

**Cour
Pénale
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**International
Criminal
Court**

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Date: **25 October 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

**With one confidential *ex parte* annex, available to the Legal Representative of
Victims and the Registry**

**Public redacted version of "Eleventh update report on the implementation plan",
submitted on 25 October 2019, ICC-01/12-01/15-336-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

Victims and Witnesses 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 on the draft implementation plan (“Decision on the DIP”) wherein it laid down the features of the organisation of the screening process for individual applications for reparations,¹ and 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.² On 4 March 2019, the Trial Chamber agreed to space the submission of such reports to a bimonthly basis.³
2. On 15 August 2018, 14 September 2018, 15 October 2018, 14 November 2018, 14 December 2018, 14 January 2019, 14 February 2019, 6 May 2019, 2 July 2019 and 4 September 2019, the Trust Fund filed its first,⁴ second,⁵ third⁶, fourth⁷, fifth⁸, sixth,⁹ seventh,¹⁰ eighth,¹¹ ninth,¹² and tenth¹³ update reports, respectively.
3. On 26 October 2018, the Trust Fund made a submission (“26 October 2018 Submission”) containing its interpretation of the legal criteria set by the Trial Chamber

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](#), paras 35-49.

² [Decision on the DIP](#), para. 22.

³ 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”) para. 104.

⁴ First monthly update report on the implementation plan, 15 August 2018, ICC-01/12-01/15-277-Conf (“First Monthly Report”).

⁵ 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”).

⁶ Third monthly update report on the updated implementation plan, 15 October 2018, ICC-01/12-01/15-288-Conf.

⁷ Fourth monthly update report on the updated implementation plan, 14 November 2018, ICC-01/12-01/15-299-Conf, with four confidential annexes (“Fourth Monthly Report”).

⁸ 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 (“Fifth Monthly Report”).

⁹ Sixth monthly update report on the updated implementation plan, 14 January 2019, ICC-01/12-01/15-314-Conf.

¹⁰ Seventh monthly update report on the updated implementation plan, 14 February 2019, ICC-01/12-01/15-321-Conf (“Seventh Update Report”).

¹¹ Eighth update report on the updated implementation plan, 6 May 2019, ICC-01/12-01/15-321-Conf.

¹² 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”).

¹³ Tenth update report on the updated implementation plan, confidential *ex parte* available to the Legal Representative of Victims and the Registry, 4 September 2019, ICC-01/12-01/15-335-Conf-Exp (“Tenth Update Report”).

in respect of individual reparations; and four annexes corresponding to the new draft application form for individual reparations and three models of *attestation*.¹⁴

4. On 2 November 2018, the Trust Fund filed its updated draft implementation plan (“UIP”).¹⁵
5. On 4 March 2019, the Trial Chamber approved the UIP.¹⁶
6. The Trust Fund hereby submits its eleventh update report.

II. CLASSIFICATION OF THE PRESENT SUBMISSION

7. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund has classified this report and its annex as confidential *ex parte* to protect the identities of the potential figures of authorities ([REDACTED] [REDACTED] [REDACTED]) who would be otherwise easily identified [REDACTED]. A confidential redacted version of the report is filed simultaneously. The confidential classification is warranted for the reasons set out in the Trust Fund’s previous update reports.¹⁷

III. UPDATE REPORT OF 25 OCTOBER 2019

8. The present report covers the period from 4 September 2019. During the reporting period, the Trust Fund, in close collaboration with the Legal Representative of

¹⁴ Trust Fund for Victims, “Trust Fund for Victims’ submission of draft application form” with four confidential annexes, 26 October 2018, ICC-01/12-01/15-289-Conf. In its Fourth Monthly Report, the Trust Fund of 14 November 2018 made amendments to questions 4.2 and 4.3 of the draft application form, and to the *attestation de famille* taking into consideration LRV, “*Observations du Représentant légal sur la soumission du projet de formulaire de demande de réparation et de ses annexes par le Fonds au profit des victimes*,” 7 November 2018, ICC-01/12-01/15-294-Conf, paras 16-17, 21. On 21 November 2018, the Trial Chamber adopted the new application form for use during the implementation of reparations, subject to one amendment, *see* Trial Chamber, “Decision on TFV Submission of Draft Application Form”, 21 November 2018, [ICC-01/12-01/15-301](#). The Trust Fund filed the approved application form with the required amendment as a confidential annex in its Fifth Monthly Report of 14 December 2018.

¹⁵ Trust Fund for Victims, “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](#); and Lesser public redacted version of “Updated Implementation Plan” submitted on 2 November 2018 ICC-01/12-01/15-291-Conf-Exp, 14 October 2019, ICC-01/12-01/15-291-Red3.

¹⁶ 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](#).

¹⁷ *See* First Monthly Report, para. 3; Second Monthly Report, para. 8.

Victims (“LRV”) made major progress in respect of individual reparations. Additionally, there were significant developments in relation to collective reparations including the project concerning the maintenance and rehabilitation of the Protected Buildings, as well as the procurement of services for the implementation of the other collective awards. Lastly, the Trust Fund participated in a joint outreach mission in Bamako from 14 to 18 October 2019 led by the Public Information and Outreach Section (“PIOS”), in cooperation with the Office of the Prosecutor (“OTP”).

A. Individual reparations awards

9. Following the impossibility to conduct a mission in Timbuktu in June 2019 to meet and train potential figures of authorities, the Trust Fund had to resort to an alternative method consisting in inviting all such potential figures to Bamako.

10. From a logistical standpoint, the Trust Fund had to ensure the timely transfer to Mali of sufficient funds to carry out its activities and had to rely on [REDACTED] flights to transport all individuals from Timbuktu to Bamako in a safe way. From [REDACTED] September 2019, youths’ movements in Timbuktu protested against the interruption of the construction of a road by blocking the airport, which resulted in the cancellation of all flights and in the inability of the first [REDACTED] attendees to Trust Fund’s activities to travel to Bamako. In spite of this complication, the Trust Fund reshuffled the planning of its activities and managed to successfully complete all proposed activities during the reporting period.

11. Taking into account the impossibility to book all passengers on a single [REDACTED] flight, the Trust Fund had to divide the participants into three groups. Accordingly, three [REDACTED] workshops were held – jointly with the LRV – [REDACTED]

[REDACTED],
[REDACTED]¹⁸ [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] They received training on the Reparations Order, the calendar of implementation of the reparations, and on the screening process, in particular the role they may play to ensure the integrity of its outcomes. Extensive working sessions were dedicated to understanding exactly who could be considered an eligible victim. At the end of each workshop, participants were

¹⁸ These three sets of trainings of potential figures of authorities were held in addition to the group already trained in July and referenced in the Tenth Update Report, paras 20-23.

asked about which – if any – Protected Buildings they were capable of attesting to and why. Their capacity to attest was assessed¹⁹ and, if the outcome of the assessment was positive, they were given time to consider whether they would accept the role of an attesting authority in the screening process. All individuals but one were deemed fit to serve as an attesting authority²⁰ and, out of the vetted authorities, all but one agreed to carry out this role. As a result, there are now [REDACTED] vetted authorities who, among them, encompass the totality of the Protected Buildings.²¹ Each Protected Building is covered at least by [REDACTED] figures of authorities.

12. Accordingly, the LRV has now been provided with a “reservoir” of authorities.²² Additionally, the workshops permitted the identification of a wide pool of potential victims. Those [REDACTED] who wished to submit an application were assisted to do so by the Trust Fund and the LRV, who is now in possession of their applications.

13. Separately, on [REDACTED] October 2019, the Trust Fund organised a workshop in Bamako to reinforce the capacities of its [REDACTED] intermediaries,²³ and ensure the quality and confidentiality of the collection of applications in Timbuktu. Out of the [REDACTED] intermediaries initially trained in [REDACTED] 2019, only those whose integrity and ability were deemed sufficient at the time were re-invited to this refresher training. Intermediaries were provided with clear guidance on the methodology for the collection of applications.

14. On 19 October 2019, [REDACTED], the LRV and the Trust Fund had a coordination meeting to discuss upcoming steps and management on the intermediaries. The Trust Fund is pleased to report that they agreed on the following methodology and calendar:

- (i) The Trust Fund, with the assistance of its intermediaries, proceeds to collect new application forms, in close cooperation with the LRV team.

¹⁹ [REDACTED]

The person of authority proposed by the LRV attended the first workshop ([REDACTED] September 2019), but he was not deemed fit to attest, due to his lack of knowledge of the Protected Buildings and the fact that he does not come from Timbuktu

²¹ During the trainings, it was found that each individual possessed a specific domain of expertise in the sense that each of the potential figures of authority could attest to the reality of one or two Protected Buildings. [REDACTED]

The LRV and VPRS have been informed of the list by way of emails sent on 1 October 2019 at 16:11 and on 25 October 2019 at 12:03 with the updated list annexed to this report.

²³ [REDACTED]

The Trust Fund is pleased to inform the Trial Chamber that the collection of new application forms has already started;

- (ii) Upon collection, the Trust Fund promptly transmits application forms to the LRV team. The recently collected application forms have already been transmitted to the LRV;
- (iii) The LRV team, relying on their own network or, if they so wish, on the Trust Fund's network, contacts figures of authorities to collect the relevant attestation(s); and
- (iv) The LRV team transmits applications to the Registry on a rolling basis.

15. Additionally, the Trust Fund and the LRV agreed on a procedure and deadline for the consolidation and transmission of the 410 unclear applications currently pending with the Victim Participation and Reparations Section ("VPRS").²⁴ By way of background, the authority training held on ██████████ September already permitted to provide a list of figures of authorities covering all Protected Buildings to which the LRV can resort to. At that point, bearing in mind the Trial Chamber's instruction that it is for the Trust Fund to "take all necessary measures to ensure that reparations can be awarded within a reasonable deadline",²⁵ the Trust Fund deemed it necessary to set a deadline for the LRV to complete all unclear pending applications. The deadline was initially devised for 30 October 2019.²⁶

16. Arguing that the workload caused by the workshops with authorities and intermediaries (all held jointly) was too important to ensure that the deadline is respected, the LRV requested an extension of time, in accordance with the procedure set by the Chamber in the Decision on the DIP.²⁷ The Trust Fund and the LRV agreed that

²⁴ See, for example, Registry, "Fifth Registry Report on Applications for Individual Reparations", 20 December 2018, [ICC-01/12-01/15-308](#), paras 12 and 14.

²⁵ [Decision on the DIP](#), para. 49.

²⁶ This decision was communicated to the LRV by way of email sent on 19 September 2019 at 16:53. Noting: (i) that the substantive criteria to qualify as a victim eligible for individual reparations are known since 26 October 2018; (ii) that the required proof (attestations) has also been known since 26 October 2018; (iii) that the Trust Fund repeatedly reminded the LRV to provide it with the required information in relation to the attesting authorities he used or wishes to use; (iv) that as an alternative to the fact that the one person of authority that he proposed was rejected by the Trust Fund, the latter has put forward a list of vetted authorities whose capacity to attest has been confirmed and to which the LRV may resort to; (v) that the LRV met all certified figures of authority between ██████████ and ██████████ 2019, and that they are easily reachable by phone or instant messaging; (vi) that the LRV and a member of his team participated in the July and in the October-November 2019 missions; and (vii) that the Trial Chamber envisaged a mechanism whereby the average length to transmit applications (including unclear ones) was of 30 days and on a rolling basis.

²⁷ [Decision on the DIP](#), para. 39.

all 410 unclear applications were to be consolidated, on a rolling basis, by 13 December 2019.

17. The Trust Fund and the LRV are pleased with the above described developments and confident that, barring exceptional circumstances, it will enable the identification of potentially eligible victims and submission of their applications within the deadline set by the Trial Chamber.

18. As a final matter, the Trust Fund wishes to inform the Chamber that the security situation in Timbuktu remains extremely precarious and has been deteriorating over the past few months. Accordingly, the personal safety of all individuals engaging with any representative of the international community is potentially at serious risk. In this context, the Trust Fund, having consulted and agreed with the LRV, wishes to inform the Trial Chamber that it will invite VPRS to redact the names of its intermediaries and of the attesting authorities from the application forms and attestations. The Trust Fund appreciates and has taken into account that the vast majority of intermediaries and figures of authority encountered have expressed genuine fear of their identity being disclosed to Mr Al Mahdi. These persons have also shown reluctance, if not refusal, to collaborate with the Trust Fund, the LRV or the Court in general should their identity be communicated to the convicted person.

19. As these individuals are essential to the success of the screening of potential beneficiaries, their non-participation would compromise the entirety of the process at its core as, on the one hand, it would prevent the Trust Fund and the LRV to collect application forms in Timbuktu, which is the place where most victims are residing and, on the other hand, it would prevent the LRV from consolidating applications with the figures of authorities met so far.

20. Further, some of these individuals are potential victims themselves and have submitted an application form, requesting that their identity be concealed from the Defence as provided for in the application form, pursuant to the Appeals Chamber's Judgment.²⁸ Revealing their names in another capacity would defeat the purpose of redacting their names in the application form, that is, to ensure their personal safety and well-being.

²⁸ Appeals Chamber, Public redacted Judgment on the appeal of the victims against the "Reparations Order," 8 March 2018, ICC-01/12-01/15-259-Red2, para. 87.

21. The Trust Fund respectfully submits that the rights of the convicted are safeguarded by the neutral nature of the Trust Fund's role in the screening process. The Trust Fund's role is different than that of the parties in that it is responsible for the integrity and impartiality of the process. Accordingly, intermediaries and figures of authorities have been chosen in a non-biased way purely based on the merit of their knowledge of the context and ability to access the Timbuktu community. They all followed the joint training organised and understood not only the scope of the role but also the role of all other parties involved in the procedure. They have been vetted, assessed and informed that they remain under the Trust Fund's constant scrutiny: any individual not meeting the Trust Fund's standards in terms of ethic, neutrality and confidentiality will be excluded from the process. For these reasons, unless otherwise instructed by the Trial Chamber, the Trust Fund will request VPRS to redact the identities of intermediaries and figures of authorities from the application forms and attestations.

22. As a final matter, the Trust Fund continues to assess the possible modalities of payment of the award in light of the current social and security context in Mali. The Trust Fund expects to be in a position to provide the Trial Chamber with more information in the next report.

B. Collective reparations

23. In respect of the collective reparations, the Trust Fund is pleased to report that: (i) substantial progress was made in respect of the reparations concerning the rehabilitation and maintenance of the Protected Building; (ii) continued efforts are being made towards the selection of implementing partners for both the psychological support mechanisms and the Economic Resilience Facility ("ERF"); (iii) the Trust Fund participated in the PIOS outreach mission held from 14 to 18 October 2019; and (iv) the cooperation with the Malian authorities was strengthened as a result of a meeting with the President of Mali.

24. In respect of the reparations concerning the rehabilitation and maintenance of the Protected Buildings, the Trust Fund has finalised the scope of work ("SOW") and concomitant programme-related documents which contain the specific details for the

implementation of this project, including description of the activities, budgetary guidelines, and monitoring and evaluation standards.

25. In parallel, on 16 October 2019, following extensive consultations with the Procurement Unit, the latter authorised the Trust Fund to sole-source UNESCO, as an exception to the usual competitive bidding process, for the measures concerning the maintenance and rehabilitation of the Protected Buildings. The Trust Fund would like to express its gratitude to the Procurement Unit for its strong collaboration in supporting the engagement with UNESCO.

26. Accordingly, on 25 October 2019, the Trust Fund shared the SOW and all programme related documents with UNESCO. The Trust Fund invited UNESCO to submit a project proposal (made of a cover letter, a narrative proposal, a budgetary proposal, and the curriculum vitae of all staff to be associated in the implementation of the activities) by 15 December 2019.

27. In accordance with its operational standard practices, the Trust Fund deems it appropriate to organise a workshop in Bamako to be attended simultaneously by UNESCO, the Malian Ministry of Culture [REDACTED] (*i.e.* the [REDACTED] entities with [REDACTED] competence regarding the management over world heritage sites) and, to the extent feasible, [REDACTED]. The goal of the workshop will be to explain the SOW and related programme documents and to create a platform to resolve any pending issues, with a view to facilitating the submission of a consolidated proposal by UNESCO in accordance with the Reparations Order.

28. Following UNESCO's submission, the Trust Fund will review the project proposal to ensure it meets quality standards, after which, in application of the Financial Rules and Regulations, it will be presented to the Procurement Review Committee for final approval.

29. In respect of the other collective measures, the Trust Fund recalls that two expressions of interest were launched earlier this year concerning the psychological support mechanisms²⁹ and the ERF: ten and eight vendors applied, respectively. The

²⁹ Due to their interdependence with the measures ordered in respect of psychological support, the memorialisation measures have been encompassed in the same expression of interest.

Trust Fund constituted two separate panels to review the applications. After evaluating the proposals against the mandatory eligibility criteria, only five vendors were deemed eligible for the psychological support projects, and three for the ERF. To avoid being left with very few to no partners capable of implementing the projects, the Trust Fund sent, via the Procurement Unit, follow-up letters to all vendors who did not provide complete documentation in relation to (some of) the Trust Fund's eligibility criteria, affording them an extra opportunity to provide the missing documentation by 25 October 2019. Upon receiving the extra documentation,³⁰ the Trust Fund will proceed to a second review and will draw an updated list of eligible candidates.

30. Simultaneously, the Trust Fund is currently completing the respective SOWs for these two collective awards. In accordance with the Financial Rules and Regulations and the procurement processes, invited bidders will be requested to sign a non-disclosure agreement ("NDA") before the Trust Fund is in a position to provide them with said SOWs. Akin to the methodology followed with UNESCO, the Trust Fund will organise workshops with invited bidders to ensure that project proposals will remain within the parameters of the SOW and of the Reparations Order.

31. The Trust Fund took part in the PIOS outreach mission from 14 to 18 October 2019 in Bamako. At the conferences and workshops organised by PIOS, the Trust Fund provided information about its mandate and the stage of implementation of the Reparations Order. Trust Fund staff gave interviews with radio stations and TVs, broadcasting in the region of Timbuktu in many local languages, notably Songhai, Tamasheq and Arabic. The Trust Fund has received positive feedback from its network in Bamako and Timbuktu on the fact that it enabled the local population to better comprehend the collective reparations in the *Al Mahdi* case.

32. Further, the Trust Fund is pleased to inform the Trial Chamber that, in furtherance of the continued positive relationships with the Malian authorities, on 26 September 2019, a member of the Board of Directors and the Trust Fund's Executive Director had a meeting, in the margins of the United Nations General Assembly in New York, with the President of Mali, H.E. Ibrahim B. Keita. The other representatives of the Government of Mali participating in the meeting were the Minister of Foreign

³⁰ While bidders were given until 25 October 2019 to submit extra information, due to internal procedures, these will only be communicated to the Trust Fund after a few days upon receipt.

Affairs and Cooperation, the Minister for Administration and Decentralisation, and the Permanent Representative of Mali. The president of Mali reiterated its strong support to the activities of the Trust Fund in Mali and, in particular, in regard of the implementation of reparations awards in the *Al Mahdi* case. It was reconfirmed that the Presidency of Mali is to host the symbolic award ceremony after the first individual compensations have been paid. The Trust Fund respectfully thanks the Malian authorities for their cooperation and support in the implementation of the Reparations Order.

33. Lastly, from a staffing point of view, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. CONCLUSION

34. The Trust Fund requests that the Trial Chamber take note of the present report. The Trust Fund 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 25 October 2019
At The Hague, The Netherlands