

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **29 November 2017**

THE APPEALS CHAMBER

Before:

**Judge Silvia Fernández de Gurmendi
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmanski**

SITUATION IN THE REPUBLIC OF MALI

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

Public Document

Observations on the Appeal Brief of the Legal Representative for Victims

Source:

The Trust Fund for Victims

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

Legal Representative of Victims

Mr Mayombo Kassongo

Counsel for the Defence

Mr Mohamed Aouini

REGISTRY

Registrar

Mr Herman von Hebel

Background

1. On 27 September 2016, Mr. Ahmad Al Faqi Al Mahdi subsequent to an admission of guilt was convicted as a co-perpetrator of war crimes in attacking protected objects under Articles 8(2)(e)(iv) and 25(3)(a) of the Rome Statute. Mr. Al Mahdi was sentenced to nine years imprisonment.¹
2. On 17 August 2017, the Trial Chamber issued a reparations order in the *Al Mahdi* case and instructed the Trust Fund for Victims (hereinafter “Trust Fund”) to develop and submit a draft implementation plan for reparations by 16 February 2018.²
3. On 17 October 2017, the Legal Representative for Victims (hereinafter “LRV”) submitted his appeal brief to the reparations order (hereinafter “Appeal Brief”).³
4. The Appeals Chamber on 7 November 2017 invited the Trust Fund to submit observations on the Appeals Brief of the LRV by 24 November 2017,⁴ which was subsequently extended to 29 November 2017.⁵
5. The Trust Fund hereby submits its observations.

Preliminary remarks

6. The Trust Fund recalls that its role in judicial proceedings is not to comment on issues that are for the parties. The Trust Fund further recalls that its role in judicial proceedings is to comment on issues pertaining to an interpretation of the Regulations of the Trust Fund for Victims (hereinafter “RTFV”), or that have an impact on the implementation stage of reparations. Therefore, the Trust Fund will only make a brief submission on the grounds of appeal, given that it is an administrative organ of the Rome Statute through which the chamber may order the implementation of orders for reparation.

¹ Judgment and Sentence, [ICC-01/12-01/15-171](#).

² Reparations Order, [ICC-01/12-01/15-236](#).

³ Brief in support of the Appeal (in part and limited) ICC-01/12-01/15-242-Conf-Exp-Corr filed against the Reparations Order of 17 August 2017 (ICC-01/12-01/15-236) issued by Trial Chamber VIII. [ICC-01/12-01/15-244-ENG](#).

⁴ Directions on the conduct of the appeal proceedings, [ICC-01/12-01/15-246](#).

⁵ Decision on the Trust Fund for Victims’ request for time extension, [ICC-01/12-01/15-249](#).

7. The LRV is seeking to appeal in part the Reparations Order by questioning the role of the Trust Fund in awarding individual reparations to victims. The LRV claims that the Trial Chamber erred in regards to regulations 59 (*Cases where the Court identifies each beneficiary*) and 60 (*Cases where the Court does not identify the beneficiary*) of the RTFV. Of the 139 reparation applications received in relation to the Rule 94 mechanism, the LRV submits that whether they are eligible for individual reparations in response to their economic loss should be determined by the Trial Chamber.
8. The LRV makes an additional argument in this regard that in the reparations order the Trust Fund was improperly given “adjudicative” powers, reserved to the Chambers, to determine the eligibility of victim applicants for individual awards due to the exclusive dependency of their livelihood on the Protected Buildings.

Trust Fund observations

9. The Trust Fund regulations are clear that the Trust Fund can determine the eligibility of reparations beneficiaries when not identified by the Trial Chamber.⁶
10. However, the Trust Fund understands the LRV to challenge the notion that those individuals who filed reparation applications can be brought under the RTFV. Rather, the LRV argues that the Trial Chamber should have decided on the merits of the 139 applications.
11. In this respect, the Trust Fund recalls the scheduling order that permitted the submission of Rule 94 applications, including the language of “without prejudice to whether or how these applications will be ultimately considered by the Chamber”.⁷
12. The Trust Fund recalls that this issue was specifically addressed by the Appeals Chamber in *The Prosecutor v. Thomas Lubanga Dyllo*, but because that case did not concern individual awards, the question was not answered in full by the Appeals Chamber in that case.
13. The Trust Fund also recalls the Trial Chamber holding in its reparations order for this case that it is not required to rule on the 139 Rule 94 applications and that all these applications

⁶ [Regulations of the Trust Fund for Victims](#) 60-68

⁷ Reparations Phase Calendar, [ICC-01/12-01/15-172](#), para 2.(iv)

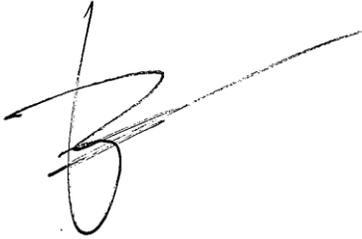
fall under the unidentified victim provisions of the Regulations of the Trust Fund, specifically Regulations 60-68.⁸

14. In essence, the present situation is one of “mixed” categories of victims. Some of the potential beneficiaries arguably are known to the Court, given they filed applications. Others still need to be identified, which the Trust Fund can carry out per Regulations 60-68. Whether the 139 applicants can be treated as unidentified, as opposed to as decided upon by the Trial Chamber in its order for reparations, is an open legal question.
15. The Trust Fund is of the view that this question cannot be answered solely by recourse to the Regulations of the Trust Fund. Therefore the Trust Fund considers that it is not appropriate for it to have a position on this legal question that extends beyond the purview of the RTFV.
16. The Trust Fund will faithfully implement a Trial Chamber order for reparations, whether it involves already identified beneficiaries as in the instance of *The Prosecutor v. Germain Katanga*, or unidentified beneficiaries.
17. The Trust Fund considers that this question has ramifications beyond this case and is a matter of fundamental importance in terms of providing clarity for victims and their legal representatives regarding the legal framework for reparations, as well as for the Trial Chamber regarding how to best conduct pre-order proceedings.
18. The Trust Fund notes regulation 81 of the Regulations of the Court, as amended, provides that the Office of Public Council to Victims (hereinafter “OPCV”) may be invited to file observations.
19. The Trust Fund considers that it may be appropriate to solicit the views of the OPCV, in its institutional capacity and not as a legal representative in a particular case, on this important legal question.

⁸ Reparations Order, paras 59, 143, 146.(iv)., [ICC-01/12-01/15-236](#).

FOR THE FOREGOING REASONS

The Trust Fund for Victims respectfully submits these observations on the LRV Appeals Brief.

A handwritten signature in black ink, consisting of a stylized 'P' and 'W' followed by a long horizontal line extending to the right.

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 29 November 2017

At The Hague, The Netherlands