



Original: **English**

No.: **ICC-01/12-01/15**  
Date: **23 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**

**Decision on the TFV Request for Amendment of the Screening Process**

**To be notified in accordance with Regulation 31 of the Regulations of the Court to:****Office of the Prosecutor**

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Trust Fund for Victims

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**Counsel Support Section****Victims and Witnesses Section****Detention Section****Victims Participation and Reparations  
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**Others**

**TRIAL CHAMBER VIII** of the International Criminal Court hereby issues its ‘Decision on the TFV Request for Amendment of the Screening Process’ in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 75 and 79 of the Rome Statute and Rule 98 of the Rules of Procedure and Evidence.

## **I. Procedural history and submissions**

1. On 17 August 2017, the Chamber issued its order for reparations.<sup>1</sup> The Chamber awarded both collective and individual reparations.<sup>2</sup> Concretely, it determined that individual reparations could be awarded in case of moral harm<sup>3</sup> and for consequential economic loss.<sup>4</sup> For the implementation, the Chamber ordered the Trust Fund for Victims (the ‘TFV’) to carry out administrative eligibility screenings of potential beneficiaries.<sup>5</sup> The Appeals Chamber confirmed the Reparations Order and amended it to the extent that applicants who are found not to be eligible are entitled to request the Chamber to review such decision.<sup>6</sup>
2. In its decision on the TFV’s draft implementation plan for reparations,<sup>7</sup> the Chamber directed the screening process – including collection, assessment, decision on and review of applications – to unfold as follows:<sup>8</sup>
  - the Victims Participation and Reparations Section (the ‘VPRS’) receives reparations applications and proceeds to a preliminary assessment;
  - the VPRS preliminary assessment is transmitted in batches every 30 days to the Legal Representative of Victims (the ‘LRV’) and Defence, and notified to the TFV;

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<sup>1</sup> Reparations Order, ICC-01/12-01/15-236 (the ‘Reparations Order’).

<sup>2</sup> Reparations Order, ICC-01/12-01/15-236, paras 67, 76-83, 90.

<sup>3</sup> Reparations Order, ICC-01/12-01/15-236, para. 90.

<sup>4</sup> Reparations Order, ICC-01/12-01/15-236, para. 81.

<sup>5</sup> Reparations Order, ICC-01/12-01/15-236, paras 140-146.

<sup>6</sup> Appeals Chamber, Judgment on the appeal of the victims against the ‘Reparations Order’, 8 March 2018, ICC-01/12-01/15-259-Red2, paras 1(ii), 2 (Key Findings), 69, 72. The Appeals Chamber also determined that applicants who did not wish their identities be disclosed to Mr Al Mahdi could participate in the administrative screening process with their identities being disclosed only to the TFV (*see* paras 1(i), 95-96).

<sup>7</sup> Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations, 12 July 2018, ICC-01/12-01/15-273-Conf (the ‘DIP Decision’). A public redacted version was filed on the same day.

<sup>8</sup> DIP Decision, ICC-01/12-01/15-273-Red, paras 36-47.

- in case of a positive preliminary assessment, the Defence has 15 days to submit observations, if any; another 15 days after expiry of that time limit, VPRS transmits its final recommendation to the TFV, with the Defence response, as applicable;
  - in case of a negative preliminary assessment, the LRV has 15 days to submit observations, if any; another 15 days after expiry of that time limit, VPRS transmits its final recommendation to the TFV, with the LRV observations, as applicable;
  - in case of an unclear preliminary assessment, the Defence has 15 days to submit observations, if any; the LRV then has 15 days to respond; another 15 days after expiry of the latter time limit, VPRS transmits its final recommendation to the TFV, with responses, as applicable;
  - within 15 days of receipt of the VPRS final recommendation, the TFV issues its administrative decision;
  - in case of a negative administrative decision, this decision and related materials are notified to the Chamber by way of annexes to the TFV bi-monthly<sup>9</sup> update report; the applicant, through the LRV, then has 15 days to file a request for review of that negative administrative decision, with the TFV and the Defence having to file their responses, if any, within 15 days of notification of any review request.
3. On 4 March 2019, the Chamber formally approved the procedure for the TFV to screen applications for individual reparations.<sup>10</sup>
4. On 2 September 2020, the TFV filed a request to amend the screening process (the 'Request').<sup>11</sup> The TFV indicates this request is filed after consultation with, and having obtained agreement from, all actors involved, namely the VPRS, LRV and Defence.<sup>12</sup> In short, the TFV proposes that for those application files which were collected jointly by the TFV and the LRV, the VPRS does not carry out a preliminary assessment.<sup>13</sup> According to the TFV, the LRV and Defence would continue to be able to make submissions in the proposed amended process, and the right to request review of

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<sup>9</sup> While at the time of the DIP Decision, TFV update reports were filed on a monthly basis, this was later changed to the update reports being filed every two months. *See* Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, ICC-01/12-01/15-324-Conf (public redacted version notified same day) (the 'UIP Decision'), para. 104 and n. 129, para. 116.

<sup>10</sup> UIP Decision, ICC-01/12-01/15-324-Red. *See also* DIP Decision, ICC-01/12-01/15-273-Red, paras 35-46.

<sup>11</sup> Trust Fund's submission on the amendment of the screening process, ICC-01/12-01/15-372-Conf.

<sup>12</sup> Request, ICC-01/12-01/15-372-Conf, para. 10 and footnote 9. *See also* para. 23.

<sup>13</sup> Request, ICC-01/12-01/15-372-Conf, paras 13-14.

negative administrative decisions remains intact.<sup>14</sup> The TFV argues that the amended process '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'.<sup>15</sup> Concretely, the amended procedure for application forms collected jointly by the LRV and TFV is suggested to unfold as follows:<sup>16</sup>

- the VPRS receives, and registers, reparations applications from the LRV and transmits them to TFV and LRV no later than 30 days after receipt;<sup>17</sup>
- the TFV issues its administrative decisions within 15 days of the transmission by the VPRS; should the TFV require additional information from the LRV, the 15 day-time limit will run as from receipt of that additional information;<sup>18</sup>
- the administrative decision is considered preliminary for 15 days, period within which the LRV and Defence may make submissions to the TFV, via email;<sup>19</sup>
- if no submissions are received by expiry of that time limit, the preliminary administrative decision is considered final and can be challenged through a request for review to the Chamber;
- if submissions are received, the TFV issues its final decision within a further 15 days; the final administrative decision can be challenged through a request for review to the Chamber.

5. No further submissions were filed by the other parties and participants.<sup>20</sup>

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<sup>14</sup> Request, ICC-01/12-01/15-372-Conf, para. 14.

<sup>15</sup> Request, ICC-01/12-01/15-372-Conf, para. 15. *See also* paras 22-23.

<sup>16</sup> Request, ICC-01/12-01/15-372-Conf, paras 16-21.

<sup>17</sup> The receipt date is considered to be the date on which the LRV submits the physical copy of the files to VPRS, and informs the TFV by email on the same day. *See* Request, ICC-01/12-01/15-372-Conf, para. 17. Also, files are deemed complete upon submission of the physical copy to VPRS, and VPRS does not need to confirm with the LRV that the files are not duplicates. *See* Request, ICC-01/12-01/15-372-Conf, para. 18 and n. 12.

<sup>18</sup> According to the TFV, decisions are issued by email and notified by way of annexes to the update reports; they contain a summary of the application and are also disclosed in redacted form to the Defence. *See* Request, ICC-01/12-01/15-372-Conf, para. 19.

<sup>19</sup> The TFV indicates also that it would consider any requests for extension of time to submit observations in accordance with the procedure set out in the DIP Decision (Request, ICC-01/12-01/15-372-Conf, para. 21). *See also* DIP Decision, ICC-01/12-01/15-273-Red, para. 39.

<sup>20</sup> The Chamber had set a time limit of 9 September 2020 to file submissions in relation to the Request, if any. *See* Email from Trial Chamber VIII Communications, 4 September 2020, at 9:42.

## II. Analysis

6. At the outset, the Chamber notes that the TFV suggests this amended procedure exclusively for those applications which were collected jointly by the TFV and LRV.<sup>21</sup> According to the TFV, it is feasible to skip the preliminary assessment by the VPRS for these applications because the way in which these applications were collected amounted, in essence, to an 'on-the-ground' preliminary assessment by the TFV.<sup>22</sup>
7. Further, the Chamber considers it important that the TFV reiterates that the parties and participants retain the possibility to make submissions on the administrative decisions, and that the entitlement to review of the administrative decisions by the Chamber, as set by the Appeals Chamber remains unchanged.<sup>23</sup> While in the currently applicable procedure, submissions are made in relation the VPRS preliminary assessments rather than the TFV administrative decisions, the Chamber is of the view that the possibility for making submissions remains meaningful – and arguably even more efficient for the parties and participants, in light of the fact that they can comment directly on the full reasoning of the TFV rather than an initial assessment made by the VPRS.
8. In light of the above, and bearing in particular in mind that all actors involved in the screening process appear to have expressed agreement with the suggested amendment, the Chamber finds that the proposed amendment indeed presents a feasible and, especially under current circumstances, more efficient procedure which still preserves the interests of all parties and participants. The Chamber notes in this regard that the proposal amends some aspects of the procedure set out in the DIP Decision, but not others, which therefore continue to apply.
9. In this context, the Chamber further recalls that under the current screening procedure, the time limit for the LRV to file a request for review of negative administrative decisions starts to run upon notification to the Chamber of these negative findings and

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<sup>21</sup> Request, ICC-01/12-01/15-372-Conf, para. 10.

<sup>22</sup> Request, ICC-01/12-01/15-372-Conf, para. 13.

<sup>23</sup> The TFV further indicates that also the way and form in which applications are transmitted to the Defence remains the same as specified in the DIP Decision. *See* Request, ICC-01/12-01/15-372-Conf, para. 20 *referring to* DIP Decision, ICC-01/12-01/15-273-Red, para. 38.

related materials by way of the bi-monthly TFV update report.<sup>24</sup> The Chamber considers that this procedure can be further streamlined and adjusted to accord with the proposed amendments to the screening procedure. Thus, rather than through the TFV update report, the Chamber should be notified of negative findings and all relevant materials leading to such findings as soon as such administrative decisions are final, in accordance with the amended procedure as outlined in the Request. The time limit to file requests for review, if any, will start to run at the time of notification to the Chamber. Positive findings can continue to be notified to the Chamber by way of a list of eligible beneficiaries included in the TFV update report.<sup>25</sup>

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<sup>24</sup> See DIP Decision, ICC-01/12-01/15-273-Red, paras 46-47 *as amended by* UIP Decision, ICC-01/12-01/15-324-Red, para. 104 and n. 129, para. 116.

<sup>25</sup> See DIP Decision, ICC-01/12-01/15-273-Red, para. 46.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY**

**GRANTS** the Request;

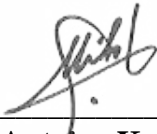
**APPROVES** the proposed amendment to the screening process as described in paragraph 4 above; and

**AMENDS** the screening process further as specified in paragraph 9 above.

Done in both English and French, the English version being authoritative.



**Judge Raul C. Pangalangan, Presiding Judge**



**Judge Antoine Kesia-Mbe Mindua**



**Judge Bertram Schmitt**

Dated 23 September 2020

At The Hague, The Netherlands