

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date of original: 13 April 2022

Date: 17 May 2022

TRIAL CHAMBER VIII

Before:

**Judge Antoine Kesia-Mbe Mindua
Judge Bertram Schmitt
Judge Maria del Socorro Flores Liera**

SITUATION IN THE REPUBLIC OF MALI

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

**Public redacted version of
Trust Fund for Victims' response to the Legal Representative for Victims' request
for extension of time, submitted on 13 April 2022,
ICC-01/12-01/15-441-Conf**

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

Mr Karim A. A. Khan QC

Counsel for the Defence

Mr Mohamed Aouini

Legal Representatives of Victims

Mr Mayombo Kassongo

Trust Fund for Victims

Mr Pieter de Baan

REGISTRY

Registrar

Mr Peter Lewis

Victims and Witnesses Section

Victims Participation and Reparations

Section

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 reparations¹ 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 approved the Trust Fund updated implementation plan³ and, set 4 March 2020 as the deadline for the completion of the screening process ("Decision on the UIP").⁴
2. On 29 April 2020, the Trial Chamber issued a decision ruling that all reparations applications must be submitted no later than eight weeks after the three following conditions are met: (i) the lifting of travel restrictions; (ii) the lifting of prohibitions of gatherings in Mali; and (iii) the lifting of restrictions put in place by [REDACTED] and placing it on the Registry to inform the Trial Chamber when these three conditions are met.⁵ The three conditions were never met.⁶
3. On 25 February 2022, the Trust Fund submitted its twenty-third update report on the implementation, in which it, *inter alia*, requested for permission to continue with the implementation of individual reparations.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, paras 35-49.

² Decision on the DIP, para. 22.

³ 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

⁴ 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.

⁵ Decision on the LRV Request for Extension of Time to Submit Individual Reparations Applications", 29 April 2020, ICC-01/12-01/15-359-Conf, para. 13 and page 7.

⁶ Registry's Report pursuant to the "Decision on the LRV Request for Extension of Time to Submit Individual Reparations Applications" (ICC-01/12-01/15-359-Conf), 23 November 2020, ICC-01/12-01/15-376-Conf, reporting that the first condition was met. Since then, no report was filed indicating to the Trial Chamber that the conditions were met.

⁷ Twenty-third update report on the updated implementation plan, 25 February 2022, ICC-01/12-01/15-438-Red, para. 12.

4. On 5 April 2022, the Trial Chamber issued a decision directing, [REDACTED]
[REDACTED]
[REDACTED].⁸
5. On 8 April 2022, the legal representative for victims (“LRV”) submitted a request
[REDACTED]
[REDACTED] (“Request”).⁹
6. On the same date, the Trial Chamber directed that any response to the Request be filed by 13 April 2022, at the latest.¹⁰

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 as confidential as it responds to a filing bearing the same classification. A public redacted version will be filed as soon as feasible.

III. SUBMISSIONS

8. To start with, the Trust Fund wishes to make two remarks, in relation to the beneficiaries of individual reparations on the one hand and in relation to the distribution of labour agreed with the LRV on the other hand.
9. *Beneficiaries* – Pursuant to the Reparations Order, the beneficiaries of individual reparations are those whose livelihood exclusively depended on the mausoleums (a group which in practice turned out to be very limited) and those who are direct descendants of the saints buried in the Protected Buildings. This latter group is constituted of individuals who are related to the Protected Buildings as a result of their filial links to the saints. Pursuant to the Reparations Order, the place of residence has no bearing on the right of the individual to reparations and the mapping conducted in 2019 and 2020 has shown that they can be roughly divided into four groups:
- (i) those residing in Bamako and Timbuktu;
 - (ii) those residing elsewhere in Mali, notably Gao and Mopti;

⁸ Decision on the TFV’s Twenty-third update report on the updated implementation plan, ICC-01/12-01/15-439-Conf.

⁹ Corrigendum de “Demande urgente d’extension de délai suivant ‘Decision on the TFV’s Twenty-third update report on the updated implementation plan (ICC-01/12-01/15-439-Conf)’, ICC-01/12-01/15-440-Conf” du 7 avril 2022, ICC-01/12-01/15-440-Conf-Corr.

¹⁰ Email of 13 April 2022 at 13:42.

- (iii) those residing in Niger and Burkina; and
- (iv) those residing elsewhere in the world.

10. *Distribution of labour* – The Trust Fund recalls the distribution of labour agreed with the LRV and presented to the Trial Chamber in its eleventh update report of October 2019,¹¹ according to which the Trust Fund conducted the identification of the beneficiaries, (including those residing in Niger and Burkina), while the collection of applications was organised depending on the place of residence of the beneficiaries. At that time (that is at the very start of the identification and collection process), it was decided that the applications of those residing in Bamako and Timbuktu were to be jointly collected with the LRV and with the support of Trust Fund's intermediaries. No decision was made yet in relation to other groups of beneficiaries.

11. From December 2019, in its twelfth update report, the Trust Fund informed the Trial Chamber that it had located beneficiaries outside of Bamako and Timbuktu, namely in other cities in Mali, and abroad (Niger, Burkina-Faso and Mauritania).¹²

12. In April 2020, by way of its fourteenth update report, the Trust Fund informed the Trial Chamber that it had agreed with the LRV that the Trust Fund would be in charge of the collection of all applications, except for those of individuals residing in Niger and Burkina-Faso. In the view of the Trust Fund, the number of individuals identified in these two countries was such that it would warrant a mission whereas the number of individuals in other countries (including Mauritania) was too limited to organise a mission and that it would proceed differently, namely by way of phone contacts or resort to intermediaries.¹³ This resulted from discussions with the LRV during which he expressed the willingness to be in charge of the collection of applications of these two groups of individuals.

13. In the course of the year 2020, the Trust Fund organised the collection of applications of individuals residing outside of Mali, as well as in other cities of Mali. In early December 2020, in the midst of the pandemic, the Trust Fund succeeded to organise

¹¹ Eleventh update report on the updated implementation plan, 25 October 2019, ICC-01/12-01/15-336-Red2, para. 14.

¹² Twelfth update report on the updated implementation plan, 27 December 2019, ICC-01/12-01/15-340-Red, para. 13. See also Thirteenth update report on the updated implementation plan, 20 February 2020, ICC-01/12-01/15-346-Red, para. 19.

¹³ Fourteenth update report on the updated implementation plan, 22 April 2020, ICC-01/12-01/15-358-Red, para. 30.

a last collection mission in Bamako. At that time, the Trust Fund reminded the LRV that he had committed to organise the collection of applications of individuals residing in Burkina-Faso and Niger.¹⁴

14. From mid-December 2020, that is at the completion of the last mission with the purpose of collecting applications, the Trust Fund considered that sufficient efforts had been deployed to identify beneficiaries and provide them with an opportunity to submit an application and it stopped engaging into active collection efforts. Instead, the Trust Fund limited itself to providing the opportunity to submit an application for reparations to those individuals approaching it,¹⁵ either as a result of interactions with the Trust Fund's partner in Timbuktu or because the information in relation to the individual reparations has reached them late following the symbolic ceremony or the start of payment of individual reparations.

15. *Response to the LRV Request* – The Trust Fund understands from the Request that the LRV is yet to collect applications from individuals residing in Niger and Burkina. The Trust Fund underlines the importance of providing these individuals with a genuine possibility to exercise their rights to reparations and believes that for the reasons described below, a limited extension of time is required for the LRV to complete this process.

16. From a practical point of view, the Trust Fund recalls that it has conducted a pre-screening of beneficiaries in Niger and Burkina and that it has transmitted its lists to the LRV in March 2020. The Trust Fund understands that the LRV [REDACTED]

17. The Trust Fund reiterates its willingness to advise and assist the LRV and, with a view to expediting the process, the Trust Fund suggests that the same process could be applied as the process followed by the Trust Fund in Timbuktu, which is:

- a. The beneficiaries identified would be contacted *ahead of the mission* and arrangements will be made to meet them collectively, possibly in groups arranged by Protected Building, at the very start of the mission.
- b. A first meeting – possibly with a head of family remotely connected – will be the opportunity to map the identities of beneficiaries residing in the country so that

¹⁴ Eighteenth Update Report on the updated implementation plan, 29 December 2020, ICC-01/12-01/15-377-Red, paras 20-25.

¹⁵ Nineteenth Update Report on the updated implementation plan, 1 March 2021, ICC-01/12-01/15-381, paras 17-18.

anyone *not* identified prior to the mission can immediately be contacted and provided with an opportunity to present themselves at a second meeting set a couple of days apart from the first meeting.

- c. Any beneficiary identified and residing elsewhere can be assisted by way of a phone call and remote interview by the LRV.

18. Proceeding in this manner would likely permit to limit the number of missions necessary to one mission per country (Niger and Burkina).

19. The Trust Fund recalls that, for the application to meet the required standard of proof, the LRV is to collect an attestation emanating from a figure of authority from Timbuktu. These individuals still remain engaged with the Trust Fund and available to support the process. Accordingly, the Trust Fund believes that adequate additional time after the mission would be required to obtain such attestations and stands ready to assist the LRV in this process.

20. *Consolidation of applications* – since the start of the screening process, the Trust Fund has requested the LRV to provide supplementary information in relation to 84 applications for reasons such as the lack of a legible ID for instance. Of these 84 applications, the Trust Fund obtained supplementary information in relation to 41, while the remaining 43 are still pending with the LRV. The Trust Fund understands that the circumstances surrounding the work in Timbuktu are difficult – however the LRV is encouraged to provide it with the missing information as soon as possible so that an administrative decision is issued. Again, the Trust Fund stands ready to assist the LRV in making contact with beneficiaries so that the missing information can be collected swiftly and transmitted to the Trust Fund, at the latest by the deadline to be set by the Trial Chamber for the completion of the collection of applications.

21. *Submission of pending applications* – based on the estimates of the Trust Fund and as confirmed by the LRV, a number of applications jointly collected are still pending with the LRV for consolidation and are yet to be submitted to the Trust Fund. The Trust Fund stands ready to assist the LRV so that these applications can be transmitted to the Trust Fund once they are complete.

22. *Deadline for the completion of the implementation of individual reparations* – The Trust Fund notes that the Trial Chamber had ordered that the collection of application be completed within four weeks, while the implementation of the individual reparations (that is issuing decision and payment) are to be completed within four months. This means in

practice that the Trust Fund is awarded with three months to issue a decision, notify the victim and proceed to the payment within three months of the completion of the collection of the applications by the LRV.

23. The Trust Fund takes no issue with this three months deadline. So far, upon receipt of an application, and insofar as the application was complete, the Trust Fund invariably issued a decision within two weeks maximum of receipt of the application through VPRS. In turn, and barring exceptional circumstances such as the unreachability of the beneficiary, notification of the decision (done by the Trust Fund) and payment (also done by the Trust Fund) is usually issued within two weeks of the administrative decision becoming final. Thus, should the LRV Request be granted, in whole or in part, the Trust Fund advises that the same approach is kept as a deadline of three months to complete the payment is reasonable and provides sufficient flexibility. However, the Trust Fund underlines that such fixed deadlines may require exceptions, such as those arising from any unexpected circumstances (such as e.g. additional future effects of ECOWAS sanction on Mali, which do render traveling and money transfer into the country much more cumbersome and lengthy already).

24. *Additional potential beneficiaries* – The Trust Fund recalls its previous submissions according to which, even if no active effort is made any longer to identify potential beneficiaries, certain events led to the organic identification of a limited number of additional beneficiaries. For instance, the implementation of the symbolic award amplified the visibility of the Trust Fund and of the reparations proceedings and permitted to identify a pool of individuals who would otherwise have been deprived from their opportunity to exercise their right to reparations. Similarly the Trust Fund has previously reported that the payment of individual reparations has increased the confidence of the community in the reality of the process and has also led to potential beneficiaries presenting themselves.

25. In addition, the implementation of collective reparations for the psychological harm also led the Trust Fund to have multiple interactions with the community of Timbuktu, including with vulnerable groups who were previously not addressed, precisely because of their vulnerability. In a few instances, certain individuals appeared to be beneficiaries for individual reparations and the Trust Fund provided them with an opportunity to submit an application (potential beneficiaries are assisted in the submission of the application by a Trust Fund's intermediaries in Timbuktu).

26. The implementation of collective reparations for economic harm is also leading to the identification of vulnerable individuals who may be potential beneficiaries for individual awards and either never fully obtained the information or understood it sufficiently to exercise their right.

27. All the above goes to show that it may remain necessary, in order to give effect to the victims' right to individual reparations, to leave a window open for individuals to submit an individual reparation application to the Trust Fund. In line with regulation 57 of the Regulations of the Trust Fund, the Trust Fund will, in due course, propose to the Trial Chamber a process catering for residual individuals approaching the Trust Fund or its partners during the implementation of collective reparations.

CONCLUSION

28. For the foregoing reasons, the Trust Fund respectfully requests the Trial Chamber to:

- (i) take note of its observations in support of the Request; and
- (ii) set the date of completion of the individual reparations three months after the deadline set for the completion of the collection of new applications by the LRV.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,
Dated this 13 April 2022

At The Hague, The Netherlands