

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **4 September 2019**

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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 "Tenth update report on the implementation plan",
submitted on 4 September 2019, ICC-01/12-01/15-335-Conf-Exp**

Source:

The Trust Fund for Victims

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

Office of the Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Mr Mayombo Kassongo

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**Office of Public Counsel for
Victims**

Office of Public Counsel for the Defence

States' Representatives

REGISTRY

Registrar

Counsel Support Section

Mr Peter Lewis

Mr Esteban Peralta Losilla

Victims and Witnesses Section

Detention Section

Mr Nigel Verrill

**Victims Participation and Reparations
Section**

Other

Mr Philipp Ambach

I. BACKGROUND

1. On 12 July 2018, Trial Chamber VIII (“Trial Chamber”) issued a decision wherein it, *inter alia*, directed the Trust Fund for Victims (“Trust Fund”) to submit monthly update reports in relation to the Trust Fund’s progress during the reparations implementation stage of the present case.¹
2. On 15 August 2018, 14 September 2018, 15 October 2018, 14 November 2018, 14 December 2018, 14 January 2019, 14 February 2019 and 6 May 2019, the Trust Fund filed its first,² second,³ third,⁴ fourth,⁵ fifth,⁶ sixth,⁷ seventh,⁸ eighth⁹ and ninth¹⁰ update reports.
3. On 26 October 2018, the Trust Fund submitted to the Trial Chamber the draft application form and the legal criteria to be applied (“26 October Submission”).¹¹
4. On 2 November 2018, the Trust Fund filed its updated draft implementation plan (“UIP”),¹² which, on 4 March 2019, the Trial Chamber approved¹³ and decided to receive future reports on a bimonthly basis.¹⁴

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, para. 22, wherein 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 First monthly update report on the implementation plan, 15 August 2018, ICC-01/12-01/15-277-Conf (“First Monthly Report”).

³ Second Monthly Update report on the implementation plan, 14 September 2018, ICC-01/12-01/15-283-Conf, with two confidential annexes (“Second Monthly Report”).

⁴ Third monthly update report on the updated implementation plan, 15 October 2018, ICC-01/12-01/15-288-Conf.

⁵ Fourth monthly update report on the updated implementation plan, 14 November 2018, ICC-01/12-01/15-299-Conf, with four confidential annexes.

⁶ Fifth monthly update report on the updated implementation plan including information concerning further details relevant to the Board of Directors’ complement decision, with one confidential annex, 14 December 2018, ICC-01/12-01/15-305-Conf.

⁷ Sixth monthly update report on the updated implementation plan, 14 January 2019, ICC-01/12-01/15-314-Conf.

⁸ Seventh monthly update report on the updated implementation plan, 14 February 2019, ICC-01/12-01/15-321-Conf.

⁹ Eighth update report on the updated implementation plan, 6 May 2019, ICC-01/12-01/15-321-Conf.

¹⁰ Ninth update report on the updated implementation plan, with one confidential, *ex parte* annex, available to the Trust Fund, 2 July 2019, ICC-01/12-01/15-332-Conf (“Ninth Update Report”).

¹¹ Trust Fund for Victims’ submission of draft application form, ICC-01/12-01/15-259-Conf, with four annexes.

¹² Updated Implementation Plan, ICC-01/12-01/15-291-Conf-Exp. A confidential redacted version was notified on 7 November 2018 (ICC-01/12-01/15-291-Conf-Red). A public redacted version was filed on 22 November 2018, *see* 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.

5. The Trust Fund hereby submits its tenth update report.

II. CLASSIFICATION OF THE PRESENT SUBMISSION

6. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report as confidential *ex parte*. The confidential classification is justified by the reasons set out in previous update reports.¹⁵ The *ex parte* classification is justified by the fact that potentially identifying information related to the person of authority proposed by the legal representative of victims (“LRV”) is disclosed.

III. UPDATE REPORT OF 4 SEPTEMBER 2019

7. During the reporting period, the Trust Fund was able, despite the logistical constraints discussed below, to conduct a variety of activities in the field, which led to significant progress regarding different aspects of the reparations plan.

8. In respect of individual reparations, the present report provides the Trial Chamber with: (i) an update on the nature and impact of the security situation and the related logistical constraints faced by the Trust Fund in the field; (ii) further information on the criteria to qualify as an attesting authority identified by the Trust Fund to ensure the fairness and integrity of the screening process; (iii) the purpose and outcome of the joint training conducted with the LRV for potential attesting authorities held in July, (iv) the plan to organise a similar joint training in an upcoming mission; and (v) the enquiries made in relation to the modalities to disburse individual awards.

9. In regard to collective reparations, the present report contains information on: (i) the preparatory work aimed at rehabilitating the Protected Buildings in cooperation with UNESCO; (ii) the current stage in the procurement process to select vendors for the other collective measures to address economic and moral harm; (iii) the situation with respect to internally displaced persons; (iv) fundraising efforts; and (v) consultations with the Malian authorities.

¹³ Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, ICC-01/12-01/15-324-Conf (“Decision on the UIP”); Public redacted version of Decision on the Updated Implementation Plan from the Trust Fund for Victims, 4 March 2019, ICC-01/12-01/15-324-Red.

¹⁴ Decision on the UIP, para. 104.

¹⁵ See First Monthly Report, para. 3; Second Monthly Report, para. 8.

A. Logistical constraints

10. The beneficiaries of the reparations ordered by the Court are predominantly located in Timbuktu, a city that has remained thus far inaccessible to the Trust Fund.¹⁶ This situation has had a serious impact on the implementation of the reparations plan.

11. By way of example, between [REDACTED] July, the Trust Fund conducted a training in Bamako for individuals identified by the Trust Fund as being potentially able to serve as attesting authorities in the application process for individual reparations.

12. While the training was initially planned to take place in Timbuktu in order to reach all identified potential authorities, including the individual proposed by the LRV, the mission to Timbuktu was not authorised due to the deteriorating security situation and in view of the confirmation of charges hearing in the case against Mr Al Hassan Agaboudou Aziz Ag Mohamed Ah Mahmoud.¹⁷ Moving the training from Timbuktu to Bamako required flying the potential attesting authorities to Bamako which, in turn, implied finding suitable dates for a number of persons who have their own availability constraints. [REDACTED]

[REDACTED]. As a result, not everyone initially meant to attend the training could travel to Bamako, including the potential attesting authority put forward by the LRV.

13. The Trust Fund has so far resorted to [REDACTED] to arrange the flights between Timbuktu and Bamako. [REDACTED] flights present several practical difficulties to the Trust Fund. There is only one flight a day during weekdays and the Trust Fund needs to rely entirely [REDACTED] [REDACTED] to obtain seats on the aircraft, often facilitated [REDACTED]. Even when such seats are kindly made available [REDACTED] to the Trust Fund, the aircraft has limited seating capacity, for which Trust Fund sponsored

¹⁶ With the exception of a 24 hours mission for the preparation of the Draft Implementation Plan in 2017.

¹⁷ The Trust Fund notes that, on 2 July 2019, the public redacted version of the document containing the charges against Mr Al Hassan was filed, which includes the war crime of intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments. The Protected Buildings contained in the charges against Mr Al Hassan coincide entirely with those of Mr Al Mahdi's case (See Version publique expurgée de la «Version amendée et corrigée du Document contenant les charges contre M. Al HASSAN Ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud» ICC-01/12-01/18-335-Conf-Corr, 11 mai 2019, avec Annexe I confidentielle et Annexes A, C et D corrigées et confidentielles, ainsi que Annexe B amendée et corrigée, confidentielle, et Annexes E à I confidentielles, 2 juillet 2019, ICC-01/12-01/18-335-Corr-Red, para. 1074).

passengers lack priority and they may not be able to fly if [REDACTED] staff urgently needs to travel.

14. Following the end of the dry season, [REDACTED] [REDACTED] the Trust Fund are currently exploring the option of transportation by river which, based on preliminary information received, appears to be costly and time-consuming. No safety determination has been made yet, and staff members are currently excluded from using this travel option. Given this situation, alternative travel providers will be considered.

15. The Trust Fund, in collaboration with the relevant Registry sections, continues to monitor the security conditions with a view to conducting a mission in Timbuktu, as this would considerably advance the reparations process with respect to both the individual and collective awards. The Trust Fund wishes to extend its gratitude to the Country Analysis Unit, the Security and Safety Section, the Field Security Officer and the Victims and Witness Section (“VWS”) for their ongoing support in this regard and equally for their support with respect to the Bamako-based missions that the Trust Fund has been able to undertake.

B) Individual reparations awards

16. The Trust Fund recalls that it has developed guidelines to conduct the screening process and continues to maintain a fruitful rapport with both the Victims Participation and Reparations Section (“VPRS”) and the LRV. To date, the LRV has submitted 408 applications to VPRS which, in turn, has deemed that none of them were yet complete and ready for transmission.

1) Attesting authorities: selection criteria

17. In light of the serious difficulties in procuring official records or documentary evidence, attesting authorities will be at the cornerstone of the screening process as the key actors able to attest whether a potential beneficiary is indeed a direct descendant of the principal saint whose tomb was destroyed as a result of Mr Al Mahdi’s crime, or whether his or her livelihood exclusively depended on the Protected Buildings at the time of the attack. While being intimately familiar with the social fabric of Timbuktu and enjoying a prominent, trusted and respected place within the local community, given the lack of alternative means for the Trust Fund to verify the assertions of harm suffered by potential beneficiaries, it is essential that attesting authorities understand

their role in the screening process and the specific eligibility criteria to qualify as a beneficiary of the individual awards as set out by the Trial Chamber.

18. Mindful of the critical role that attesting authorities play as well as the fairness and the integrity which must govern the screening process, the Trust Fund has set out criteria¹⁸ to recognise individuals as an attesting authority, which are hereby recalled: first, the authority must be recognised as [REDACTED]
[REDACTED]
[REDACTED]. Second, the person must be vetted [REDACTED]
[REDACTED], among other things, that the person is not on the list of sanctions of the United Nations Security Council Sanctions Committee concerning Mali. Third, the person must participate in, at least, one of the Trust Fund's trainings, following which, the Trust Fund must reach a positive assessment concerning the participant's understanding of the role of attesting authorities, the eligibility criteria relevant to individual awards, and their capability to attest to the veracity of applicants' claims. Lastly, the person must voluntarily accept to become an attesting authority in the process.

19. The Trust Fund cannot exclude the possibility that its increased field presence would lead to the finding of new information and reserves the right to adjust these criteria should further activities reveal the need for adjustment.

2) Training delivered for potential attesting authorities

20. The objective of the training delivered in [REDACTED] for potential authorities was to present the reparations proceedings in the *Al Mahdi* case, clarify the charge for which Mr Al Mahdi was convicted, the types of harm recognised by the Trial Chamber, the eligibility criteria necessary to qualify as a victim entitled to an individual reparations award and, most importantly, the nature, importance and limitations of the role of authorities in the screening process. Direct contact with the potential attesting authorities revealed that detailed discussions on some points needed to be held for the attendees to fully understand the contours of the case and their prospective role. For instance, the Trust Fund had to place emphasis on the fact that only ten Protected Buildings are covered by the present reparations proceedings despite the fact that other mausoleums – some regarded as very relevant by the local population – were destroyed.

¹⁸ See Eighth Update Report, paras 29-32; Ninth Update Report, paras 12 and 16-17.

This enabled all attendees to understand that the Al Arawani mausoleum was within the scope of the case, whereas for example the Tamba Tamba shrine was not.

21. For this first training, the Trust Fund had selected [REDACTED] individuals as potential attesting authorities in relation to [REDACTED] different Protected Buildings. These individuals could also serve as [REDACTED].¹⁹ Their identity was communicated to the LRV ahead of the training. Out of these, [REDACTED] were able to complete the training²⁰ of which [REDACTED] accepted to act as an attesting authority immediately after the training for the purposes of the *Al Mahdi* case. The [REDACTED] other attendees requested to take time to consider this possibility. The Trust Fund continues to engage with them and with the LRV on this matter.

22. One of the participants was assisted by the LRV team – in presence of a Trust Fund’s staff member – to fill out an application form [REDACTED]. In line with the “bottom-up” approach devised in the 26 October Submission,²¹ the Trust Fund will request VPRS to frontload applications coming from [REDACTED] s [REDACTED] prioritise their transmission to the Trust Fund along with the participating victims’ applications submitted by the LRV, once they are deemed complete.

23. The Trust Fund wishes to thank the LRV and his team for their assistance in the formation of both intermediaries and attesting authorities to who the LRV may if he so chooses resort to in the future.

3) Upcoming training session for potential attesting authorities

24. The Trust Fund notes that none of the individuals it has identified would be qualified to serve as attesting authorities in relation to all of the Protected Buildings because, on average, their expertise is specific to [REDACTED]. Accordingly, further training sessions with other potential attesting authorities are needed to ensure that the totality of Protected Buildings is covered. The Trust Fund is therefore currently planning a joint mission with the LRV in September to pursue another training of potential attesting authorities. As planned and coordinated with the LRV, the person of authority identified by the LRV will attend this upcoming session.

¹⁹ 26 October Submission, para. 39.

²⁰ One prospective attendee could not attend the training and is scheduled to attend the next training.

²¹ 26 October Submission, para. 36.

25. In this respect, the Trust Fund recalls that the LRV communicated the identity of one potential person of authority with all the required information (viz. identity card, as well as a statement as to why this person is in a position to attest to the veracity of the information contained in the applications relevant to the Trial Chamber's eligibility criteria).²² The Trust Fund reiterates its gratitude to the LRV for providing this information and its willingness to consider other figures of authority that he may wish to propose in the future. The LRV has informed the Trust Fund that this person has attested to the totality of applications submitted to date, that is, he has attested for all current applicants, be it for moral and/or economic harm, and in relation to all of the Protected Buildings. It is for this reason, as well as the Trial Chamber's explicit prioritization instructions of the applications of the participating victims, that the Trust Fund considers it a priority to have this individual participate in a training and greatly appreciates all the efforts made by the LRV to ensure this individual's attendance at the September training.

26. The training with potential attesting authorities will be followed by a workshop with the intermediaries who were already identified and trained during a [REDACTED] training by the Trust Fund. The goal of this workshop will be twofold: on the one hand it will aim at reinforcing their capacity by updating them on the implementation of reparations and verify that their knowledge of the process and of the confidentiality requirements remains up to date; and on the other hand it will aim at familiarising them with the LRV, under whose instructions and direction they will work should the LRV wish to resort to their assistance in the future.

4) Modalities of disbursement of individual awards

27. Given the current state of insecurity and the monetary value of the individual compensations paid, direct payment of individual awards by the Trust Fund appears to be difficult operationally. During its July mission, the Trust Fund has made enquiries regarding potential disbursement methods for compensation to victims and is currently assessing the different options. The Trust Fund is investigating alternative payment modalities that would maximise the level of confidentiality and personal safety for the

²² The information provided by the LRV, the Trust Fund's independent investigations and [REDACTED] background check confirm that, at the time of the crime, this individual [REDACTED] [REDACTED] [REDACTED].

victims and their related data. Other factors to be considered include geographic coverage of cash delivery mechanisms, availability of cash, additional financial costs associated with the method chosen (such as bank charges for bank transfers, provision of phones to beneficiaries not owning one if mobile transfer is used, cost of monitoring) and gender sensitivity. The Trust Fund expects to be in a position to elaborate a robust and safe and payment modality before the first decision on the victim eligibility is issued. The LRV's input will be sought on this matter in due course.

C. Collective reparations

1) Rehabilitation of the Protected Buildings

28. On 16 July 2019, at a meeting held with the UNESCO Bamako Office and the Trust Fund Programme Manager, the Trust Fund was informed that the walls of the Three Saints cemeteries and the Alpha Moya mausoleum – measures initially envisaged in the UIP –²³ have already been rebuilt.

29. The Trust Fund is currently finalising the programme documents related to the measures that the Trial Chamber ordered in relation to the rehabilitation and maintenance of the Protected Buildings. This will allow Procurement to start a sole sourcing procedure for which UNESCO will need to submit a project proposal containing a narrative and a budget, which will be subject to review by the Trust Fund on quality and adherence to the reparations plan.

2) Economic Resilience Facility, Psychological support, Safe Space and commemorations

30. The second round of calls for expressions of interest (“EOI”) concerning the Economic Resilience Facility (“ERF”) as well as the collective and symbolic reparations programmes for moral harm closed on 31 July 2019. During the mission in Bamako, the Trust Fund disseminated the calls for EOIs through diplomatic, NGO and humanitarian networks. This resulted in an important increase of applications: eight vendors expressed their interest to collaborate with the Trust Fund for the implementation of the ERF while ten vendors did so for the moral harm measures, as opposed to the two received in the first call. The files of the vendors are currently with the Trust Fund. The review committees established by Trust Fund for each EOI are

²³ UIP, paras 90-91.

currently verifying the eligibility of the vendors. The Trust Fund wishes to thank the Registry's Procurement Unit for their assistance throughout this process.

31. In parallel, the Trust Fund is currently preparing the Requests for Proposal ("RFP") for these measures, which contain all the programme documents, including the scopes of work. The RFPs will then be shared with those vendors pre-selected in the EOI process once they have signed a non-disclosure agreement. All pre-selected vendors will be invited to a mandatory workshop to explain the Reparations Order and Plan, and clarify the requirements and expected objectives of the reparations measures.

3) Assistance for the return of displaced victims

32. The Trust Fund is currently mapping the actors involved in the return of internal displaced persons ("IDPs") to appreciate which entity currently bears the responsibility for this process in Mali as well as assess the current possibility to organise and support returns on a consensual basis. This consultation revealed that the number of IDPs doubled in the period of one year, and that the current security context does not allow for safe returns. Notwithstanding the unlikelihood of returns occurring in a near future, in line with the Decision on the UIP,²⁴ the Trust Fund is exploring options to facilitate the return package and intends to continue engaging with the LRV on this topic.

4) Fundraising efforts

33. The Trust Fund recalls that 50% of the total envelope has been collected.²⁵ A substantial additional amount of resources remains to be collected to cover the funding gap as well as the indirect costs related to implementation of the reparations awards.

34. To this end, during the month of July, the Trust Fund pursued its fundraising efforts for the *Al Mahdi* reparations. The Trust Fund held meetings with the donor community, in particular the embassies of [REDACTED]. The Trust Fund met with receptive audiences expressing a positive appreciation of financial needs in relation to the complete implementation of the reparations awarded in *Al Mahdi*. The Trust will continue these engagements throughout the second semester of 2019.

²⁴ Decision on the UIP, para. 79.

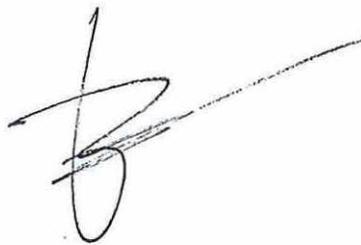
²⁵ First Monthly Report, para. 18.

5) Liaison with Government of Mali

35. During the July mission, the Trust Fund held meetings with various representatives of the Malian authorities to keep them apprised of developments regarding the reparations awards in the *Al Mahdi* case and is pleased to report the continued and full support of the Malian authorities. The Trust Fund's Malian Board Member remains in close contact with Malian authorities.

IV. CONCLUSION

36. The Trust Fund respectfully requests that the Trial Chamber take note of the present report and stands ready to further clarify any information provided in this document, or any other issue affecting the implementation phase of the present case.



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 4 September 2019
At The Hague, The Netherlands