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TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding
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 document

Final Submissions on the reparations proceedings

Source:

The Trust Fund for Victims

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

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I. Background

1. On 29 September 2016, Trial Chamber VIII (hereinafter: “Trial Chamber”) issued its “Reparations Phase Calendar”,¹ inviting the parties and participants in the case, including the Trust Fund for Victims (hereinafter: “Trust Fund”) to make “general submissions [...] on the reparations proceedings” in the *Al Mahdi* case.² The Trial Chamber also invited interested organizations to submit applications to make *amicus curiae* observations³ and set out a schedule for the identification and appointment of experts,⁴ as well as setting the deadline for the submission of the expert reports.⁵
2. On 25 and 31 October 2016, the Trial Chamber granted the requests of five organizations to submit *amicus curiae* observations.⁶
3. On 2 December 2016, the Defence for Mr Al Mahdi (hereinafter: “Defence”),⁷ the Prosecutor,⁸ the legal representative of the victims in the case (hereinafter: “Legal Representative”),⁹ the Registry,¹⁰ and the Trust Fund¹¹ submitted their general observations on the reparations proceedings.
4. Also on 2 December 2016, UNESCO,¹² Queen’s University Belfast Human Rights Centre and the Redress Trust jointly,¹³ and the *Fédération internationale des ligues des droits*

¹ [ICC-01/12-01/15-172](#) (hereinafter: “Reparations Phase Calendar”).

² [Reparations Phase Calendar](#), para. 2 (viii).

³ [Reparations Phase Calendar](#), para. 2 (iii), p. 5.

⁴ [Reparations Phase Calendar](#), para. 2 (i) - (ii).

⁵ [Reparations Phase Calendar](#), para. 2 (v).

⁶ Decision on Application by Queen’s University Belfast Human Rights Centre, the Redress Truss [*sic*], the FIDH and AMDH to submit *amicus curiae* observations (ICC-01/12-01/15-175 and ICC-01/12-01/15-176), [ICC-01/12-01/15-178](#), para. 4; Decision on Application by the United Nations Educational, Scientific and Cultural Organization (‘UNESCO’) to Submit *Amicus Curiae* Observations, [ICC-01/12-01/15-180](#).

⁷ General Defence Observations on Reparations, [ICC-01/12-01/15-191-tENG](#) (hereinafter: “Defence Observations”).

⁸ Prosecution’s Submissions on Reparations, [ICC-01/12-01/15-192-Red](#) (hereinafter: “Prosecution’s Observations”).

⁹ Submissions of the Legal Representative of Victims on the principles and forms of the right to reparation, ICC-01/12-01/15-190-Conf-tENG (hereinafter: “Legal Representative’s Observations”).

¹⁰ Registry’s Observations pursuant to Trial Chamber VIII’s Decision ICC-01/12-01/15-172 of 29 September 2016, [ICC-01/12-01/15-193-Anx1-Red](#) (hereinafter: “Registry’s Observations”).

¹¹ Submissions on the Reparations proceedings, [ICC-01/12-01/15-187](#) (hereinafter: “Trust Fund’s Observations”).

¹² UNESCO AMICUS CURIAE OBSERVATIONS SUBMITTED PURSUANT TO RULE 103 OF THE RULES OF PROCEDURE AND EVIDENCE, notified on 5 December 2016, [ICC-01/12-10-15-194](#) (hereinafter: “UNESCO *Amicus* Observations”).

¹³ Queen’s University Belfast Human Rights Centre and the Redress Trust observations pursuant to Article 75 (3) of the Statute and Rule 103 of the Rules, [ICC-01/12-10/15-188](#) (hereinafter: “Queen’s University/Redress Trust *Amicus* Observations”).

de l'Homme and the *Association malienne des droits de l'Homme* jointly¹⁴ submitted their *amicus curiae* observations.

5. On 9 March 2017, the Trial Chamber issued an order¹⁵ varying the reparations calendar by extending the date for the filing of the expert reports to 28 April 2017 and the final submissions of the parties and participants, including the Trust Fund, to 26 May 2017,¹⁶ the latter of which was then extended at the Trust Fund's request to 16 June 2017.¹⁷

6. On 27 and 28 April 2017, the appointed experts submitted their reports.¹⁸

7. The Trust Fund hereby submits its final submissions on the reparations proceedings.

II. Preliminary Observations

8. At the outset, the Trust Fund wishes to express its appreciation to the Trial Chamber for permitting it to make final submissions in these proceedings, as well as granting it a limited extension of time in order to be able to do so.

9. Second, recalling that it has previously made extensive submissions on the applicable legal framework for reparations and other potentially relevant issues in this¹⁹ and other cases before the Court,²⁰ and bearing in mind its role at the pre-order for reparations stage of proceedings,²¹ the Trust Fund's present observations are narrowly focused on those issues

¹⁴ Joint observations of FIDH and AMHD on the reparations proceedings, [ICC-01/12-01/15-189-tENG](#) (hereinafter: "FIDH/AMHD *Amicus* Observations").

¹⁵ Public redacted version of "Decision Granting an Extension of Time for Filing of Experts' Report and Amending Reparations Calendar", 9 March 2017, [ICC-01/12-01/15-206-Red.](#)

¹⁶ *Ibid.*, para. 6.

¹⁷ Decision Granting an Extension of Time for Filing of TFV Submissions, 12 May 2017, ICC-01/12-01/15-219.

¹⁸ ICC-01/12-01/15-214-Conf-AnxI-Red (hereinafter: "First Expert Report"); Expert-Report – Reparations Phase, notified on 3 May 2017, ICC-01/12-01/15-214-Conf-AnxII-Red (hereinafter: "Second Expert Report"), RAPPORT Rédigé par un college d'Experts, notified on 3 May 2017, ICC-01/12-01/15-214-Conf-AnxIII-Red (hereinafter: "Third Expert Report").

¹⁹ In this regard, the Trust Fund notes that the parties and participants, as well as the *amicus* and expert reports, address the issue of the eligibility of victims. The Trust Fund has already made submissions in terms of the applicable legal framework relevant to this matter in its Observations and does not intend to repeat those submissions herein. See [Trust Fund's Observations](#), paras 19-22. See in particular footnote 28, referring to the Trust Fund's observations in the *Bemba* case wherein the Trust Fund discusses the legal framework regarding the eligibility of victims in detail. See, in this regard, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Trust Fund, Observations relevant to reparations, 31 October 2016, [ICC-01/05-01/08-3457](#) (hereinafter "Trust Fund's Observations in the *Bemba* case")

²⁰ See, in particular, [Trust Fund's Observations in the Bemba case](#). The Trust Fund incorporates herein those submissions relevant to the present proceedings instead of repeating them in full.

²¹ [Trust Fund's Observations](#), paras 6-14.

raised by the parties and participants in their general observations or in the expert reports that are relevant to and/or may impact the implementation stage of proceedings.

10. Accordingly, the topics addressed in these final observations are: 1) issues that may impact the timeframe for the implementation of the order for reparations, including the preparation and submission of a draft implementation plan; 2) the feasibility of implementing certain proposed modalities or awards for reparations proposed by the parties and participants; and 3) issues relevant to the funding of the awards for reparations in the present case; 4) the possibility of activities in Mali under the Trust Fund's assistance mandate; and 5) the potential cooperation of the government of Mali in the reparations proceedings.

III. Final Observations

A. Issues relevant to the timeframe for the implementation of the upcoming order for reparations

11. The Trust Fund recalls that, under the Court's legal framework, once an order for reparations has been issued, the Trust Fund is tasked with developing a draft implementation plan that is submitted to the Trial Chamber for approval prior to any actual implementation being undertaken.²² In terms of the timeframe for the development of the draft implementation plan, other trial chambers at the Court have set deadlines of 6 months²³ and 3 months,²⁴ respectively. The Trust Fund notes that these other cases arose in a situation country where the Trust Fund had extensive on the ground programmatic experience of nearly a decade through its assistance mandate activities, thereby permitting it to more expeditiously prepare the relevant draft implementation plans.²⁵

12. The Trust Fund also recalls that, in other reparations proceedings at the Court, the parties and participants have been given the opportunity to review and provide observations on the

²² See regulations 54, 57 of the Regulations of the Trust Fund (hereinafter: "TFV Regulations").

²³ Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2, 3 March 2015, [ICC-01/04-01/06-3129](#) (hereinafter: "*Lubanga* Reparations Appeals Judgment"), para. 242.

²⁴ Trial Chamber II, *Prosecutor v. Germain Katanga*, Ordonnance de réparation en vertu de l'article 75 du Statut, 24 March 2017, [ICC-01/04-01/07-3728](#) (hereinafter: "*Katanga* Order for Reparations"), para. 309.

²⁵ See *contra* [Trust Fund's Observations](#), para. 53, wherein the Trust Fund explained that it does not have such a presence or institutional experience in Mali.

draft implementation plan prior to its approval.²⁶ In the Trust Fund's view, such observations provide an important opportunity to refine and strengthen its proposed plan, which will hopefully increase the likelihood that the reparations that are in fact implemented will be accepted by the victim beneficiaries and result in the meaningful and tangible reparative value to them that was envisioned and intended in the order. The Trust Fund accordingly would encourage the Trial Chamber to include this procedural step in its eventual order for reparations.

13. Further, the Trust Fund understands and shares the view that reparations should be implemented in as timely a manner as possible. At the same time, the Trust Fund considers that ensuring that any reparations awards are in fact meaningful to victims requires that sufficient time be allocated in order to allow for the development of a careful and considered plan regarding their design and implementation. In this regard, the Trust Fund notes that the submissions of the parties and participants in these proceedings have highlighted several facts and circumstances that, in its view, are relevant to the amount of time that it may need to prepare a well-considered draft implementation plan.

14. First, one of the overarching issues highlighted in many of the submissions relates to the continued instability in Timbuktu and Northern Mali more generally. In this regard, the current security situation poses serious challenges not only to the implementation of any awards (discussed in the next section), but also to the amount of time that the Trust Fund may need to be able to consult with all of the relevant stakeholders *in situ*, including displaced victims who no longer reside in Timbuktu.²⁷

15. Second and linked to this first point, the Trust Fund notes that a substantial number of victims were displaced and are not currently located in Timbuktu.²⁸ Given that it appears that the victims in this case are in different geographic locations, the Trust Fund would respectfully request that the Trial Chamber take into account the time that will be needed to

²⁶ See Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Order for Reparations (amended), Annex A to *Lubanga reparations Judgment ICC-01/04-01/06-3129-AnxA* (hereinafter: "*Lubanga Amended Order for Reparations*"), para. 77; *Katanga Order for Reparations*, para. 311; See also *Lubanga Reparations Appeals Judgment*, para. 243.

²⁷ See e.g. Legal Representative's Observations, para. 15; *FIDH/AMDH Amicus Observations*, para. 51; see also First Expert Report, para. 82, p. 42.

²⁸ See, in this regard, Legal Representative's Observations, paras 15-16.

effectively consult not only with the potential beneficiaries, but also with the different local community leaders and the non-governmental organizations operating in these areas in order to develop a realistic and responsive draft implementation plan. Further, the Trust Fund would point out that the time needed to visit these different localities is rendered more challenging by the overall security situation in northern Mali, which also impacts on the Trust Fund's ability to travel inside the country from one location to another.

16. Finally, the Trust Fund observes that several of the observations highlight the importance of involving local authority figures in the design and implementation of the eventual reparations programme in order to ensure that it is accepted and considered credible by the victims and the Timbuktu community,²⁹ as well as to ensure that it appropriately takes into account the local cultural customs and traditions. In this regard, the Trust Fund notes the Legal Representative's submission that "reparation must go through the traditional and religious authorities who embody the manna of the ancestors and are the custodians of custom" and that "the involvement of the local traditional and spiritual leaders in the reparation process is paramount".³⁰ The Legal Representative also suggests that certain traditional conflict resolution methods might be appropriate,³¹ some of which are also referred to in the expert reports.³²

17. Trust Fund notes that the Regulations of the Trust Fund permit it to consult during the implementation stage with experts and expert organizations in terms of both the design and implementation of any reparations awards.³³ In light of the parties and participants' submissions on the importance in this case of incorporating to the extent possible local traditions and customs, the Trust Fund is of the view that such further consultations, with the aim to strengthen the feasibility and responsiveness of the draft implementation plan, would be of significant benefit.³⁴ The Trust Fund would also request that the eventual order for reparations include language to this effect (or even an instruction if that is the Trial Chamber's preference).

²⁹ Legal Representative's Observations, para. 130; [Registry's Observations](#), para. 49; [FIDH/AMDH Amicus Observations](#), paras 56-58; [UNESCO Amicus Observations](#), para.15.

³⁰ Legal Representative's Observations, para. 131.

³¹ Legal Representative's Observations, para. 133.

³² First Expert Report, pp. 48-49; Second Expert Report, paras 87-89, 120-124.

³³ See regulations 49, 70 of the TFV Regulations.

³⁴ See for a similar position, [Registry's Observations](#), paras 62-64.

18. In light of the above factors, the Trust Fund would respectfully request that the Trial Chamber set a deadline for the submission of the draft implementation plan in this case to *at a minimum* 6 months from the date of the issuance of the order for reparations. The Trust Fund also considers that the Trial Chamber may be assisted in setting such a deadline by requesting an updated security assessment from the Registry at a moment closer to the actual expected issuance of the order. This will permit the Trial Chamber to set a realistic deadline based on up to date and relevant security information.

B. Issues relevant to certain proposed modalities or potential specific awards for reparations

19. The Trust Fund recalls its previous submissions relevant to the Trial Chamber’s finding in the context of the judgment and sentence that Mr Al Mahdi’s crimes caused “moral and economic harm”.³⁵ The Trust Fund observes that the parties and participants have put forward a diversity of views and opinions regarding the degree to which various harms are attributable to Mr Al Mahdi’s crimes and can thus form a part of an order for reparations. In line with its previously stated position regarding the Trust Fund’s role in these proceedings, the Trust Fund does not express any viewpoint on these different positions. Rather, the Trust Fund considers that its role is to inform the Trial Chamber of issues that could arise on the basis of *possible* forms of harms put forward by the parties and participants and whose reparation *could potentially* form a part of the Trial Chamber’s order.

20. Below, the Trust Fund first addresses the economic harm suffered and then addresses the moral harm.

1. The appropriate modalities to remedy the economic harm suffered

21. Regarding economic harm, the Trust Fund observes that many of the submissions address the harm suffered by the entire community of Timbuktu due to the loss of tourism following the destruction of the mausoleums.³⁶ While the Trust Fund does not take a position in relation to whether and to what extent this broader community-wide economic harm is

³⁵ [Trust Fund’s Observations](#), para. 21, referring to Judgment and Sentence, 27 September 2016, [ICC-01/12-01/15-171](#), para. 108.

³⁶ See e.g. Legal Representative’s Observations, paras 65-66; Second Expert Report, paras 80-84; [Queen’s University/Redress Trust Amicus Observations](#) para. 66.

attributable to the crimes for which Mr Al Mahdi was convicted, it does consider it important to address what would be the appropriate modalities to repair this harm, assuming it were to form a part of the order for reparations. The Trust Fund considers that it is important to carefully manage victims' expectations as to what is realistic and possible in terms of repairing harms that have been suffered, both individually and collectively, in order to avoid that expectations are raised to an unrealistic level, which can lead to confusion, anger and resentment if these expectations do not materialize into concrete realities. In this respect, the Trust Fund would respectfully request that the Trial Chamber bear in mind the inherent limitations of reparations programmes that can be undertaken by the Trust Fund (which can only operate in countries with the agreement and cooperation of the relevant state authorities), as well as the realities on the ground in northern Mali and specifically in Timbuktu, particularly the ongoing security situation.

22. The Trust Fund notes in this regard that the continued decline in tourism to Timbuktu is caused by a wide variety of factors, some of which appear to fall outside of the scope of the crimes for which Mr Al Mahdi was convicted. Put simply, the Trust Fund considers that the restoration of Timbuktu's tourism industry to where it was prior to the destruction of the mausoleums does not appear to be a realistic or achievable goal for reparations stemming from this case. In so saying, the Trust Fund does not wish to suggest that, if so instructed, it will not engage with the local and national authorities on this topic and explore possible economic tourism programmes that it could support. However, the Trust Fund would suggest that the Trial Chamber may wish to consider other, more realistic modalities of reparations to redress this harm, such as community based educational and awareness raising programmes to promote Timbuktu's unique and important cultural heritage³⁷ or "a micro-credit system that would assist the population to generate income".³⁸

23. Second, the Trust Fund notes the Registry's submission that many of the victims it engaged with expressed a preference for monetary compensation as the modality of reparations to redress the harm that they suffered.³⁹ At the same time, the Trust Fund also notes the concerns expressed that, "if financial compensation is made a central component of

³⁷ See First Expert Report, p. 43.

³⁸ [Registry's Observations](#), para. 44.

³⁹ [Registry's Observations](#), paras 41-42.

these reparations, it risks creating – in the face of poverty- an incentive for people in other towns to attack cultural heritage sites”.⁴⁰ The Trust Fund wishes to be clear that it is not arguing that financial compensation is not an appropriate modality for reparations in the circumstances of the *Al Mahdi* case. It would however suggest that the Trial Chamber should carefully consider how any financial compensation component of an order for reparations, if included, is publicized, including in terms of any Court-managed media publicity surrounding the content of the order for reparations itself.

24. In addition, the Trust Fund also submits that the inclusion of the modality of financial compensation in the order may heighten security concerns for the beneficiaries themselves. While during implementation the Trust Fund would endeavor to ensure that any financial awards were distributed in as a discreet, confidential and secure manner as possible, the reality is that the identity of beneficiaries may well be already known in the local communities where they are located. In this regard, the Trust Fund would respectfully suggest that the Trial Chamber may wish to consider including guidance or instruction to the Registry regarding the need to not overly emphasize or focus on any compensation award in its media and community interactions regarding the content of the order for reparations.

2. The appropriate modalities to remedy the moral harm suffered

25. The Trust Fund recalls the submissions regarding the physical location of the victims in this case and the fact that many victims were displaced from Timbuktu. The Trust Fund submits that the current location of victims in terms of their proximity to Timbuktu and the sites of the mausoleums is a critical factor in terms of how the moral harms suffered should and can be remedied in a meaningful manner. For example, the Trust Fund submits that different forms of commemoration may need to be developed based on where the victims are located. In this same sense, with respect to the submissions regarding ensuring the security and ongoing maintenance needs of the reconstructed mausoleums as a possible reparation in this case,⁴¹ the Trust Fund submits that the relevance and reparative value of these measures may differ for those who are physically distant from the mausoleums and who are unable, for security reasons, to return to Timbuktu. For these displaced victims, the Trust Fund considers

⁴⁰ First Expert Report, p. 47.

⁴¹ Legal Representative’s Observations, paras 118-119.

that there is a need for further consultations, in partnership with the Legal Representative and community leaders, to determine what types of reparations programmes where the victims are actually located would be most appreciated and desired by these victims.

26. Second, the Trust Fund recalls the Trial Chamber's findings in the context of Mr Al Mahdi's sentence that the crime of destroying protected cultural property was of "significant gravity", as well as the cultural importance of the destroyed sites to not only the inhabitants of Timbuktu, but also to the "people throughout Mali" and the "entire international community".⁴² The Trust Fund also notes the submissions relevant to the appropriateness of collective symbolic reparations to redress this harm and to contribute towards the non-recurrence of crimes against cultural property.⁴³ The Trust Fund therefore submits that the Trial Chamber may wish to consider the option of including, under the modality of symbolic reparations, an education and awareness raising campaign (potentially within the community of Timbuktu, nationally and internationally) regarding the fact that the destruction of cultural property is in fact an international crime and the significant economic, cultural, and moral harm that results from such crimes.⁴⁴

27. Finally, the Trust Fund recalls its previous submissions relevant to Mr Al Mahdi's possible participation in the reparations awards, including potentially in terms of issuing an apology.⁴⁵ The Trust Fund notes that several of the parties and participants have made submissions regarding a possible apology by Mr Al Mahdi and that the Defence has submitted that Mr Al Mahdi is willing to "reiterate his apologies in accordance with any process that the Chamber may see fit to establish".⁴⁶ At the same time, the Trust Fund notes that several of the other participants suggest that an apology from Mr Al Mahdi may not be acceptable to or desired by the victims of his crimes.⁴⁷ The Trust Fund considers there

⁴² [Judgment and Sentence](#), paras 77-82.

⁴³ See e.g. [Prosecutor's Observations](#), paras 1, 3, 17-18, 26.

⁴⁴ See, for an example of such a symbolic reparations programme addressing different crimes, [Trust Fund Observations](#), footnote 43, referring to *The Prosecutor v. Thomas Lubanga Dyilo*, Trust Fund, Public Redacted version of Filing regarding symbolic collective reparations projects with Confidential Annex: Draft Request for Proposals, ICC-01/04-01/06-3223-Conf, 19 September 2016, [ICC-01/04-01/06-3223-Red](#); Order approving the proposed plan of the Trust Fund for Victims in relation to symbolic collective reparations, 21 October 2016, [ICC-01/04-01/06-3251](#).

⁴⁵ [Trust Fund's Observations](#), para. 35.

⁴⁶ See [Defence Observations](#), para. 50; [Registry's Observations](#), paras 46-47; see also [Queen's University/Redress Trust Amicus Observations](#), paras 78-81.

⁴⁷ First Expert Report, pp. 41-42.

appears to be a need to further explore the suitability of an apology as a form of reparations in this case, as well as how such an apology should be structured and delivered to ensure it widest acceptance by victims. The Trust Fund respectfully suggests that this may be more properly done during community consultations that could occur post-order for reparations and before the submission of its draft implementation plan. The Trust Fund accordingly would request that the Trial Chamber consider including an apology from Mr Al Mahdi as an *option* in the order for reparations, but not necessarily already establish a specific process or procedure in the order itself. In this regard, the Trust Fund reiterates its view that the draft implementation plan would be strengthened by the Defence and the Legal Representative having the opportunity to make observations on the draft plan, including any proposal relevant to Mr Al Mahdi's personal participation in the reparations awards.

C. Issues relevant to the funding of the awards for reparations

28. With regard to the Court's jurisprudence establishing that, in the case that the convicted person is indigent at the time of the order, the Trust Fund's Board of Director's decision to complement the payment of (an) award(s) for reparations⁴⁸ does not displace the convicted person's liability for the awards,⁴⁹ the Trust Fund notes the Defence's request that, "should the situation change, the [Trust Fund] be authorized to claim reimbursement⁵⁰ [...] only within a *limited time period*" (emphasis added).⁵¹

29. The Trust Fund submits that there is nothing in the cited Appeals Chamber judgment,⁵² article 75 (4) of the Statute or regulation 117 of the Regulations of the Court that supports the Defence's arguments for the imposition of an arbitrary time limit for Mr Al Mahdi's personal

⁴⁸ See regulation 56 of the TFV Regulations.

⁴⁹ [Lubanga Reparations Appeals Judgment](#), p. 8, KEY FINDING 8; para. 115.

⁵⁰ The Trust Fund submits that the Defence's reference to the Trust Fund "claim[ing] reimbursement" is legally incorrect and not in line with the applicable framework relevant to reparations or seized assets generally. In this regard, the Trust Fund notes that it is the Presidency that has monitoring and enforcement authority over order for reparations against a convicted person, as well as the disbursement of seized assets in this regard, not the Trust Fund. See in this regard [Trust Fund's Observations in the Bemba case](#), paras 138-139.

⁵¹ [Defence Observations](#), para. 41 (d), p. 23.

⁵² See [Defence Observations](#), para. 41 (d), which is footnoted to paragraph 74 of the [Lubanga Reparations Appeals Judgment](#). Paragraph 74 provides in full that: "The Appeals Chamber also finds that this interpretation is reinforced by the equally authoritative French version of article 75 (2) of the Statute, in which "through the Trust Fund" reads as "par l'intermédiaire du Fonds", suggesting that the Trust Fund is an intermediary, but does not replace the convicted person." The Trust Fund respectfully submits that this paragraph does not provide support for the Defence's proposition.

liability for the reparations ordered against him. Indeed, regulation 117 provides in relevant part that the convicted person's monetary situation be monitored by the Presidency for purposes of the enforcement of an order for reparations "*even following completion of a sentence of imprisonment*" (emphasis added). Accordingly, the Trust Fund would respectfully request that the eventual order for reparations not include the requested limitation. In the case that the Trial Chamber considers that there should be a temporal limit to Mr Al Mahdi's liability; the Trust Fund would request that it and the other parties and participants be given the opportunity to make further submissions specifically on this point before any determination in this regard is made by the Trial Chamber. This is needed particularly in light of the fact that the Trust Fund does not have access to relevant information regarding Mr Al Mahdi's current and potential financial situation that would permit it to make informed submissions on this matter at this time.

30. Furthermore, the Trust Fund would point out to the Trial Chamber, by incorporating its submissions made in a different case, the fact the amount of Mr Al Mahdi's eventual liability for reparations cannot be assumed to be automatically equal to the amount of funds that the Trust Fund's Board of Directors may decide to put forward under its regulation 56 complement authority,⁵³ as well as its submissions relevant to the fact that, in the case assets were later seized, these would first "go towards funding any awards for which financing was not initially available and not to reimbursing the Court for the Trust Fund's complement".⁵⁴

D. Issues relevant to the Trust Fund's activities under its assistance mandate

31. Finally, the Trust Fund notes that many of the submissions, particularly the *amicus curiae* filings, make reference to the Trust Fund's assistance mandate with respect to the other serious harms suffered by individuals in Timbuktu during the occupation. While these submissions acknowledge that these harms fall outside of the scope of the *Al Mahdi* case and do not suggest that they would form a part of the reparations ordered in this case, they nonetheless request that the Trust Fund be encouraged to consider separately undertaking activities under its assistance mandate to address these harms.

⁵³ See [Trust Fund's Observations in the Bemba case](#), paras 136-139.

⁵⁴ [Trust Fund's Observations in the Bemba case](#), paras 138-139.

32. The Trust Fund wishes to underline that it is fully cognizant of the immense harms suffered during the occupation of Timbuktu, as well as the fact that the majority of these harms have gone unaddressed. Further, the Trust Fund has taken careful note of all of the submissions that address the wider victim harm relevant to the situation in northern Mali. While the Trust Fund does not currently have any assistance activities in Mali or the budgetary resources to expand its assistance mandate into the Mali situation, it is actively exploring fundraising opportunities with its current and potential donors and, should it be in a financial position to do so, would indeed give careful consideration to expanding its assistance activities into the country.

33. The Trust Fund will continue to engage with the Malian civil society, victims' advocacy groups, the Malian government, and any other interested parties and would encourage all those who made submissions in this regard to continue to communicate directly with Trust Fund, as well as equally to the donor community, regarding the situation of victims of crimes under the jurisdiction of the Court in the Mali situation.

E. The potential cooperation of the government of Mali in the reparations proceedings

34. Finally, the Trust Fund recalls the holdings of the Trial Chamber of the *Katanga* reparations proceedings that Court-ordered reparations do not exonerate a state from its separate obligations, under domestic law or international treaties, to provide reparations to its citizens, as well as its obligations under the Statute to cooperate with the Court, including with regard to the implementation of reparations.⁵⁵ The Trust Fund suggests that the Trial Chamber may wish to include similar language in its order for reparations. In this regard, the Trust Fund submits that the Government of Mali's participation in the present reparations proceedings could potentially include: (i) raising awareness (locally, nationally, and internationally) that destruction of cultural property is a crime that results in significant moral, cultural and economic harm; and (ii) to promote and invest in the rehabilitation of the tourism industry of Timbuktu, as well as to raise funds for this internationally. In this respect, the Trust Fund's Board of Directors and Secretariat are committed, pursuant to regulation 53 of the TFV Regulations and in cooperation with the Court, to engage in joint advocacy with

⁵⁵ See [Katanga Order for Reparations](#), paras 323-325.

the Government and relevant international organizations, such as UNESCO, in any such undertakings.

IV. **Conclusion**

35. The Trust Fund reiterates its appreciation for the opportunity to make final submissions in the present reparations proceedings and hereby submits those observations. The Trust Fund also wishes to express its willingness and availability to respond to any queries or to address any other matters should the Trial Chamber consider that would be of assistance to it.

FOR THE FOREGOING REASONS

The Board of Directors respectfully submits its final submissions on the reparations proceedings in the Al-Mahdi case.



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

Dated this 16 June 2017

At The Hague, The Netherlands