

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/12-01/15**
Date: **21 September 2017**

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR *v.* AHMAD AL FAQI AL MAHDI**

**Confidential
Corrigendum
With one explanatory annex**

**NOTICE OF APPEAL
*"In part and limited"***

**Against the Reparations Order of 17 August 2017 (ICC-01/12-01/15-236) issued
in accordance with article 75 of the Statute; *limited to paragraphs 81, 83 and 146
setting one of the criteria for screening victims eligible for reparations***

Source: Legal Representative of Victims, Mr Mayombo Kassongo

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Mr Mohamed Aouini

Legal Representatives of Victims

Mr Mayombo Kassongo

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for
the Defence**

States' Representatives

The competent authorities of
the Republic of Mali

Amici Curiae

Belfast Human Rights Centre

Redress Trust

FIDH

AMDH

UNESCO

REGISTRY

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Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verril

Detention Section

**Victims Participation and Reparations
Section**

Ms Isabelle Guibal

Other

Trust Fund for Victims

I. I. Procedural History:

- II. On 17 August 2017, Trial Chamber VII ("Chamber") ordered reparations for the harm alleged by the 139 victims in their reparations applications.
- III. Well before the Order for Reparations¹ (issued on 17 August 2017), the Chamber received from the Legal Representative all applications for reparations in his possession: in total, one hundred and thirty-nine (139) victims applying for reparations ("Applicants").
- IV. In the light of the deadline set for the parties and participants in the reparations phase,² the Legal Representative had to file all victims' applications in his possession before any deliberations on the merits of reparations. These were the same applications submitted to the Victims and Witnesses Unit for redactions.³
- V. Since 17 August 2017, the Trust Fund for Victims ("TFV") has been granted the administrative authority to screen reparations applications and assess the applicants' eligibility. The Legal Representative met with the TFV to set a calendar for collaboration on reparations projects. It was during this working meeting that the question was discussed of the criterion used in the administrative screening of reparations applications for consequential economic loss, and, in particular, the link between the Protected Buildings and the consequential economic losses for which individual reparations are claimed.⁴

¹ ICC-01/12-01/15-236.

² Reparations Calendar, ICC-01/12-01/15-172.

³ Minutes from meeting with VWU.

⁴ Minutes from meeting with the TFV.

VI. **II. Notice of Appeal**

- VII. The Legal Representative hereby files his Notice of Appeal, limited to: paragraph 81, concerning awards for “*individual reparations for consequential economic loss only to those whose livelihoods exclusively depended upon the Protected Buildings*”; paragraph 83, to the extent that it requires an exclusive link for “*individual reparations for those whose livelihoods exclusively depended upon the Protected Buildings [...]*”; and paragraph 146 insofar as it confirms “*the administrative role of the TFV in the screening*” of victims applying for individual reparations. The purpose of the present Notice of Appeal is also to respectfully request the Chamber to maintain a high degree of confidentiality for all reparations applications.
- VIII. That said, the Legal Representative will provide further detail in his brief in support of a partial appeal, limited to the above-mentioned paragraphs of the Reparations Order, addressing the principle of administrative screening by the TFV.
- IX. As the Chamber is well aware, the thirty-day (30-day) deadline for filing a notice of appeal with the Registry has not yet passed. In initiating this Appeal “in part and limited” the Legal Representative relies on article 82(4) of the Rome Statute and rule 150(1), (2) and (3) of the Rules of Procedure and Evidence – together with regulation 57(a), (b), (c) and (d) of the Regulations of the Court – according to which it is possible to appeal against part of an order for reparations issued under article 75 of the Rome Statute.
- X. The Legal Representative respectfully submits to the Appeals Chamber not only all principles and solutions contained in *Order No. ICC-01/12-01/15, issued on 17 August 2017* by Trial Chamber VIII, but only on the principle of administrative screening or the screening criterion for victims applying for individual reparations for consequential economic harm following

the destruction of the Protected Buildings, i.e. paragraphs 81, 83 and 146 of the Reparations Order.

- XI. According to regulation 57 of the Regulations of the Court, a notice filed by the appellant must contain: (a) the name and number of the case; (b) the date of the decision of conviction or acquittal, sentence or reparation order appealed against; (c) whether the appeal is directed against the whole decision or part thereof; and (d) the relief sought. This will be the case with the appeal brief, which will be submitted in due course.
- XII. In his forthcoming brief, the Legal Representative will provide further details on the Reparations Order that is partially and in part the focus of the present Appeal; namely paragraphs 81, 83 and 146 concerning the criteria for an initial screening in the administrative procedure concerning individual reparations for consequential economic loss.
- XIII. As such, the Legal Representative wishes to respectfully notify to the Appeals Chamber its Notice of Appeal – “in part and limited” – against the paragraphs in the Reparations Order concerning the screening of applications for individual reparations for consequential economic harm. This is done following Trial Chamber VIII’s Order of 17 August 2017 in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, reference no. ICC-01/12-01/15, ordering Mr Al Mahdi Al Faqi to pay reparations.
- XIV. The Legal Representative will submit a brief in support of the present Appeal in due course and respectfully requests the Appeals Chamber to grant him the opportunity to argue the views and concerns of those victims due to undergo administrative screening by the TFV in accordance with the Order.
- XV. The Legal Representative, therefore, respectfully requests the [Appeals] Chamber not to grant suspensive effect to its Appeal “in part and limited”, so

that the reparations envisaged together with the TFV can take their normal course.

- XVI. In no way is it the Legal Representative's intention to request that the Appeal have suspensive effect – or to have such a request granted under article 82(3) of the Statute – as that could risk jeopardizing all of the measures set forth by Trial Chamber VIII in the Reparations Order.
- XVII. Lastly, granting suspensive effect to the present Appeal would halt the reparations proceedings under way and would risk frustrating all victims, whose interest it is to obtain satisfaction.
- XVIII. The screening envisaged in the Order allows the TFV to make screening decisions on the basis of an assessment of the evidence provided by the victims. However, although the TFV may be able to assess the evidence provided in support of the reparations applications, as regards the screening there nonetheless remain uncertainties about the specific criterion for the definition "*of the exclusive link between the Protected Buildings and the economic losses*".
- XIX. An early-stage screening of financial losses in direct relation or closely linked to the mausoleums or Protected Buildings runs the risk of ultimately excluding families whose work relates to the buildings, descendants of the Saints and those who work informally for the proper functioning of the mausoleums.
- XX. Aside from this ground of appeal, which challenges the above-mentioned paragraphs (i.e. 83 and 146) of the Order, the Legal Representative does not wish to advance any additional arguments other than the preservation of the utmost degree of confidentiality.
- XXI. He also requests of the Chamber that his collaboration with the TFV on seeking reparations for all the victims be ongoing.

XXII. The Legal Representative intends to limit himself to this two-pronged approach, relating to the *“exclusive link between the economic losses and the Protected Buildings”* for all individual reparations: in view of the risk of again victimizing the applicants for exclusively individual reparations.⁵

XXIII. For the reasons to be set out in his appeal brief, the Legal Representative will be requesting an amendment of part of the Order only; accordingly he intends to argue before the Chamber the *“in part and limited”* aspect of this Appeal against the Reparations Order.

XXIV. III. Preservation of the utmost degree of confidentiality

XXV. *In accordance with regulation 23 bis* of the Regulations of the Court and taking into account the high degree of insecurity that persists in Timbuktu, it is prudent to keep the present document confidential, and future redactions should not be ruled out, should it be made public.

XXVI. This level of confidentiality is to be maintained, not only for the 139 reparations applications transmitted, but also for all other future applications.

XXVII. The Legal Representative intends to request not only confidentiality for the victims' reparations applications but, more importantly, significant redactions of the confidential information contained in them.

XXVIII. The Legal Representative emphasizes the ongoing climate of insecurity in the Timbuktu region, where there are regular attacks on the civilian population, adding that there is good reason to believe security would be jeopardized were the identity of the reparations beneficiaries to be disclosed.

⁵ ICC-01/12-01/15-236.

For these reasons, may it please the Appeals Chamber to declare the present Notice of Appeal admissible and to grant the motion, on the basis of regulation 57 of the Regulations of the Court.

Respectfully submitted,

Without prejudice,

[signed]

The Legal Representative of Victims

Mr Mayombo Kassongo

Dated this 21 September 2017

At The Hague, Netherlands