

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

**Public redacted version of "Third monthly
update report on the updated implementation plan", submitted on
15 October 2018, ICC-01/12-01/15-288-Conf**

Source: The Trust Fund for Victims

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

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Participation/Reparation

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REGISTRY

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I. BACKGROUND

1. On 12 July 2018, Trial Chamber VIII (“Trial Chamber”) issued its decision on the Trust Fund for Victims’ (“Trust Fund”) draft implementation plan in the present case,¹ wherein it directed the Trust Fund to submit monthly update reports, starting on 15 August 2018, in relation to the Trust Fund’s progress in preparing an updated draft implementation plan (“Updated Implementation Plan”). The Trial Chamber specified that each monthly update report should contain “concrete information on the actions taken in respect of each of the reparations modalities with timelines, objectives and staffing.”²

2. On 15 August 2018, the Trust Fund filed its first monthly update report, including the notification relevant to the Trial Chamber’s complement request pursuant to regulation 56 of the Regulations of the Trust Fund.³

3. On 5 September 2018, the Trust Fund emailed a draft of the new application form for individual reparations (“Draft Application”) to the Legal Representative of Victims (“LRV”), the Defence and the Victims Participation and Reparations Section (“VPRS”),⁴ requesting their feedback by 14 September 2018.⁵

4. By 14 September, both VPRS and the Defence had replied by email.⁶

5. On 14 September 2018, the Trust Fund filed its monthly update report of the implementation plan (“Second Monthly Update Report”) with two confidential annexes, corresponding to a copy of the Draft Application sent to the parties and VPRS and an updated list of authorities.⁷

¹ 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](#) (“Decision on Draft Implementation Plan”).

² [Decision on Draft Implementation Plan](#), para. 22.

³ First monthly update report on the implementation plan, 15 August 2018, ICC-01/12-01/15-277-Conf.

⁴ [Decision on Draft Implementation Plan](#), para. 30.

⁵ Email sent by the Trust Fund to the Defence counsel, the LRV team and VPRS on 5 September 2018 at 16:59.

⁶ VPRS replied to the Trust Fund on 6 September 2018 at 12:47 asking to provide comments once the form would have been amended in light of the parties’ comments. The Trust Fund agreed. The Defence responded to the Trust Fund -with VPRS and LRV on copy- on 14 September 2018 at 14:50.

⁷ Second Monthly Update report on the implementation plan, 14 September 2018, ICC-01/12-01/15-283-Conf, with two confidential annexes.

6. On 24 September 2018, the LRV filed observations on the Second Monthly Update Report and on the beneficiary screening process (“LRV Observations”).⁸
7. On 4 October 2018, after the LRV indicated that he still had comments on the Draft Application, the Trust Fund scheduled a meeting with him for 8 October 2018 to discuss this and other matters.⁹
8. On 5 October 2018, the Defence filed its observations on the Second Monthly Update Report (“Defence Observations”).¹⁰
9. On 8 October 2018, after having accepted the invitation,¹¹ the LRV unfortunately could not attend the scheduled meeting. 10 October 2018 was established as the new deadline for the LRV to provide comments on the Draft Application.
10. On 10 October 2018, VPRS filed its third report on applications for individual reparations.¹²
11. On 12 October 2018, the LRV sent an email to the Trust Fund with observations on the Draft Application.¹³
12. The Trust Fund hereby submits its third monthly update report, in which it will also address some of the issues raised in the LRV and Defence Observations.

II. CLASSIFICATION OF THE PRESENT SUBMISSION

13. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report confidential in line with the reasoning for its previous update reports.¹⁴ No information is deemed necessary to redact from the parties.¹⁵

⁸ 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, ICC-01/12-01/15-284-Conf.

⁹ Email sent by the Trust Fund to the LRV on 4 October 2018 at 18:01. The agenda consisted of: “la nouvelle version du formulaire pour les réparations individuelles; la campagne de sensibilisation ainsi que l’implication de l’équipe du LRV; l’octroi de réparations monétaires aux mineurs; l’implication d’une dame spécifique pour les réparations collectives; and prioritaires à des réparations”. This last item was added at the request of the LRV.

¹⁰ 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, ICC-01/12-01/15-285-Conf.

¹¹ Email sent by the LRV to the Trust Fund on 5 October at 9:46 AM.

¹² Third Registry Report on Applications for Individual Reparations, ICC-01/12-01/15-287, with confidential Annex I and confidential *ex parte* Annex II, only available to the Legal Representative of Victims (“Third Registry Report on Applications”).

¹³ Email sent by the LRV team to the Trust Fund on 12 October 2018 at 9:11 AM.

¹⁴ Public redacted version of “Monthly update report on the implementation plan, including notification of the Board of Directors’ decision on the Trial Chamber’s complement request pursuant to regulation 56 of

III. UPDATE REPORT OF 15 OCTOBER 2018

A. Field activities – Progress on Collective Reparations

14. During the period covered by this report, the Associate Field Programme Officer temporarily based in Bamako held meetings with various organisations -national and international- and local service providers with expertise in areas relevant to the implementation of foreseeable collective reparations concerning the Protected Buildings, economic and moral harm.

15. In this context, the Trust Fund is preparing an invitation for expressions of interest to pre-qualify potentially eligible service providers for selected parts of the collective reparations measures. The pre-qualified organisations will be provided with a request for proposals, once a final scope of work is established on the basis of the eventually approved Updated Implementation Plan.

B. Activities in The Hague – Screening Process

16. The Trust Fund appreciates the continued communication and cooperation with VPRS. The Trust Fund also appreciates and has also been responsive to the LRV's initiatives. For example, at the request of the latter, the Trust Fund made observations to the *modèles d'attestation* concerning *revenus* and *activités* that the LRV prepared to accompany the Draft Application.¹⁶

1) Draft Application for individual reparations

17. Activities during the present reporting period have revolved around collecting feedback on the Draft Application.¹⁷

18. The Trust Fund notes that the Defence found that the Draft Application was in conformity with the Trial Chamber's instructions and stated that it had no objections to the document,¹⁸ a remark reiterated in its Observations to the Second Monthly Update Report.¹⁹

the Regulations of the Trust Fund for Victims", [ICC-01/12-01/15-277-Red](#), para. 3; and Second Monthly Update Report, para. 8.

¹⁵ [Decision on Draft Implementation Plan](#), para. 22.

¹⁶ Email from the Trust Fund to the LRV team -with VPRS in copy- sent on 24 September 2018 at 17:43.

¹⁷ [Decision on Draft Implementation Plan](#), para. 30.

¹⁸ *Supra* para. 4.

¹⁹ Defence Observations, para. 32.

19. The Trust Fund observes that the LRV Observations contain a number of comments to the Draft Application and the screening process,²⁰ but only one specific change was suggested, namely, substituting the term “business” (*commerce*) with “material harm caused by the destruction” (*préjudice matériel causé par la destruction*).²¹

20. The Trust Fund notes that it is not within its discretion to amend the eligibility criteria that the Trial Chamber has set out on several occasions, namely: “certain *business* owners”²² as well as “assistants, helpers, apprentices and employees of *businesses* that could not exist without the Protected Buildings”²³ may benefit from individual reparations provided that they can demonstrate the requisite exclusivity link. The Trust Fund also recalls that the Trial Chamber also took note of the criteria that VPRS developed for its assessment, where the notion of “business” is already integrated.²⁴

21. Accordingly, the Trust Fund does not intend to incorporate the LRV’s suggested change because it understands the expression “material harm caused by the destruction” to be substantially broader than the parameters laid down by the Trial Chamber.

22. Further, the Trust Fund understands the LRV to consider that the Trust Fund has made a distinction between masons and guardians on the one hand, and persons with other vocations, on the other.²⁵ The Trust Fund would like to stress that its Draft Application is based on the clear guidelines provided by the Trial Chamber.²⁶

23. The Trust Fund recalls that the LRV unfortunately could not attend the meeting that was scheduled based upon his request to discuss the Draft Application,²⁷ as well as

²⁰ LRV Observations, paras 56-72.

²¹ LRV Observations, para. 61.

²² [Reparations Order](#), para. 81 (emphasis added).

²³ [Reparations Order](#), para. 81; [Decision on Draft Implementation Plan](#), paras 62, 64 (emphasis added); Decision on TFV Request for Clarification Regarding Individual Reparations for Economic Harm, [ICC-01/12-01/15-280](#) (“Decision on TFV Request for Clarification”), para. 6.

²⁴ [Decision on TFV Request for Clarification](#), para. 7; VPRS Criteria for Legal Assessment, Annex I to the First Registry Report on Applications for Individual Reparations, ICC-01/12-01/15-275-Conf-AnxI, paras 11-13.

²⁵ LRV Observations, para. 68. *See also* Defence Observations, para. 32.

²⁶ *See* [Decision on Draft Implementation Plan](#), paras 62, 64; and [Decision on TFV Request for Clarification](#), para. 6; *see also* VPRS Criteria for Legal Assessment, Annex I to the First Registry Report on Applications for Individual Reparations, ICC-01/12-01/15-275-Conf-AnxI, para. 10; VPRS Criteria for Legal Assessment, Annex I to the Second Registry Report on Applications for Individual Reparations, ICC-01/12-01/15-282-Corr-AnxI, para. 10; and VPRS Criteria for Legal Assessment, Annex I to the Third Registry Report on Applications, ICC-01/12-01/15-287-Conf-AnxI, para. 10.

²⁷ *Supra* para. 9.

the fact that the LRV subsequently sent comments on the Draft Application one working day prior to the deadline of the present submission.²⁸ Once the Trust Fund has had time to examine the LRV's comments, it will send the form to VPRS for their remarks.²⁹ It will then submit a final draft application to the Trial Chamber.

24. Upon approval of the application, the Trust Fund intends to develop guidelines with the assistance of VPRS³⁰ to train those intermediaries who will be ultimately tasked with assisting with the applications in the field during the outreach campaign. This document will contain clear instructions to ensure that the screening process is carried out in a gender-inclusive manner.³¹

25. Lastly, the Trust Fund takes note that, in its most recent report, VPRS has "concluded that none of the forms reviewed contain all the information necessary for the VPRS to issue either a positive or a negative preliminary assessment."³² Therefore, in line with the administrative screening process,³³ the Trust Fund has not yet received any positive or negative preliminary assessments that would prompt adopting final decisions on eligibility.

2) *List of authorities*

26. The Trust Fund is fully aware that the list of persons who possess signatory authority within the screening process currently only refers to men. The Trust Fund first raised this issue to the LRV in a meeting held on 17 July 2018,³⁴ and wishes to reassure the Trial Chamber that it remains open to the LRV - and other stakeholders with direct knowledge of the realities in the field - to propose alternative individuals, particularly women, who could fulfil that function.³⁵ Separately, the Trust Fund is also seeking to identify potential alternative individuals.

²⁸ *Supra* para. 11.

²⁹ *Supra* para. 4.

³⁰ Third Registry Report on Applications, para. 8.

³¹ [Reparations Order](#), paras 31, 34, 105.

³² Third Registry Report on Applications, para. 7.

³³ [Decision on Draft Implementation Plan](#), para. 45.

³⁴ Meeting between the Trust Fund and the LRV held on 17 July 2018 from 14:00 to 15:15 PM at the Court's premises.

³⁵ See [Decision on Draft Implementation Plan](#), para. 61.

27. The Trust Fund notes the Defence's observations in relation to the traditional leaders,³⁶ and recalls that the Second Monthly Update Report was explicit in stating: "[t]he Trust Fund does not in any way challenge that traditional leaders may serve as persons of authority given the weight these figures are given by the local population."³⁷

28. In this context, the Trust Fund reiterates for the fourth time³⁸ the request made to the LRV to provide background information concerning the traditional leaders he has put forward. This information should include the name of the traditional leader, when and how s/he began acting as such, and the approximate number of matters or disputes heard to date. This information would be used to verify, to the extent possible, that these individuals are indeed considered traditional leaders in their community, and thereby ensure the integrity of the screening process.³⁹

IV. ORGANISATION OF WORK

A. Staffing

29. The staffing capacity at the Trust Fund in relation to the development and implementation of reparations awards in *Al Mahdi* has remained unchanged during the reporting period. [REDACTED]

B. Expert consultations

30. The Trust Fund has received the written observations of five professionals of recognised competence in, *inter alia*, the use of cultural heritage in post-conflict societies, transitional justice, psychology and international law. Their observations have provided further insights into the sensitive nature and risks of using cultural heritage in post-conflict societies, healing techniques for communities affected by armed conflict, and case-law specific to reparations for the loss of cultural heritage. Some of their observations are summarised below.

³⁶ See Defence Observations, paras 18, 24.

³⁷ Second Monthly Update Report, para. 21 (emphasis added).

³⁸ Prior to filing the Second Monthly Update Report filed, the Trust Fund had also requested background information on the traditional leaders from the LRV during a meeting held on 13 August, and through an email sent by the Trust Fund to the LRV -with VPRS in copy- on 29 August at 10:44.

³⁹ See Defence Observations, para. 24 sharing this concern.

31. With respect to guarantees of non-repetition, one of the experts on cultural heritage stated that it was hard to conceive such type of measures at this moment while the political and security situation was so volatile. This expert recommended against memorialisation constructions, similar to the *Flamme de la Paix* built in Timbuktu in 1996, given that the funds associated with such measure would do more harm than good. For example, the expert recalled that, during a cultural heritage project in 2006 in a nearby town, false rumours concerning the illicit exportation of holy sand led to a violent halt of the project.⁴⁰

32. Another of the experts, partially concurring, emphasised that guarantees of non-repetition should revolve around education and community involvement which could include, for example, public dissemination campaigns, training programmes for cultural heritage facilitators or cultural *animateurs*. As to memorialisation, this expert warned against imposing Western notions of what shape a memorial should take (e.g. monument, museum, plaque) and called attention to the fact that memorialisation measures should focus on the restorative agency of the population. This could be done by developing a format that is in accordance with the local customs, rules and practices.⁴¹

33. Concerning public ceremonies, one of the consulted experts noted that the usual practice is to arrange public functions on special dates to be attended by both public officials and the population. However, this expert cautioned the Trust Fund that this sometimes lends itself to political manipulation that often entrenches division and conflict.⁴²

34. One of the experts mentioned ceremonies targeting healing and collective bonding, workshops and services catering to the community needs, such as mental health. As to psychosocial techniques to improve mental health arising from conflict, this expert recommended working in groups and focussing on the community's well-being and resiliency in the post-violent phase.⁴³

⁴⁰ Consultation n.1 with expert specialised in the politics of heritage management, received by the Trust Fund on 4 September 2018 ("Consultation n.1"), p. 1.

⁴¹ Consultation n.2 with expert specialised in the politics of heritage management, received by the Trust Fund on 17 September 2018 ("Consultation n.2"), p. 2.

⁴² Consultation n.2, p. 5.

⁴³ Consultation n.3 with expert specialized in forced migration, vulnerable communities and social psychology, received by the Trust Fund on 14 September 2018 ("Consultation n.3"), p. 3.

35. Another expert stressed that reparations not only occur because of an adopted measure, but mainly because of the process leading to such a measure where the participation and consultation of victims is paramount.⁴⁴ As to projects aimed at repairing economic harm, this expert stated that each one of the measures will have to be analysed individually to ensure that they do not upset community bonds. Another expert suggested caution when selecting partners, as enlisting the help of those seen as not from or local to Timbuktu could have undesirable consequences.⁴⁵

V. SECURITY CONCERNS RAISED BY LRV

36. The Trust Fund wishes to explain to the Trial Chamber the security situation of the local expert based in Mali.⁴⁶ Given the LRV Observations on this matter,⁴⁷ which the Trust Fund notes were not communicated to it by the LRV, the Trust Fund sought clarification directly from the expert. The expert informed the Trust Fund that the alleged safety concerns related solely to a then possible field mission to Timbuktu. This mission was subsequently cancelled for security reasons. The expert affirmed that, after the mission to Timbuktu had been cancelled, ■ no longer had any safety concerns.

37. The Trust Fund has orally addressed this situation with the LRV and agreed that, should any similar issue arise again, it would be raised directly and promptly with the Trust Fund, particularly to avoid unnecessary delay or confusion and misrepresentation of such a serious issue.

VI. CONCLUSION

38. The Trust Fund wishes to reiterate to the Trial Chamber its commitment to submit a comprehensive and responsive Updated Implementation Plan by 2 November 2018, in compliance with the Trial Chamber's order. The Trust Fund is furthermore committed to promptly providing any clarification or further information requested in relation to this monthly update report.

⁴⁴ Consultation n.5 with doctor and psychologist specialised in socio-political trauma ("Consultation n.5"), p. 2.

⁴⁵ Consultation n.1, p. 5.

⁴⁶ LRV Observations, para. 55.

⁴⁷ LRV Observations, para. 55.



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

Dated this 15 October 2018

At The Hague, The Netherlands