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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***

Public redacted version

Decision on the Updated Implementation Plan from the Trust Fund for Victims

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TRIAL CHAMBER VIII ('Chamber') of the International Criminal Court hereby issues its 'Decision on the Updated Implementation Plan from the Trust Fund for Victims' in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 75 and 79 of the Rome Statute and Regulations 57-58 of the Regulations of the Trust Fund for Victims ('TFV Regulations').

I. Procedural background

1. On 27 September 2016, following an admission of guilt, the Chamber convicted Mr Al Mahdi of the war crime of attacking ten protected objects ('Protected Buildings') in Timbuktu, Mali.¹
2. On 17 August 2017, the Chamber issued its order for reparations ('Reparations Order'), in which it determined that the crime committed by Mr Al Mahdi had caused physical damage to the Protected Buildings, as well as economic harm and moral harm, and set his total liability at 2.7 million euros.² The Chamber primarily awarded collective reparations, but individual reparations were accorded to certain victims.³ The Chamber also ordered some symbolic reparations measures, including the award of one euro to the Malian State and United Nations Educational, Scientific and Cultural Organization ('UNESCO'), respectively.⁴
3. The Chamber encouraged the Trust Fund for Victims ('TFV') to complement the award made against Mr Al Mahdi and directed it to submit a draft plan for the implementation of the reparations.⁵

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

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

³ Reparations Order, [ICC-01/12-01/15-236](#), paras 67, 76-83, 90.

⁴ Reparations Order, [ICC-01/12-01/15-236](#), paras 71, 90, 106-07.

⁵ Reparations Order, [ICC-01/12-01/15-236](#), paras 136.

4. On 8 March 2018, following an appeal by the LRV, the Appeals Chamber amended the Reparations Order in two respects related to the administrative screening which the Trial Chamber had ordered for individual reparations applications.⁶ The Reparations Order was otherwise confirmed.
5. On 13 July 2018, the Chamber approved the TFV's draft implementation plan, subject to amendments and further directions ('DIP Decision').⁷ In that decision, the Chamber ordered the TFV to file an updated implementation plan ('UIP') setting out all the selected projects and other required information.⁸ The Chamber also directed the TFV to file monthly status reports and ordered the Victims Participation and Reparations Section of the Registry to start reviewing applications for individual reparations.⁹
6. On 2 November 2018, the TFV filed the UIP.¹⁰
7. On 8 January 2019, at the invitation of the Chamber and after being granted an extension of time,¹¹ the Government of the Republic of Mali ('Malian Authorities') filed its observations on the UIP.¹²
8. On 15 January 2019, the Legal Representative of Victims ('LRV')¹³ and Defence for Mr Al Mahdi ('Defence')¹⁴ filed their responses to the UIP.

⁶ Public redacted Judgment on the appeal of the victims against the "Reparations Order", 8 March 2018, [ICC-01/12-01/15-259-Red2](#), A ('*Al Mahdi* AJ').

⁷ 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](#) (notified 13 July 2018).

⁸ DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 21, 71-75, 78-81, 99-105, 110, p. 37.

⁹ DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 22, 31, p. 37.

¹⁰ Public redacted version of "Updated Implementation Plan", submitted on 2 November 2018, ICC-01/12-01/15-291-Conf-Exp, [ICC-01/12-01/15-291-Red2](#) (with three annexes; public redacted version notified 22 November 2018).

¹¹ Decision on Malian Authorities' Request for Extension of Time to Submit Observations on the Updated Implementation Plan, 30 November 2018, [ICC-01/12-01/15-303](#) (also granting the parties an extension of time to 15 January 2019 in which to respond to the UIP); Decision inviting Malian authorities to submit observations on the Trust Fund for Victims' Updated Implementation Plan, 5 November 2018, [ICC-01/12-01/15-293](#).

¹² Annex to the Transmission of Observations from the Malian Authorities on the Updated Implementation Plan, ICC-01/12-01/15-312-Conf-Anx-tENG ('Malian Observations').

II. Overview

A. Relief sought by the parties and participants

9. The UIP generally envisages a three-year time frame for the implementation of the individual, collective and symbolic reparations.¹⁵ The TFV proposes a breakdown of the allocation of the full 2.7 million euro award (redacted from the public version of the UIP).¹⁶
10. The TFV requests that the Chamber: (i) approve the UIP; (ii) allow it to submit its status reports every three months; and (iii) invite the Malian Authorities to submit observations.¹⁷ As the third request has been granted, only the relief sought at points (i) and (ii) will be considered in the present decision.
11. The Malian Authorities express their appreciation for the quality of the UIP, commenting only on a limited number of points.¹⁸
12. The LRV requests the Chamber to approve the UIP in accordance with the proposals he makes.¹⁹
13. The Defence commends the TFV for its efforts, welcomes the Malian Authorities' readiness to cooperate, expresses its gratitude to those States who

¹³ Observations of the Legal Representative of Victims on the Updated Reparations Implementation Plan Submitted by the Trust Fund for Victims, ICC-01/12-01/15-315-Conf-tENG (translation notified on 5 February 2019) ('LRV Observations').

¹⁴ Final Submissions of the Defence on the Reparations Implementation Plan (ICC 01/12-01/15-291-Conf) and Mali's Observations (ICC-01/12-01/15-312-Conf-Anx), ICC-01/12-01/15-316-Conf-tENG (translation notified on 5 February 2019) ('Defence Observations'). The Defence received a short extension of time to file its observations several hours after the 16:00 filing deadline. Email from Trial Chamber VIII, 21 January 2019 at 15:14.

¹⁵ UIP, [ICC-01/12-01/15-291-Red2](#), para. 175.

¹⁶ UIP, ICC-01/12-01/15-291-Conf-Red, para. 176; ICC-01/12-01/15-291-Conf-Anx3.

¹⁷ UIP, [ICC-01/12-01/15-291-Red2](#), p. 44.

¹⁸ Malian Observations, ICC-01/12-01/15-312-Conf-Anx-tENG, pp. 2-4.

¹⁹ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, p. 30.

have made donations for the implementation of the reparations, and makes limited suggestions on specific points.²⁰

B. Scope of the present decision

14. The Chamber sees the reparations proceedings in terms of three core judicial decisions:²¹ the Reparations Order; the DIP Decision approving the TFV's draft implementation plan; and the present decision, whereby the Chamber will approve the selected projects identified in the UIP. After the present decision, the Chamber regards its role in the implementation of the reparations as limited to considering the TFV's periodic reports, reviewing any decisions by the TFV to reject applications for individual reparations during the administrative screening, and resolving any exceptional matters unrelated to the reparations.²² That said, the Chamber will retain oversight over the entire process for the implementation of the Reparations Order²³ and will invite submissions or intervene *proprio motu* whenever warranted.
15. At the outset, the Chamber considers it necessary to lay down the level of detail for a proposed measure to be approved as a 'selected project'. The statutory regime of the Court says nothing in this regard and the TFV Regulations envisage only that the relevant Chamber approves the draft implementation plan (the present Chamber did so in the DIP Decision).²⁴ The present inquiry is thus an extra layer of scrutiny the Chamber has elected to add as part of its oversight during the implementation phase.

²⁰ Defence Observations, ICC-01/12-01/15-316-Conf-tENG, paras 19, 23-41.

²¹ Reparations Order, [ICC-01/12-01/15-236](#), para. 136.

²² One such matter is to ensure the publicity of the case record, and a decision on this will be rendered in the near future.

²³ See *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), para. 68.

²⁴ Regulation 57 of the TFV Regulations ('[t]he Trust Fund shall submit to the relevant Chamber, via the Registrar, the draft implementation plan for approval and shall consult the relevant Chamber, as appropriate, on any questions that arise in connection with the implementation of the award.'). See also Regulation 69 of the TFV Regulations (in the specific context of collective reparations).

16. The Chamber considers that for a proposed measure to be approved as a selected project, the measure must:
- (i) fall within the scope of the Chamber's prior rulings – it must be consonant with the Reparations Order and all previous directions of the Chamber.
 - (ii) be justified – its purpose, manner of execution and intended outcome must be stated with sufficient clarity.
 - (iii) put forward a reasonable time frame for its execution.
 - (iv) be proportionate, in that the estimated costs for the measure must be commensurate with the estimated benefits. An assessment of proportionality includes consideration of the monetary estimates stated for the measure, the number of persons to be assisted and/or the sites involved.
17. These criteria make clear that the Chamber only will render an *overall* decision to approve, modify or reject proposed measures. Each proposed measure will subsequently entail a series of further consultations and modalities in order to ensure its execution. The Chamber will not seek to regulate all aspects of the proposed measures, nor will it specify the exact funds required to ensure their proper implementation. Likewise, the Chamber generally will not address suggestions from the other parties and participants which agree with sufficiently explained proposals. It will, in its view, be for the TFV to take such suggestions into account in the course of implementation.²⁵

²⁵ *E.g.* Malian Observations, ICC-01/12-01/15-312-Conf-Anx-tENG, p. 3 (opting for the use of solar panels to improve the lighting around the Protected Buildings); UIP, [ICC-01/12-01/15-291-Red2](#), para. 101 ('The Trust Fund's enquiries have shown that solar panels can be installed, leading to the self-sustainability of the project'). The same applies to unspecific submissions which do not offer any clear alternative proposals and which, for example, seek to move the Chamber to place greater emphasis on certain components of the UIP. *E.g.* Defence Observations, ICC-01/12-01/15-316-Conf-tENG, para. 28 ('As to the youth component, which Mr Al Mahdi holds dear, the Defence notes that the Trust Fund's draft plan caters for it to some extent [...] but does not really dwell on the matter. The Defence hopes that it will be different in practice').

18. This approach delegates authority to the TFV to facilitate the reallocation of funds in light of evolving circumstances.²⁶ It also makes implementation more flexible so that the TFV may have a continuing dialogue with all concerned within the scope of the selected projects approved by the Chamber.
19. The Chamber sets out its reasoning below in accordance with the structure of the UIP and thus assesses the TFV's proposals on: (i) individual reparations; (ii) collective reparations; (iii) symbolic reparations; and (iv) other matters. The specific points raised by the parties²⁷ and the Malian Authorities are addressed under the relevant sub-sections.
20. In relation to each of these parts of the UIP, the Chamber will summarise the determinations made to date, describe the proposals made by the TFV in the UIP, and assess the proposals (resolving, if need be, challenges thereto from the other parties and participants). In view of the fragile security situation in Mali and the need to minimise the risk to victims who participate in the reparations programme,²⁸ the Chamber has used redactions in some places.
21. As regards time frames, the TFV provides a variety of estimates for its proposed measures. The Chamber understands that the time frames start to run as of approval of the UIP, that is, as of notification of the present decision. Should the TFV consider that a particular time frame requires an extension which falls within the general three year time frame, it is not necessary to apply to the Chamber to that end unless otherwise ordered. Extensions of time beyond that general time frame must be granted by the Chamber, unless the

²⁶ *In agreement with* LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 39.

²⁷ For the purposes of reparations proceedings, the 'parties' are understood to be the Defence and Legal Representatives of Victims.

²⁸ Annex I to the UIP, ICC-01/12-01/15-291-Conf-Exp-Red. It is noted that the LRV requests access to this document. LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 23. As the LRV was notified of the confidential redacted version of this report on 18 January 2019, the request need not be considered.

measure in question is a service-based measure that the TFV wishes to keep available to the victims for longer.

22. Lastly, before presenting its assessment, the Chamber must recall that in the proceedings which preceded the DIP Decision it had frequent occasion to admonish the TFV for lack of diligence.²⁹ The Chamber wishes to take this opportunity to commend the TFV for what is by all accounts a marked improvement in the UIP. The proposals are described in considerable detail,³⁰ the relevant figures are explained and the document was submitted on time. The TFV's efforts exemplify the high standard expected of them going forward.

III. Individual reparations

A. Determinations made to date

23. The Chamber has awarded individual reparations to those who suffered more acute and exceptional harm relative to the rest of the Timbuktu community.³¹ For consequential economic loss suffered, individual reparations were awarded to those whose livelihoods exclusively depended upon the Protected Buildings. For moral harm suffered, such reparations were awarded to those whose ancestors' burial sites were damaged in the attack.³²
24. The Chamber has ordered that the TFV undertake administrative screening to determine eligibility for the individual reparations.³³ The DIP Decision specifies the *modus operandi* for that screening, including the procedural deadlines and

²⁹ DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 9-17; Public redacted version of 'Decision on Second Trust Fund for Victims' Request for Extension of Time', 5 April 2018, [ICC-01/12-01/15-261-Red](#), paras 8-9.

³⁰ As just one of many examples, the TFV describes its proposal for a living hedge around the Protected Buildings with reference to the precise species of trees to be planted. UIP, [ICC-01/12-01/15-291-Red2](#), para. 97 ('*prosopis juliflora*, *calotropis procera*, cram-cram and moringa').

³¹ Reparations Order, [ICC-01/12-01/15-236](#), paras 78-81, 89.

³² Reparations Order, [ICC-01/12-01/15-236](#), para. 104(ii)-(iii).

³³ Reparations Order, [ICC-01/12-01/15-236](#), para. 144.

the respective roles of the TFV, the parties and the Registry.³⁴ Applicants for reparations whose applications were entered in the case record as of the Reparations Order need not reapply, but future applicants must use a new application form approved by the Chamber.³⁵ The Chamber permitted the Defence to file submissions on the individual applicants in the course of the screening, but - by virtue of an Appeals Chamber amendment to the Reparations Order - the Defence has no entitlement to know the identity of those seeking individual reparations from Mr Al Mahdi.³⁶

25. There is no review mechanism whereby the Defence can seek review of a decision to find a victim eligible during screening.³⁷ The Reparations Order did not specify what happens when a person is found to be ineligible, but a second Appeals Chamber amendment to the Reparations Order requires that victims declared ineligible during screening are entitled to contest such a decision.³⁸ The DIP Decision specifies the procedure for so doing.³⁹
26. The Chamber has directed the TFV to provide in the UIP a sufficiently justified proposal for the amount of compensation to be awarded to the individual victims.⁴⁰ The Chamber has stressed that the individual awards should provide real, rather than symbolic compensation.⁴¹ The Chamber gave some guidance on the time frame for identifying new applicants, but in the DIP Decision did not address the setting of a deadline for applications.⁴²

³⁴ DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 35-46.

³⁵ DIP Decision, [ICC-01/12-01/15-273-Red](#), para. 31; Decision on TFV Submission of Draft Application Form, 21 November 2018, [ICC-01/12-01/15-301](#) (approving the new form).

³⁶ *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 80-95, 99, *amending* Reparations Order, [ICC-01/12-01/15-236](#), para. 146(iv).

³⁷ Reparations Order, [ICC-01/12-01/15-236](#), para. 146(v).

³⁸ *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 66-72, 98.

³⁹ DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 47-48.

⁴⁰ DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 71-75.

⁴¹ DIP Decision, [ICC-01/12-01/15-273-Conf](#), paras 72-73.

⁴² DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 33-34 (and para. 32 in the confidential version).

B. UIP Proposals

27. The submissions on individual reparations as set out by the TFV in the UIP develop the framework for the process ordered by the Chamber for the screening of individual applications for reparations.
28. In one sub-section, almost entirely redacted from the public, the TFV proposes procedures and deadlines regarding the identification of new applicants.⁴³ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
29. [REDACTED]. [REDACTED].⁴⁴
30. Regarding the TFV's interpretation of the Chamber's requirements as to how eligibility is to be determined during the administrative screening, the TFV refers to one of its earlier submissions which sets out how it intends to proceed.⁴⁵
31. As to the size of the individual compensation awards, the TFV gives revised amounts and explains how it arrived at them. For moral harm, the TFV arrives at an individual award of [REDACTED] on the basis of, *inter alia*, information from the field and Malian law governing fines for altering or destroying national cultural heritage (specifically, the Malian Cultural Heritage Act).⁴⁶ For economic harm, the TFV arrives at individual awards ranging from [REDACTED].⁴⁷ The economic harm figures are based on, *inter alia*, information

⁴³ UIP, ICC-01/12-01/15-291-Conf-Red, paras 32-41.

⁴⁴ [REDACTED].

⁴⁵ UIP, [ICC-01/12-01/15-291-Red2](#), paras 41, 57, *in reference to* Public redacted version of "Trust Fund for Victims' submission of draft application form" ICC-01/12-01/15-289-Conf submitted on 26 October 2018, 30 October 2018, [ICC-01/12-01/15-289-Red](#), paras 18-26, 32-43.

⁴⁶ UIP, ICC-01/12-01/15-291-Conf-Red, paras 43-56, *referencing* Republic of Mali, [Loi n°10-061](#) du 30 décembre 2010 portant modification de la Loi n°85-40/AN-RM du 26 juillet 1985 relative à la protection et à la promotion du patrimoine culturel national, 30 December 2010.

⁴⁷ UIP, ICC-01/12-01/15-291-Conf-Red, para. 75.

on salaries in Mali, and the cost of living in Timbuktu (taking into account the average Malian household size).⁴⁸

C. Assessment

32. The only potential ‘selected project’ which the TFV puts forward for individual reparations is the procedure for screening applications for individual reparations. As much of the process governing the implementation of the individual reparations was prescribed in previous decisions, the Chamber will focus on only a few discrete points in its assessment. Unless otherwise stated below, the Chamber considers that the screening procedure specified in the UIP meets the four criteria enumerated at paragraph 16 above, namely that the procedure (i) falls within the scope of the Chamber’s prior rulings; (ii) is justified; (iii) puts forward a reasonable time frame for its execution; and (iv) is proportionate.

1. *Identification of new applicants (deadline for applications)*

33. [REDACTED]. [REDACTED]. [REDACTED].

34. [REDACTED].⁴⁹ [REDACTED].⁵⁰ [REDACTED].⁵¹

35. [REDACTED]. [REDACTED].⁵² [REDACTED].

36. [REDACTED]. [REDACTED]. [REDACTED].⁵³ [REDACTED].

⁴⁸ UIP, ICC-01/12-01/15-291-Conf-Red, paras 59-75.

⁴⁹ UIP, ICC-01/12-01/15-291-Conf-Red, para. 40.

⁵⁰ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 27 (citation removed).

⁵¹ UIP, ICC-01/12-01/15-291-Conf-Red, para. 39.

⁵² UIP, ICC-01/12-01/15-291-Conf-Red, para. 40.

⁵³ [REDACTED].

2. *Criteria for the assessment of the 'exclusive link' and 'direct descendant' requirements*

37. The Chamber notes the TFV's proposed interpretations of the Chamber's 'exclusive link' requirement (for economic harm) and 'direct descendant' requirement (for moral harm).
38. The Chamber does not see fit to expound on these criteria at this juncture. The Chamber has set out the relevant criteria and specified the necessary procedure for screening applications for individual reparations. The Chamber considers it best that any doubts regarding the contours of these criteria be resolved in the course of the screening procedure. As the Chamber has said before, it is primarily for the TFV to see how to undertake its assessment in the context of concrete cases.⁵⁴ Should the TFV make any unduly restrictive assessments in the course of the screening, the Chamber may correct them when reviewing any decisions by the TFV to reject applications for individual reparations.

3. *Level of compensation*

39. The Chamber is generally satisfied with the TFV's methodology for arriving at the proposed awards. However, the Chamber notes the LRV raises a number of objections to how the compensation should be calculated. The Chamber will address these arguments in turn.

⁵⁴ Decision on TFV Request for Clarification Regarding Individual Reparations for Economic Harm, 31 August 2018, [ICC-01/12-01/15-280](#), para. 7 (rejecting a TFV request for clarification as to the exclusive link requirement).

i. Economic harm

40. As regards economic harm, the LRV disagrees with the approach in two respects: [REDACTED].⁵⁵
41. [REDACTED].
42. [REDACTED].
43. [REDACTED].⁵⁶ [REDACTED].⁵⁷ [REDACTED].
44. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁵⁸
45. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
46. [REDACTED]. [REDACTED]. [REDACTED].⁵⁹
47. [REDACTED]. [REDACTED].⁶⁰ [REDACTED]. [REDACTED].⁶¹ [REDACTED].
48. For these reasons, the Chamber rejects the arguments raised by the LRV in relation to the individual reparations for economic harm.

ii. Moral harm

49. The Chamber notes that the LRV objects to the TFV's methodology for calculating the individual awards for moral harm. The LRV argues that the national law relied upon, the Malian Cultural Heritage Act, is not a valid point of reference and that the TFV's suggested amount would not bring sufficient

⁵⁵ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 33-36.

⁵⁶ UIP, ICC-01/12-01/15-291-Conf-Red, para. 71(a).

⁵⁷ UIP, ICC-01/12-01/15-291-Conf-Red, para. 71(b).

⁵⁸ UIP, ICC-01/12-01/15-291-Conf-Red, paras 72-74.

⁵⁹ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

⁶⁰ DIP Decision, ICC-01/12-01/15-273-Conf, para 65.

⁶¹ *Contra* LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 36.

economic relief to victims.⁶² The LRV suggests that eligible victims should receive [REDACTED] (which would amount to an increase of nearly 25% per victim), and that such an 'award would take into account the sacred and spiritual dimension of the Protected Buildings, which the TFV seems to have neglected'.⁶³

50. The Chamber is not persuaded by the LRV's objections.
51. In the view of the Chamber, the TFV has sufficiently explained why it relied on the national law it chose. It is an inherently difficult exercise to arrive at a monetary sum to repair the moral harm caused by the loss of irreplaceable historical buildings.⁶⁴ The TFV itself acknowledges that the monetary estimate derived from the Malian Cultural Heritage Act is only an indicative figure derived from an analogous context.⁶⁵ The TFV uses that estimate as a baseline which can then be adjusted to the specific circumstances in the case at bar. The Chamber does not consider this approach to be problematic: it essentially accords with the Chamber's own approach for the calculation of moral harm in the Reparations Order.⁶⁶
52. In the specific circumstances of this case, this methodology is reasonable. As noted by the LRV and by the TFV itself, the Malian Cultural Heritage Act does not concern punitive damages.⁶⁷ But, as indicated by the TFV, the Act does lay down fines for altering or destroying protected objects belonging to national heritage. The Chamber considers this context to be sufficiently close to that of the case before it such that the fines specified in the Act constitute a valid

⁶² LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 28-32.

⁶³ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 31.

⁶⁴ *Stated previously in Reparations Order*, [ICC-01/12-01/15-236](#), para. 129.

⁶⁵ UIP, [ICC-01/12-01/15-291-Red2](#), para. 48.

⁶⁶ *See Reparations Order*, [ICC-01/12-01/15-236](#), paras 131-33.

⁶⁷ UIP, [ICC-01/12-01/15-291-Red2](#), para. 48; LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 29.

reference point, noting also that the LRV does not propose a better alternative. The TFV then increases the estimate to factor in the need for the reparations to represent a form of economic relief, the international dimension of the cultural heritage destroyed, its symbolic and emotional features, and the religious discriminatory intent of the destruction.⁶⁸ The Chamber considers that the proposed increases are sufficiently explained and persuasive.

53. In support of his submission that some victims consider the amount calculated by the TFV to be insufficient, the LRV merely cites 'telephone interviews with groups of victims'.⁶⁹ The Chamber considers it to be natural, and perhaps inevitable, that the victims in the case may hold very different views on how much they should be awarded for moral harm. But the Chamber does not consider that the divergent views of individual victims necessarily mean that the TFV has miscalculated.
54. The Chamber is alive to the fact that the assessment may result in some individual victims receiving less than they think is fair. But a decision to increase the size of the individual awards to victims cannot be taken in the abstract. In the Reparations Order, the Chamber set Mr Al Mahdi's liability at 2.7 million euros: that figure is final. Were the Chamber to accept the LRV's proposal to increase the individual reparations awards, that would mean that less money would be available for the collective reparations. The real issue for the Chamber here is the opportunity cost which an increase to the individual award component of the reparations would entail. Having considered the LRV's arguments, the Chamber is of the opinion that the reduction in the collective reparations awards which would result from the LRV's proposal rules out any change to the TFV's figures.

⁶⁸ UIP, ICC-01/12-01/15-291-Conf-Red, paras 50-51.

⁶⁹ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 31, n. 60.

55. As to the LRV's final point that his proposed figure alone would 'take into account the sacred and spiritual dimension of the Protected Buildings', the Chamber again disagrees. In explaining its calculations, the TFV considered the sentimental and emotional dimensions of the Protected Buildings beyond their status as cultural heritage.⁷⁰ The TFV also made explicit reference to the Chamber's prior consideration that 'the targeted buildings were not only religious buildings but had also a symbolic and emotional value for the inhabitants of Timbuktu'.⁷¹ Although the TFV and the LRV couch the issue in different terms, the Chamber considers that the TFV has taken it sufficiently into account.
56. For these reasons, the Chamber rejects the LRV's submissions on the TFV's calculation of the awards for moral harm. However, as regards moral harm for individuals with direct kinship with more than one saint, the Chamber will analyse this specifically in the context of enhanced awards.

iii. Enhanced awards

57. The TFV proposes that individual awards be increased for those who establish that the direct economic harm to them derives from more than one Protected Building or who establish direct kinship with more than one saint. [REDACTED].⁷²
58. [REDACTED].⁷³
59. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
60. [REDACTED]. [REDACTED].

⁷⁰ UIP, [ICC-01/12-01/15-291-Red2](#), paras 50(d), 51.

⁷¹ UIP, [ICC-01/12-01/15-291-Red2](#), para. 50, *quoting* Judgment and Sentence, [ICC-01/12-01/15-171](#), para. 79.

⁷² UIP, ICC-01/12-01/15-291-Conf-Red, para. 80.

⁷³ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 37.

4. *Conclusion*

61. For the reasons above and subject to paragraphs 36, 38 and 60 above, the Chamber approves the procedure for screening applications for individual reparations as proposed by the TFV.

IV. Collective reparations

A. Determinations made to date

62. The Chamber awarded collective reparations to the Timbuktu community, which it defined as ‘organisations or persons ordinarily residing in Timbuktu at the time of the commission of the crimes or otherwise so closely related to the city that they can be considered to be part of this community at the time of the attack’.⁷⁴ Collective reparations form the bulk of the award, as the harm caused by Mr Al Mahdi’s actions is primarily collective in character.⁷⁵
63. These reparations seek to redress the harm caused by the damage to the Protected Buildings, the consequential economic loss and the emotional distress suffered by the Timbuktu community.⁷⁶ Those who are ineligible for individual reparations may still participate in collective reparations programs, which may include financial support to individual businesses and families.⁷⁷
64. The Chamber directed the TFV to give further details on its proposals, including an explanation as to how they satisfy the requirements of the Reparations Order or meet the victims’ expectations.⁷⁸ The Chamber acknowledged the need to mitigate security risks during implementation, but

⁷⁴ Reparations Order, [ICC-01/12-01/15-236](#), para. 56.

⁷⁵ Reparations Order, [ICC-01/12-01/15-236](#), para. 76.

⁷⁶ Reparations Order, [ICC-01/12-01/15-236](#), para. 104.

⁷⁷ Reparations Order, [ICC-01/12-01/15-236](#), paras 82-83, 145.

⁷⁸ DIP Decision, [ICC-01/12-01/15-273-Red](#), paras 98, 100, 106.

emphasised that one important aspect of a reparative measure is that the victim knows that it is aimed at repairing the harm suffered.⁷⁹ The Chamber noted with approval the TFV's previous submissions that women and the elderly be prioritised for collective economic reparations.⁸⁰

B. UIP Proposals

65. Although the TFV's proposals can be grouped in different ways, the Chamber sees the UIP as advancing nine distinct proposals.
66. The TFV proposes five discrete measures to improve the protection and maintenance of the Protected Buildings: (i) rehabilitation of doors, windows and enclosures (to entail the rehabilitation of the cemetery walls, the planting of trees and a living hedge, improved lighting, and surveillance); (ii) logistical support [REDACTED]; (iii) workshops designed to improve capacity-building for those protecting and maintaining the buildings; (iv) a support fund for the buildings' customary annual maintenance; and (v) [REDACTED].⁸¹
67. The TFV makes two proposals for collective reparations for economic harm: (vi) assistance for the return of victims to Timbuktu and (vii) an Economic Resilience Facility ('ERF') to support economic initiatives proposed by members of the Timbuktu community.⁸²
68. As for collective reparations for moral harm, the TFV proposes (viii) implementing a programme for psychological support [REDACTED] and (ix) creating safe spaces for women and girls.⁸³ The TFV also explains why, upon

⁷⁹ DIP Decision, [ICC-01/12-01/15-273-Red](#), para. 101.

⁸⁰ DIP Decision, [ICC-01/12-01/15-273-Red](#), para. 105.

⁸¹ UIP, ICC-01/12-01/15-291-Conf-Red, paras 87-115.

⁸² UIP, [ICC-01/12-01/15-291-Red2](#), paras 116-37.

⁸³ UIP, [ICC-01/12-01/15-291-Red2](#), paras 142-55. [REDACTED].

consideration, it has decided not to recommend radio broadcasts designed to promote community therapy.⁸⁴

C. Assessment

69. As a preliminary point, the Chamber notes that the Malian Authorities request the deletion of a sentence in the UIP which quotes two victims.⁸⁵ The sentence in question is only part of the TFV's general overview of how it considered the implementation of collective reparations. Its deletion would serve no purpose, as the content of all the TFV's specific proposals would remain unchanged. To the extent that the request indicates that the views and concerns of these two victims are seen as problematic, the Chamber emphasises that victims must be at liberty to express themselves so that the Court can give proper redress for the harm they suffered. The Chamber therefore rejects this request.
70. The Chamber also notes the LRV's assertion that the TFV does not explain how it intends to make clear to the beneficiaries that the awards they will receive are reparative measures.⁸⁶ The Chamber disagrees. The TFV does explain how it reconciled the 'inherent tension' between this consideration and what it describes as 'the dire security situation' in Timbuktu, particularly as regards the decision not to pursue community therapy through radio broadcasts.⁸⁷ The Chamber is satisfied that its prior directions on this point have been sufficiently taken into account.
71. Lastly, the Chamber notes that the LRV finds it unfortunate that the TFV did not accept the LRV's proposed 'Koranic education project' for school children

⁸⁴ UIP, [ICC-01/12-01/15-291-Red2](#), paras 140-41.

⁸⁵ Malian Observations, ICC-01/12-01/15-312-Conf-Anx-tENG, p. 3, *referring to* UIP, [ICC-01/12-01/15-291-Red2](#), para. 86 (penultimate sentence).

⁸⁶ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 25.

⁸⁷ UIP, [ICC-01/12-01/15-291-Red2](#), para. 141.

and adolescents.⁸⁸ The LRV also makes mention of several new projects proposed by victim a/35140/16, which is an organisation.⁸⁹ The LRV does not flesh out the projects and, in the absence of a proper explanation for them, the Chamber must dismiss them for that reason.

72. Turning now to its assessment, the Chamber is generally satisfied with the nine specific proposals for collective reparations as identified in the UIP. The Chamber notes with particular approval the unopposed proposal to create safe spaces for women and girls, which complies with its prior direction that reparations must be implemented ‘in a gender and culturally sensitive manner which does not exacerbate – and in fact addresses – any pre-existing situation of discrimination preventing equal opportunities to victims’.⁹⁰ Unless otherwise stated below, the Chamber considers that the proposals meet the four criteria enumerated at paragraph 16 above, namely that they (i) fall within the scope of the Chamber’s prior rulings; (ii) are justified; (iii) put forward a reasonable time frame for execution; and (iv) are proportionate.

1. *Protection and maintenance of the Protected Buildings*

73. The LRV finds it regrettable that most of the budgets for addressing the damage to the Protected Buildings are based on estimates and that no studies have been undertaken so as to arrive at exact costs.⁹¹ The Chamber does not

⁸⁸ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 67.

⁸⁹ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 68. The LRV’s submissions about this organisation seem to reflect a misunderstanding of the Reparations Order. The Chamber did not award any particular reparations to organisation a/35140/16, such that a failure to afford it a sufficient role during the implementation phase would amount to a failure to remedy the harm it suffered. The Chamber only indicated that the general kinds of work this organisation wanted to manage were consistent with the reparations modalities for moral harm. The decision on the involvement of this organisation was deferred to the implementation phase. Reparations Order, [ICC-01/12-01/15-236](#), para. 92.

⁹⁰ Reparations Order, [ICC-01/12-01/15-236](#), para. 105.

⁹¹ UIP, [ICC-01/12-01/15-291-Red2](#), paras 98, 101. The LRV also expresses concerns that the cost of some of the studies undertaken to determine exact costs could be deducted from the overall reparations budget. The Chamber need not rule on the matter, given the TFV’s assurances that administrative costs related to the

consider it realistic to expect the TFV to be in a position to provide 'exact costs' for specific projects which, by definition, have not yet been approved for implementation. The 'approval' of exact costs for selected reparations projects does not even rest with the Chamber but with the Registry which has its own procurement requirements.⁹² The Chamber has only considered the TFV's budgetary figures to the extent that they are proportionate with the expected benefits of the proposals. In the course of implementation, it may turn out that the exact costs differ from the estimates. It is then the TFV's responsibility to reallocate funds - subject to available funds and applicable procedures - in order to ensure appropriate financing for all approved projects.

74. These considerations apply equally to the various concerns raised by the LRV about how certain budgets will be apportioned or what they will actually cover.⁹³ The Chamber considers it unreasonable to expect the TFV to provide exhaustive budgets and line items in the UIP. The approval of the selected projects cannot turn into an endless discussion about minutiae. Every such exchange of views delays the TFV's delivery of the reparations to the victims. The Chamber will not reject sufficiently explained proposals just because they are not described down to the last detail.
75. In this regard, the Chamber considers some of the LRV's arguments to be excessive. To cite an example discussed at length by the LRV, the TFV proposes to give the [REDACTED] two motorbikes and a set of 50 plastic chairs. These measures have a budget of [REDACTED] and are intended to facilitate the surveillance of the Protected Buildings and provide the basic infrastructure for

implementation of the awards have been excluded from the budgets for the proposed collective measures. *See* UIP, [ICC-01/12-01/15-291-Red2](#), para. 137.

⁹² Rules 110.12-19 of the Financial Regulations and Rules, *applicable by virtue of* Assembly of States Parties Resolution on the Establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, 9 September 2002, [ICC-ASP/1/Res.6](#), para. 13.

⁹³ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 42.

meetings and training sessions for the Timbuktu community.⁹⁴ The LRV makes the following objections to the proposal: the budget for these two measures grossly exceeds their cost; the surveillance arrangements have not been specified (as to how the surveillance will be organised, how many guardians it will require, who will pay their wages, and how long the surveillance will last); no arrangements appear to be foreseen for the oversight or monitoring of the equipment provided; and the motorcyclists involved may be put at risk as potential targets.⁹⁵

76. These objections illustrate that the LRV overestimates the ambit of the present decision. Although any reparations implementation must be preceded by a proper assessment of all security risks, the Chamber does not think it is necessary to have in the UIP the additional details raised by the LRV. The core of the TFV's proposal is to provide logistical support to the [REDACTED] for the purposes stated, with about [REDACTED]% of the 2.7 million euro award being devoted to that end. Discrete purchases are identified, but if they turn out to be less expensive than estimated then funds can be reallocated accordingly.
77. The Chamber is satisfied with the core of this proposal, and notes that, for all the objections he raises, the LRV does not appear to object to it as such. An assessment by the Chamber to the level of specificity sought by the LRV would be impractical, inefficient and ultimately impede the delivery of expeditious reparations to the victims. Otherwise put, the Chamber will not delve into the detailed arrangements concerning 50 plastic chairs.

⁹⁴ UIP, [ICC-01/12-01/15-291-Red2](#), paras 104-05.

⁹⁵ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 46-50.

78. Having considered the TFV's methodology for its proposals to improve the protection and maintenance of the Protected Buildings, the Chamber is satisfied that the proposals have been sufficiently explained. It is the responsibility of the TFV to ensure that each project is properly funded and operates as far as practicable within the indicated estimates. The Chamber therefore rejects the LRV's argument that additional details are necessary before any projects can be approved.

2. *Economic harm*

i. Relocation assistance

79. Both the LRV and Defence argue that the TFV underestimates the finances required for victims to return to Timbuktu.⁹⁶ The Chamber considers that the parties raise some compelling points which the TFV should bear in mind in the course of implementing the assistance. In particular, the Chamber requires that the victims be given an amount that enables them to relocate *properly* to Timbuktu and includes travel expenses and any other funds reasonably required for permanent relocation to Timbuktu.

80. The importance of a proposal to facilitate victims returning to Timbuktu is uncontested and undeniable. The Chamber also notes that the parties do not contest the TFV's estimate of the number of victims who should be relocated.⁹⁷ The Chamber hereby decides that this project is approved on the understanding that it will aim to properly relocate the number of people estimated by the TFV. Should the cost of relocation exceed the TFV's monetary estimates, then funds, if available, must be reallocated.

⁹⁶ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 51-57; Defence Observations, ICC-01/12-01/15-316-Conf-tENG, para. 25.

⁹⁷ UIP, ICC-01/12-01/15-291-Conf-Red, para. 119.

ii. ERF

81. The LRV fully endorses the proposed Economic Resilience Facility, while expressing the following concerns: he is not given a specific role in the ERF; the TFV fails to explain how the ERF's budget will be apportioned between the locations where it needs to operate; and the TFV does not specify arrangements for the implementation of the measure (such as the maximum investment amounts that could be given to victims during the process).⁹⁸
82. The Chamber is not persuaded by the LRV arguments concerning his lack of involvement in the ERF. The Chamber must point out that the LRV does not represent the Timbuktu community as such, but represents only certain clients in the course of judicial proceedings before the Court. As concerns individual reparations, the LRV must have (and has been given) a prominent role throughout the implementation of the reparations. But his role in relation to the implementation of the collective reparations is different. It is the TFV, and not the LRV, which has been tasked by the Chamber with overseeing the implementation of the reparations award.⁹⁹ The LRV should be afforded reasonable opportunity to discuss concerns regarding the course of the implementation with the TFV, but the Chamber does not see fit to mandate that the LRV be involved 'in all the stages of the implementation of [the ERF]', and that he 'have some oversight in the project selection process, the choice of partner and the advice that will be given'.¹⁰⁰

⁹⁸ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 58-62 (arguments re-ordered).

⁹⁹ In the Reparations Order, collective reparations were ordered under Rule 98(3) of the Rules of Procedure and Evidence: 'The Court may order that an award for reparations against a convicted person be made *through the Trust Fund* where the number of the victims and the scope, forms and modalities of reparations makes a collective award more appropriate' (emphasis added).

¹⁰⁰ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 61.

83. As said above, the Chamber will not examine the specifics of budget apportionment in the present decision. The Chamber will only consider whether the monetary estimate given is proportionate. The Chamber considers that the ERF is a particularly important part of the implementation of the reparations, and the budgetary outlay presented by the TFV is commensurate with its importance.
84. As regards the LRV's concerns about the failure to specify the arrangements for the operation of the ERF, the Chamber considers that his concerns have some merit. The Chamber is of the opinion that the TFV has given sufficient justification for the ERF as a selected project, noting that it provides an indicative breakdown of the ERF budget and gives meaningful information on the measure's purpose, execution and intended results. But the Chamber shares the LRV's interest in having as clear a picture as possible of how the ERF will operate. The Chamber therefore approves the ERF as a selected project, but expects the TFV to provide, in the course of its periodic reporting, detailed updates on the ERF's operations.

3. *Moral harm*

85. The Chamber notes that the LRV objects to the fact that one of his clients, organisation a/35140/16, has been given insufficient involvement in the psychological support measures.¹⁰¹ In short, the LRV seeks to have all psychological support provided through this organisation. The Chamber is not persuaded that such an arrangement is necessary for the psychological support measure proposed. The only justification the LRV gives for the provision of support through organisation a/35140 is that [REDACTED].¹⁰²

¹⁰¹ LRV Observations, ICC-01/12-01/15-315-Conf-t-ENG, paras 68-69.

¹⁰² LRV Observations, ICC-01/12-01/15-315-Conf-t-ENG, para. 69.

[REDACTED].¹⁰³ The TFV also describes multiple roles for organisation a/35140/16 in the UIP, including in relation to psychological support,¹⁰⁴ and the Chamber is satisfied that the TFV has given a sufficient role to this organisation.

86. As for those providing the psychological support, [REDACTED]. [REDACTED]. [REDACTED].¹⁰⁵ [REDACTED].¹⁰⁶ [REDACTED].

87. The Chamber also notes the LRV's concerns as to how much remuneration to give those providing psychological support, how many people should provide that support, and where they should be based.¹⁰⁷ The Chamber considers that these matters are part of the detailed arrangements of the selected project approved. Since the TFV has the primary role in overseeing the effective implementation of this measure, the Chamber is of the view that it is for the TFV to decide to what extent it seeks to take the LRV's concerns into account.

4. *Conclusion*

88. For the reasons above and subject to paragraph 86 above, the Chamber approves nine selected projects for collective reparations as proposed by the TFV.

V. Symbolic reparations

A. Determinations made to date

89. In its Reparations Order, the Chamber laid down certain symbolic measures and stated that the TFV may advance further proposals for symbolic

¹⁰³ UIP, ICC-01/12-01/15-291-Conf-Red, para. 144.

¹⁰⁴ UIP, ICC-01/12-01/15-291-Conf-Red, paras 119, 144, 177.

¹⁰⁵ UIP, ICC-01/12-01/15-291-Conf-Red, para. 146.

¹⁰⁶ Malian Observations, ICC-01/12-01/15-312-Conf-Anx-tENG, p. 4. [REDACTED].

¹⁰⁷ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 63-65.

reparations during the implementation phase. In particular, the Chamber ordered further measures to disseminate Mr Al Mahdi's apology for his crimes, and ordered the award of one symbolic euro to the Malian State and to UNESCO, respectively, to acknowledge the harm suffered by Mali and the international community as a result of the loss of cultural heritage.¹⁰⁸

90. In response to the TFV's submissions that the symbolic one-euro awards should be presented at a formal ceremony after the first victims receive their reparations, the Chamber directed the TFV to include in the UIP a project dedicated to the ceremony.¹⁰⁹

B. UIP Proposals

91. The TFV makes two proposals in relation to symbolic measures.
92. First, the TFV proposes arrangements for the holding of the symbolic awards ceremony at which one euro will be presented to the Malian Authorities and to UNESCO, respectively.¹¹⁰
93. Second, the TFV proposes a project for memorialisation measures whereby the local community is empowered to steer the memorialisation process itself. The TFV proposes to help organise these local efforts and would like to receive concrete proposals within a year of approval of the UIP.¹¹¹
94. Lastly, the TFV advises the Chamber not to make further use of Mr Al Mahdi's apology, noting that a significant number of victims have expressed reservations about it and others reject it outright.¹¹²

¹⁰⁸ Reparations Order, [ICC-01/12-01/15-236](#), paras 71, 90, 106-07.

¹⁰⁹ DIP Decision, [ICC-01/12-01/15-273-Red](#), para. 110.

¹¹⁰ UIP, [ICC-01/12-01/15-291-Red2](#), paras 157-58.

¹¹¹ UIP, [ICC-01/12-01/15-291-Red2](#), paras 160-66.

¹¹² UIP, [ICC-01/12-01/15-291-Red2](#), para. 167.

C. Assessment

95. The Chamber is generally satisfied with the two proposals for symbolic reparations set out in the UIP. Unless otherwise stated below, the Chamber considers that they meet the four criteria enumerated at paragraph 16 above, namely that they (i) fall within the scope of the Chamber's prior rulings; (ii) are justified; (iii) put forward a reasonable time frame for execution; and (iv) are proportionate.

1. *Symbolic awards ceremony*

96. As for the symbolic reparations ceremony, the LRV submits that certain transport and accommodation expenses envisaged by the TFV should not be paid out of the budget for reparations.¹¹³ The TFV includes the budget for these expenses within its overall reparations budget, but says in the UIP itself that the 'Trust Fund will cover the cost[s] [...]'.¹¹⁴ Noting the TFV's position that it will assume the administrative costs for the implementation of the reparations awards,¹¹⁵ the Chamber considers the LRV to be correct in regarding transportation and accommodation expenses for the ceremony as administrative costs which should be excluded from the overall reparations budget.

2. *Memorialisation measures*

97. [REDACTED].¹¹⁶ The Chamber notes the LRV's comment that some victims have questioned the benefits of memorialisation measures, but it considers that possible reticence vis-à-vis such measures has been taken into account in

¹¹³ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 71.

¹¹⁴ UIP, [ICC-01/12-01/15-291-Red2](#), para. 159.

¹¹⁵ UIP, [ICC-01/12-01/15-291-Red2](#), para. 137.

¹¹⁶ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 72.

the TFV's proposal. [REDACTED].¹¹⁷ The Chamber considers the TFV's more specific proposal to be more appropriate, as it ensures that voices ordinarily marginalised in the Timbuktu community will have the opportunity to be heard on the subject.¹¹⁸

3. *Apology*

98. The Chamber notes that the Defence objects to the TFV's view on the use of Mr Al Mahdi's apology and 'defers to the Chamber for adjudication of that point so that Mr Al Mahdi's message can be handed down to posterity and serve as a safeguard to prevent young people from following the lure of radicalization.'¹¹⁹
99. The Chamber recalls that it has concluded that Mr Al Mahdi's apology is genuine, and has taken measures to ensure that it is disseminated to all victims.¹²⁰ That said, the Chamber also has no reason to doubt the TFV's assessment that a large number of victims are not satisfied with Mr Al Mahdi's apology. The victims' interests are paramount in this context, and if a sufficiently large number of victims do not want to make use of this apology then it should not be used. In this regard, the Chamber recalls that it is 'ultimately up to each individual victim to decide whether he or she considers Mr Al Mahdi's apology to be sufficient. Some victims may already be satisfied with the apology given, and others will not be satisfied no matter what kind of further apologies are given. This is inevitable, and eminently understandable.'¹²¹

¹¹⁷ UIP, ICC-01/12-01/15-291-Conf-Red, paras 160-66.

¹¹⁸ [REDACTED]. [REDACTED]. *See* LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 67 and 70.

¹¹⁹ Defence Observations, ICC-01/12-01/15-316-Conf-tENG, para. 30.

¹²⁰ Reparations Order, [ICC-01/12-01/15-236](#), paras 68-71.

¹²¹ Reparations Order, [ICC-01/12-01/15-236](#), para. 69.

4. *Conclusion*

100. For the reasons above and subject to paragraph 96 above, the Chamber approves the two selected projects for symbolic reparations.

VI. Other matters

A. Funding

101. The TFV has decided to allocate 1.35 million euros to complement the 2.7 million euro award set by the Chamber and to recover any administrative costs from its reparations reserve. The TFV has stated that it will continue its efforts to raise additional funds to make up the resulting shortfall.¹²²

102. Orders for reparations handed down by the Court cannot just be numbers on paper. Its restorative justice mandate depends on its awards being effective, even when a convicted person is indigent. The Chamber appreciates the donations given and the TFV's fundraising efforts to date. The Chamber hopes and expects that the outstanding resources will be secured.

B. Reporting and oversight

103. The TFV has given the Chamber assurances that it will take responsibility for the implementation of the reparations program.¹²³ The TFV requests that it be allowed to report to the Chamber every three months, instead of every month, so as to 'avoid diverting scarce resources from the implementation of the reparations'.¹²⁴ The Defence proposes setting a reporting interval of every two

¹²² UIP, [ICC-01/12-01/15-291-Red2](#), para. 168.

¹²³ UIP, [ICC-01/12-01/15-291-Red2](#), para. 170.

¹²⁴ UIP, [ICC-01/12-01/15-291-Red2](#), para. 169.

months instead.¹²⁵ The Malian Authorities suggest an annual evaluation to review the status of implementation and identify any difficulties.¹²⁶

104. As stated previously,¹²⁷ the present decision marks the Chamber's final approval of the overall plan for the implementation of the reparations. The Chamber expects its involvement to be relatively limited thereafter. At the same time, consideration must also be afforded to the need for ongoing oversight by the Chamber of the implementation of the reparations, and to the fact that the TFV's periodic reports affect the efficient conduct of the screening of individual applications for reparations.¹²⁸ On balance, the Chamber agrees with the Defence and sees fit to order the TFV to report to it every two months.¹²⁹

105. Lastly, the Chamber notes that the parties have been filing observations on the reports filed by the TFV thus far.¹³⁰ These observations have consistently had no concrete relief sought - the parties have done nothing more than put

¹²⁵ Defence Observations, ICC-01/12-01/15-316-Conf-tENG, para. 31.

¹²⁶ Malian Observations, ICC-01/12-01/15-312-Conf-Anx-tENG, p. 4. *See also* Defence Observations, ICC-01/12-01/15-316-Conf-tENG, para. 38 (supporting this same idea).

¹²⁷ Paragraph 14 above.

¹²⁸ *See* DIP Decision, [ICC-01/12-01/15-273-Red](#), para. 47 (in its periodic reports, the TFV notifies the Chamber where it decides that, upon screening, an applicant is ineligible for individual reparations. The deadlines to challenge such decisions run from the date of notification of the reports).

¹²⁹ This ruling applies *mutatis mutandis* to the procedure specified in paragraphs 46-48 of the DIP decision.

¹³⁰ *Observations de la Défense sur le sixième rapport mensuel ICC-01/12-01/15-314-Conf*, 30 January 2019, ICC-01/12-01/15-318-Conf; Final Submissions of the Defence on the Reparations Implementation Plan (ICC-01/12-01/15-291-Conf) and Mali's Observations (ICC-01/12-01/15-312-Conf-Anx), 15 January 2019, ICC-01/12-01/15-316-Conf-tENG; *Observations de la Défense sur le cinquième rapport mensuel ICC-01/12-01/15-305-Conf du Fonds au profit des victimes et sur le cinquième rapport ICC-01/12-01/15-308+Anx du Greffe*, 4 January 2019, ICC-01/12-01/15-311-Conf; *Observations de la Défense sur le quatrième rapport mensuel ICC-01/12-01/15-299-Conf du Fonds au profit des victimes*, 5 December 2018, ICC-01/12-01/15-304-Conf; *Observations de la Défense sur le troisième rapport mensuel ICC-01/12-01/15-288-Conf du Fonds au profit des victimes*, 5 November 2018, ICC-01/12-01/15-292-Conf; *Observations de la Défense sur le deuxième rapport mensuel ICC-01/12-01/15-283-Conf du Fonds au profit des victimes et réponse aux observations ICC-01/12-01/15-284-Conf du représentant légal des victimes*, 5 October 2018, ICC-01/12-01/15-285-Conf; *Observations du Représentant légal sur le Second rapport mensuel d'activité du Fonds au profit des victimes et sur le processus de sélection des victimes aux réparations*, 24 September 2018, [ICC-01/12-01/15-284-Red](#) (confidential and redacted versions notified on 25 September 2018); *Observations de la Défense sur le rapport mensuel ICC-01/12-01/15-277-Conf du Fonds au profit des victimes*, 4 September 2018, ICC-01/12-01/15-281-Conf (notified on 5 September 2018).

forward general observations for the Chamber's consideration. Upon examination, it is clear that the filings raise matters which already appear in the parties' final submissions on the UIP; matters which do not require any ruling (in that they concern matters for the TFV to decide and/or are suggestions consistent with the UIP); matters superseded by subsequent events; and/or matters on which the Chamber has deferred consideration at this time (i.e. submissions on the criteria which the Chamber will apply when reviewing any decisions by the TFV to reject applications for individual reparations). The Chamber has, therefore, not referred to observations above and beyond the parties' final submissions on the UIP.

106. The Chamber wishes to make clear that it will not consider any further general observations on the implementation of the reparations. The parties may communicate any general suggestions they have to the TFV in the course of the implementation of the reparations. But, outside the context of reviewing any decisions by the TFV to reject applications for individual reparations, the Chamber only expects to receive filings from the parties on an exceptional basis and with specific relief sought.

C. Cooperation

107. The TFV specifies that the Malian Authorities may cooperate in the implementation of the award by: (i) ensuring that no local taxes or fees are imposed on the reparations awards; (ii) providing a venue for the workshops for enhancing professional capacity; (iii) assisting the TFV to establish the ERF; and (iv) facilitating the administrative procedures, formalities and operational costs related to the organisation of the symbolic awards ceremony.¹³¹

¹³¹ UIP, [ICC-01/12-01/15-291-Red2](#), paras 171-73.

108. The Malian Authorities have expressed their willingness to assist the TFV in all those respects. They have also identified government ministries with which the TFV could consult in the course of the implementation.¹³²
109. The Chamber notes the LRV submissions that some victims object to the involvement of the government in the reparations.¹³³ The LRV argues that the proposed involvement of certain government ministries would not be appropriate.¹³⁴
110. The Chamber considers the concerns about excessive involvement by the Malian Authorities to be baseless.
111. The implementation of the Reparations Order will necessarily involve cooperation with the Malian Authorities to some degree, as it is not possible to execute such wide-ranging projects without the national government concerned. The Malian Authorities request that certain government ministries be involved during the implementation of the reparations, and the TFV states certain measures which require government assistance. In the UIP and the Malian Observations, the proposed government involvement is described in general terms and primarily relates to logistical support.¹³⁵ The Chamber considers that none of the government involvement proposed is inherently incompatible with the UIP or the responsibility of the TFV as regards the implementation of reparations. That notwithstanding, and noting that the degree of government influence is of particular concern to the victims,¹³⁶ state

¹³² Malian Observations, ICC-01/12-01/15-312-Conf-Anx-tENG, pp. 3-4.

¹³³ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 22.

¹³⁴ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, para. 22, 44.

¹³⁵ Malian Observations, ICC-01/12-01/15-312-Conf-Anx-tENG, p. 3 (on UIP Section V); UIP, ICC-01/12-01/15-291-Conf-Red, paras 4, 27, 88, 94, 100-14, 163. *But see* paragraphs 75-77 above.

¹³⁶ LRV Observations, ICC-01/12-01/15-315-Conf-tENG, paras 44-45.

cooperation must be sought and provided in a manner which ensures the independence of the TFV and the well-being and dignity of the victims.

112. For these reasons, the Chamber is satisfied with the TFV's approach to cooperation as set out in the UIP.

VII. Conclusion

113. On the basis of the conclusions above, the Chamber is satisfied with the UIP and approves the following selected projects:

Individual reparations:

(i) The procedure for screening applications for individual reparations.

Collective reparations:

(ii) Rehabilitation of doors, windows and enclosures (to entail rehabilitation of the cemetery walls, the planting of trees and a living hedge, improved lighting, and surveillance).

(iii) Logistical support [REDACTED].

(iv) Workshops designed to improve the capacity-building for those protecting and maintaining the buildings.

(v) A support fund for the buildings' customary annual maintenance.

(vi) [REDACTED].

(vii) Assistance for the return of victims to Timbuktu.

(viii) An Economic Resilience Facility to support economic initiatives proposed by members of the Timbuktu community.

(ix) Implementation of a programme for psychological support [REDACTED].

(x) The creation of safe spaces for women and girls.

Symbolic reparations

- (xi) A symbolic awards ceremony at which one euro will be presented to the Malian Authorities and to UNESCO, respectively.
 - (xii) Memorialisation measures.
114. The approval of the above projects is subject to the conditions laid down in the present decision,¹³⁷ specifically:
- (i) The deadline for applications for individual reparations [REDACTED].
 - (ii) Any further consideration of the TFV's proposed criteria for the screening of applications for individual reparations shall be deferred until such time as a decision by the TFV to reject such an application comes before the Chamber for review.
 - (iii) [REDACTED].
 - (iv) [REDACTED].
 - (v) The transport and accommodation costs envisaged for the symbolic awards ceremony shall be regarded as administrative in nature and shall not be deducted from the overall reparations budget.
115. The Chamber also does not consider that any additional projects are needed to fully implement the Reparations Order.
116. As for the TFV's request for a quarterly reporting schedule, this request is granted in part. From now on, the TFV may report once every two months.

¹³⁷ Paragraphs 36, 38, 60, 86, and 96 above.

VIII. Disposition

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

APPROVES the selected projects in the UIP enumerated at paragraph 113 above, subject to the conditions summarised at paragraph 114 above; and

DIRECTS the TFV to report to the Chamber on the implementation of the reparations every two months hence.

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 4 March 2019

At The Hague, The Netherlands