Decision on the Updated Implementation Plan from the Trust Fund for Victims, ICC-01/12-01/15-324-Conf, paras 33-36.

⁶ Decision on Joint Request for Extension of Reparations Application Deadline, ICC-01/12-01/15-348-Conf, para. 11.

⁷ Decision on the LRV Request for an Extension of Time to Submit Individual Reparations Applications, ICC-01/12-01/15-359-Conf, paras 15-16.

of 416 are due on 18 September 2020. This will conclude the treatment of the Group of 409 applications collected by the LRV alone.

7. In parallel, from September 2019 to March 2020 (and in the subsequent months at a slower pace), the Trust Fund, jointly with the LRV collected applications from potential beneficiaries. 570 files were collected during these missions and a number of additional files were subsequently collected by intermediaries.

8. As a result, on 24 July 2020, the LRV submitted to the VPRS 212 files of these jointly collected files.

II. CLASSIFICATION OF THE PRESENT SUBMISSION

9. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report as confidential for the reasons set out in the Trust Fund's update reports.⁸ A public redacted version will be filed as soon as feasible.

III. SUBMISSIONS

10. The present submission on the proposed amendment is submitted by the Trust Fund to the Trial Chamber after having sought and obtained the agreement of all actors involved, that is the VPRS, the LRV and the Defence.⁹ The proposal was made by reference to all files collected jointly by the Trust Fund and the LRV and does not relate to those files belonging to the Group of 409 that the LRV would elect to re-consolidate. The Trust Fund would have no objection to the amendment of the procedure being extended to these files too, but notes that the LRV has requested to the Trust Fund that an alternative solution be explored.

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

⁹ On 26 August 2020, the Trust Fund sent a written proposal to VPRS (email on 26 August 2020 at 6:04pm to VPRS, resent on 27 August 2020 at 8:37am with an additional recipient). The VPRS communicated its agreement by way of email sent on the same day (email on 27 August 2020 at 6:27pm). On 28 August 2020, the Trust Fund sent the proposal to the parties (email on 28 August 2020 at 4:27pm to the LRV; email on 28 August 2020 at 4:37pm to the Defence). The Defence responded on the same day that it does not have any objections (email on 28 August at 5:35pm). On 1 September 2020, the LRV communicated his agreement by way of two emails (email on 1 September 2020 at 11:34am and email on 1 September 2020 at 5:36pm). He indicates that he does not wish the amendment to concern the Group of 409 for which he will propose a solution to the Trust Fund. The Trust Fund stands ready to produce all email communications if necessary.

1. Reasons for the proposed amendment

11. Over the course of 2020, the screening process put in place by the Trust Fund and approved by the Trial Chamber has permitted the Trust Fund to deal with 398 applications which resulted to date in 12 positive decisions and 386 negative decisions. The Trust Fund has drawn a series of lessons from the use of the screening process. Accordingly, on 25 August 2020, the Trust Fund convened a meeting with VPRS to discuss possible simplifications of the screening process. The meeting focused on the applications collected jointly by the Trust Fund and the LRV and how the process could be moulded to ensure the most expeditious way forward, taking into account the deadline set by the Trial Chamber, the effectiveness of the screening process so far, and the fact that in the current procedure, VPRS can commit to transmitting up to 75 files per batch and per month. In addition, as previously reported, an implementing partner has been selected to perform the payment of the individual reparations and is expected to start its work in the forthcoming weeks.

12. With regard to the deadline, the Trust Fund is also mindful of the time elapsed since the Reparations Order and of the fact that the Trial Chamber had initially ruled that it is expected that any and all decisions on requests for reviews be issued by March 2021 and that even though this deadline might be affected by the international health crisis, actors involved in the screening process are directed to keep on exploring mitigating measures. Simplifying the screening process would permit that this deadline be less affected.

13. The Trust Fund recalls that from September 2019 to March 2020 (and thereafter through collaboration with intermediaries), the Trust Fund and the LRV jointly collected applications from potential beneficiaries. As part of the joint collection, the identification of beneficiaries was conducted by the Trust Fund after a thorough mapping of the social fabric connected to the mausoleums. As set out in more detail in the Trust Fund's update reports, potential beneficiaries were identified by the Trust Fund by cross-checking names suggested by resource persons, intermediaries, heads of families as well as traditional and local leaders. Effectively, this exercise constitutes an on-the-ground preliminary assessment by the Trust Fund.

14. Accordingly, it is proposed that the VPRS would not carry out an additional preliminary assessment for the jointly collected applications but would submit the

applications upon registration to the Trust Fund. Even though the parties have to date not made use of the opportunity, it is proposed that the LRV and the Defence should continue to be able to make submissions in the process. In addition, the right of the parties to request review of the decision of the Board of Directors to the Trial Chamber remains intact.

15. In sum, the simplified screening procedure would further the expeditiousness of the process while making sure that procedural rights of all parties are respected and the Court's and Trust Fund's resources are used effectively. It abstains from preliminary and final assessments by VPRS while preserving the parties' right to make submissions. Lastly, it would ensure that potential beneficiaries whose application would give rise to a positive administrative decision obtain their reparations substantially faster.

2. Proposed amendment

16. Under the simplified procedure, the process would unfold as follows:

17. The LRV submits the application to VPRS, which registers it in the system (notably, the applications are scanned and they are attributed a registration number). VPRS then transmits them all to the Trust Fund and the LRV no later than 30 days after receipt.¹⁰ Applications can be transmitted on a rolling basis, depending on when they are received. For the purpose of calculating deadlines, the receipt date is the date at which the LRV submits the physical copy of the files to VPRS, informing the Trust Fund by way of email sent on the same day.

18. This means that VPRS is not required to seek for the jointly collected files additional confirmation from the LRV that the files are complete:¹¹ it is the LRV's responsibility to ensure that complete files are submitted to VPRS and files are therefore deemed complete from the moment the physical copy is submitted to VPRS. Similarly, it is not required that confirmation be sought by VPRS from the LRV that the applicants have not already previously submitted an application (i.e. that the files 'are not a

¹⁰ So far, transmissions were effectuated by way of Records Manager containers. The Trust Fund has no objection to this method being used.

¹¹ The Trust Fund understands that this intermediate confirmation process was performed in the past.

duplicate').¹² Should such a case arise, the Trust Fund will revert to VPRS to correct the numbering.

19. Upon receipt of the transmission by VPRS, the Board of Directors of the Trust Fund has 15 days to issue its administrative decisions. Should the Trust Fund, exceptionally, require additional information from the LRV, because the file is deemed to be incomplete, the deadline starts to run from the receipt of the requested additional information.¹³ Decisions are issued by email and notified by way of annexes to the update reports. The decisions systematically contain a summary of the application and are also disclosed in redacted form to the Defence. Any such decision is considered preliminary for a period of 15 days, during which the LRV and the Defence may make submissions (by way of email to the Trust Fund). VPRS is kept in copy of all communications.

20. As to the redactions to the decisions, the Trust Fund applies them in accordance with the requirements set out in the Decision on the DIP:¹⁴

- When the assessment is straightforward: as per the Decision on the DIP, the Defence is only entitled to a summary of the application. This requirement will be addressed as the preliminary decision issued by the Trust Fund contains such a summary.
- When the assessment is not straightforward: as per the Decision on the DIP, the Defence is entitled to a redacted version of the application: in this scenario, the Trust Fund will apply redactions to the application forms and transmit them.

21. Upon notification of the Trust Fund's decision, the parties have 15 days to make their observations;

¹² The Trust Fund understands that VPRS sought in the past confirmation from the LRV that the files submitted were not stemming from an applicant who already submitted an application previously. The Trust Fund deems this confirmation to be unnecessary, keeping in mind that the LRV may not have a copy of all applications and supporting documents, that he has to handle a very large number of documents, that applicants were always asked whether they submitted already a form and that, in the Malian context, many individuals bear a similar or the same name. As the Trust Fund receives all files and supporting documents and assesses them individually, the Trust Fund considers that it is in the best position to make the assessment whether a person filled out two forms.

¹³ Any such additional information will be provided to VPRS for registration purposes.

¹⁴ Decision on the DIP, para. 38.

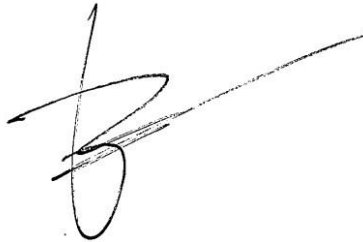
- If no observations are received by the parties within 15 days, the preliminary decision is considered automatically the Board of Director's final decision, which can be challenged through a request for review to the Chamber.
- If observations are received by the Trust Fund (by email through read receipts) within 15 days, the Trust Fund has a further 15 days to issue a decision. This decision can be challenged through a request for review to the Chamber. Should the party request an extension of time to submit its observations, the Trust Fund will consider it in accordance with the procedure set out in the Decision on the DIP.

22. The Trust Fund submits that the proposed system preserves the right of the parties to make observations while simplifying the system thereby leading to an efficient use of the Court's and the Trust Fund's resources and providing for the possibility to award compensation faster to victims. Such amendment would allow all actors involved to shorten the process and to considerably increase the number of files that can be treated every month.

23. As indicated above, the proposed amendment is submitted with the agreement of all actors involved. Indeed, under the current system the transmission of the VPRS preliminary assessment of the first batch containing 76 applications of the 212 applications submitted on 24 July 2020 is set to start on 3 September 2020. Should the proposed amendment be rejected, the Trust Fund will await potential observations on the preliminary assessments (15 days), the issuance of the VPRS final assessment (a further 15 days) and the transmission of the 76 files to the Trust Fund (an additional 15 days) prior to issuing its decisions (yet another 15 days) leading to, at best, decisions being issued on 21 October 2020 on these 76 files, and the rest being transmitted on a rolling basis every month. Should the proposed amendment to the screening process be approved, the Trust Fund will issue decisions on this first batch within 15 days of the Trial Chamber's approval. The Trust Fund will then continue to issue decisions within 15 days of receiving the remaining applications (of the 212 files) from VPRS.

CONCLUSION

24. The Trust Fund respectfully requests the Trial Chamber to approve the amendment proposed to the screening process.



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 2 September 2020
At The Hague, The Netherlands