

PUBLIC Redacted Annex I

Registry's observations pursuant to Trial Chamber VIII's Decision ICC-01/12-01/15-172 of 29 September 2016

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Introduction

1. In its Reparations Phase Calendar (“Calendar”), Trial Chamber VIII (“Chamber”) invited, *inter alia*, the Registry to make general submissions of up to 50 pages on the reparations proceedings in the Case by 2 December 2016, and to file applications for reparations by 16 December 2016.¹ Consequently, the Victims Participation and Reparations Section of the Registry (“VPRS”) organised a mission in the field in Mali [REDACTED]. The objective of the mission was to gather information regarding the types and modalities of reparations which could be contemplated to redress the harm caused to victims of Mr Al Mahdi’s crime. During the mission, the VPRS made preliminary inquiries on issues pertaining to reparations and met with key interlocutors, including civil society stakeholders, community leaders and relevant government officials.
2. In consultation and collaboration with the Legal Representative of the participating victims (“LRV”),² Me Kassongo, the VPRS met with 24 applicants for reparations, including six of the participating victims.³ Owing to time and security constraints, the number and scope of consultations was limited.
3. Consequently the Registry does not consider that it has been able to conduct sufficiently comprehensive inquiries. As developed below, the Registry respectfully recommends that further consultations be conducted for the Chamber to be provided with more detailed information and recommendations as regards reparations in this Case.

¹ Trial Chamber VIII, “Reparations Phase Calendar”, dated 29 September 2016, ICC-01/12-01/15-172, para. 2 (iii)(iv).

² The LRV was appointed through the following decision: Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Decision on Victim Participation at Trial and on Common Legal Representation of Victims”, 8 June 2016, ICC-01/12-01/15-97-Red, para. 38.

³ Victims a/35000/16; a/35002/16; a/35004/16; a/35005/16; a/35006/16; a/35007/16.

4. The purpose of this report is to present the information collected, and make general submissions on the reparations proceedings as well as recommendations arising from the limited consultation exercise carried out during the VPRS' mission in the field.
5. For the purpose of the present submission, a distinction is made between the victims who are already participating in the proceedings ("Participating Victims") and the other victims who may also benefit from reparations in this Case or are new potential applicants to reparations ("New Applicants"). All of these victims, regardless of whether they have yet filled-in a reparation form, are collectively referred to as "Potential Beneficiaries".

A. Steps undertaken by the Registry following the Calendar

6. The Registry undertook a number of steps with a view to gathering as much relevant information as possible within the timeframe set by the Chamber for the purpose of the reparations proceedings in this Case. These steps included:
 - (i) the preparation and development of an application form for reparations;
 - (ii) a security assessment; and
 - (iii) undertaking a field mission to facilitate the reparations application process and gather relevant information.

(i) Preparation and development of an application form for reparations

7. The VPRS developed a draft simplified application form for reparations respectively for individuals and organisations, based, *inter alia*, on its experience in the context of the *Lubanga* and *Katanga* reparations proceedings. The application form was designed to facilitate the application process for victims wishing to apply for reparations in the present proceedings, and the collection of

information relevant to these proceedings. The VPRS held detailed consultations with the LRV on the draft form so as to adjust the design of the form based on his experience with participating victims, the need to protect the victims' well-being and the goal of ensuring a smooth and easy application process.

8. The application form for reparations contains questions designed to meet three main objectives: (a) obtaining detailed information on the crime and harm suffered, (b) obtaining information on the reparations measures sought and (c) obtaining information on projects or proposals that had benefited the victims or their communities, including any measures that had already been taken to redress the damage and harm caused by the crime for which Mr Al Mahdi was convicted, and how those measures were perceived by victims. The draft application form for reparations was subsequently submitted to the Chamber who approved it on 25 October 2016 after inclusion of minor amendments.⁴

(ii) Security assessment

9. Immediately after the issuance of the Calendar, the Registry decided to conduct a threat and risk assessment in the context of Mali [REDACTED] to evaluate the extent and nature of existing security risks and ultimately the feasibility of a Registry mission to the field. The objective of this assessment was twofold:
 - a. to enable specific risks to be identified and mitigated, following recommendations that maximize the protection of confidentiality and integrity of both the Registry's interlocutors and staff in the context of a field mission; and
 - b. to provide the Chamber with relevant information on the contextual and political situation in the country in view of the reparations proceedings. The report of the security assessment

⁴ Email from the Chamber to the VPRS dated 25 October 2016, at 12:13.

performed by the Registry is appended as Annex II.

(iii) Field mission for the purpose of facilitating the reparations application process and gathering relevant information

10. A field mission was organised by the Registry [REDACTED] (“Field mission”) with the following objectives:
 - a. identifying and informing potential victims of the reparations proceedings and assisting those wishing to apply for reparations to fill in an application form; and
 - b. gathering information relevant to the reparations proceedings through meetings with relevant interlocutors, including civil society stakeholders, community leaders and relevant government officials.
11. While preparing the mission a number of important factors were taken into consideration: (i) the VPRS had not previously conducted activities in the field with affected communities; (ii) in light of the security context, every step had to be taken with great caution and only after obtaining appropriate advice on how to avoid putting people at risk since there were significant concerns about the safety of persons seen to be engaging with the Court, including among Potential Beneficiaries or other relevant interlocutors⁵. There were also concerns that the team’s presence in violence-affected areas [REDACTED], in particular [REDACTED] could be noticeable and may increase the risks to persons met. Because of these concerns, it was decided to organise all meetings [REDACTED]; (iii) [REDACTED].⁶ A decision was therefore taken

⁵ [REDACTED].

⁶ [REDACTED].

for this mission to be made in a discreet manner so as to minimize the risks posed to both the Registry's interlocutors and staff in the field.⁷

12. In addition, time constraints limited the number of individuals and organisations with whom it was possible to meet.

(a) Meetings with victim applicants

13. The VPRS, in close consultation and collaboration with the LRV, organised collective and individual meetings with a total of 24 Potential Beneficiaries, including six Participating Victims, [REDACTED]. Of these, 22 individuals spoke [REDACTED] and two [REDACTED]. Interpretation was therefore provided throughout the meetings. Victims were met over two full days. First, they were met in group in order to be collectively provided with information on the Court and its mandate (including the differences between each organ), the proceedings related to this Case and the related reparations process. Despite the short amount of time spent together, a relationship of trust was quickly established between the Registry staff and the participants who felt free to ask questions openly and provide their views on the different issues addressed.
14. The collective meeting was subsequently followed by individual meetings for the purpose of filling in an application form for reparations for those interested. The individual meetings were conducted by both the Registry staff and the LRV's team. Twenty-two victims expressed their wish to participate in the reparations proceedings and completed an application form for reparations.

(b) Meetings with relevant interlocutors

⁷ See for more details the Security Assessment provided as Annex II to this Report.

15. The VPRS organised private meetings with key-individuals and relevant organisations which might provide a channel to potential victims and assist them to fill in application forms for reparations. Information about the Court and the Case was provided to participants, with a particular focus on the current reparations proceedings and a training session on how to fill in the application form for reparations. Two collective meetings were separately held with civil society organisations (a total of [REDACTED] organisations were met), and [REDACTED] separate individual meetings were held: [REDACTED] with [REDACTED] leader and [REDACTED] separate meetings with government officials. Discussions were held to gather input from participants on a range of questions pertaining to reparations.⁸
16. The following sections of this report set out the information which was received from those organisations and individuals met during the mission in relation to the abovementioned issues, as well as from the applications for participation that were admitted in the instant Case, and the applications for reparations collected so far from Participating Victims and New Applicants, and other written sources consulted by the Registry.

B. Registry's observations on reparations principles applicable in this Case

(i) Victims and groups of victims potentially eligible to benefit from reparations

⁸ In particular, the following issues were discussed:

- a. Who should be eligible to benefit from reparations?
- b. What are the relevant harm(s)? How can they be established and assessed?
- c. What can be done to redress the harm(s) suffered?
- d. What impact had the request of forgiveness of the convicted person?
- e. Should reparations be administered individually or collectively?
- f. What factors should be taken into consideration to determine the appropriate reparations measure(s)?

17. As a first principle in the “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’” in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“Appeals Chamber Judgment” and “Lubanga case” respectively), the Appeals Chamber had outlined that reparations could be granted to direct and indirect victims, including family members of direct victims, or other persons who suffered personal harm as a result of the crime(s).⁹ The Appeals Chamber further highlighted that reparations could also be granted to legal entities, including non-governmental, charitable and non-profit organisations, schools, hospitals and institutions that benefit members of the community or other partnerships.¹⁰ The Appeals Chamber further established that an order for reparations must identify the victims eligible to benefit from reparations or set out the criteria of eligibility.¹¹ It held that: “where an award for reparations is made to the benefit of a community, only members of the community meeting the relevant criteria are eligible”.¹²
18. The Registry notes that in total, the Chamber admitted eight victims to participate in the trial proceedings of this Case.¹³ Three applicants were authorised to participate as individuals, and six applicants to participate as organisations.¹⁴ The Chamber found that these victims suffered personal

⁹ Appeals Chamber, “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012”, dated 3 March 2015, ICC-01/04-01/06-3129, paras. 6-8.

¹⁰ *Ibid*, para. 8.

¹¹ *Ibid.*, 32, 205.

¹² *Ibid*, para. 8.

¹³ Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Judgment and Sentence, 27 September 2016, ICC-01/12-01/15-171, para 6; Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Decision on Victim Participation at Trial and on Common Legal Representation of Victims”, 8 June 2016, ICC-01/12-01/15-97-Red, para. 34 and page 15; Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Second Decision on Victim Participation at Trial’, 12 August 2016, ICC-01/12-01/15-156-Red, p. 7.

¹⁴ ICC-01/12-01/15-97-Red, p 15; following decision; ICC-01/12-01/15-156-Red, p. 7, victim a/35008/16 withdrew. Transcript of Hearing, 22 August 2016, ICC-01/12-01/15-T-4-Red-ENG, p. 3, lines 8-19.. Pursuant to rule 85 (b) of the Rules, a victim may be an “organisation” or “institution” provided that (1) it owns “property dedicated to religion, education, art or science or charitable purposes” or

economic and moral harm¹⁵ as a result of the destruction of 10 buildings of a religious and historical character in Timbuktu, Mali, in July 2012.

Scope of this Case

19. Pursuant to the Trial Chamber’s Judgment and Sentence in this Case (“Judgement and Sentence”),¹⁶ the Registry considers that the scope of eligibility for reparations covers those victims who suffered direct or indirect personal harm as a result of Mr Al Mahdi intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu, Mali, between around 30 June 2012 and 11 July 2012, namely: (i) the Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum; (ii) the Sheikh Mohamed Mahmoud Al Arawani Mausoleum; (iii) the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum; (iv) the Alpha Moya Mausoleum; (v) the Sheikh Mouhamad El Mikki Mausoleum; (vi) the Sheikh Abdoul Kassim Attouaty Mausoleum; (vii) the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum; (viii) the Sidi Yahia Mosque door and the two mausoleums adjoining the Djingareyber Mosque, namely (ix) the Ahmed Fulane Mausoleum; and (x) the Bahaber Babadié Mausoleum (“Buildings”).¹⁷

Direct and indirect victims

20. The Appeals Chamber recognised in the *Lubanga* case that: “[h]arm suffered by one victim as a result of the commission of a crime within the jurisdiction

“historic monuments, hospitals and other places and objects for humanitarian purposes”; and (2) it “has sustained direct harm to this property”. [Emphasis added].

¹⁵ ICC-01/12-01/15-97-Red, para. 34; ICC-01/12-01/15-171, para. 108.

¹⁶ Trial Chamber VIII, The Prosecutor v. Ahmad Al Faqi Al Mahdi, “Judgment and Sentence”, 27 September 2016, ICC-01/12-01/15-171.

¹⁷ *Ibid*, paras. 42 – 44.

of the Court can give rise to harm suffered by other victims.”¹⁸ In the Judgement and Sentence in this Case, the Chamber found that the attack at the sites appeared “to be of particular gravity as their destruction does not only affect the direct victims of the crimes, namely the faithful and inhabitants of Timbuktu, but also people throughout Mali and the international community.”¹⁹ During the discussions held in the field with the organisations and individuals met, it was consistently asserted that the [REDACTED] are the first affected by the attack against the Buildings. These [REDACTED] enjoy enormous prestige within the Malian community because of [REDACTED]. It was reported that [REDACTED] whose advice has been warmly solicited and seriously considered.

21. It was also frequently stated that [REDACTED] were also deeply affected both emotionally and materially as a result of the crime committed against the Buildings. It was explained that these [REDACTED] enjoy a special status within the Timbuktu community because of their [REDACTED] to the Buildings. One Potential Beneficiary, [REDACTED], [REDACTED] reported that [REDACTED] hold some secrets about the Buildings which cannot be shared with anyone [REDACTED]. [REDACTED].
22. Timbuktu is known as the city of 333 saints. For Timbuktu’s community, the Buildings are considered to be a solid psychological bulwark around the town, they are supposed to protect from every misfortune. Hence, the Buildings were a great source of pride and honour for the inhabitants. They

¹⁸ ICC, *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, “Judgment on the Appeals of the Prosecutor and the Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, ICC-01/04-01/06-1432, 11 July 2008, para. 32. On that basis, Chambers of this Court have recognised, for example, the emotional suffering of an applicant as a result of the death of a family member, and the financial loss or material deprivation that accompanies the loss of a person who used to provide for another. See ICC, Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Redacted version of “Decision on ‘indirect victims’”, 8 April 2009, ICC-01/04-01/06-1813, para. 50.

¹⁹ Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Judgment and Sentence”, 27 September 2016, ICC-01/12-01/15-171, para. 80.

were part of their identity. Many ceremonies were organised around the Buildings.

23. In addition, the Buildings were an important [REDACTED] and for the population of Timbuktu as a whole. It was stated during the discussions held in the field that many people used to come to Timbuktu from all over the world to pray in the Buildings and call out invocations to the saints. As was the custom, people coming to visit the Buildings [REDACTED].
24. VPRS' interlocutors in the field also highlighted that some institutions and legal entities may have also suffered material harm as a result of the crime committed against the Buildings, and mentioned the following in this regard: [REDACTED]; [REDACTED]; [REDACTED]. According to the persons and organisations consulted in the field, the destruction of the Buildings may have had heavy financial consequences on the budget of these entities since revenue acquired through [REDACTED] deteriorated as a result of the crime committed against the Buildings, which has also nourished the prevailing feeling of insecurity in the region.
25. Given that the Chamber found "the faithful and inhabitants of Timbuktu" as direct victims of the crimes, should it decide to also consider indirect victims in line with the principles established in the *Lubanga* case, the Chamber might also consider two further categories as being indirect victims in this Case, namely, "people throughout Mali" and "the international community". The latter category of victims would seem to be consistent with a selected number of *erga omnes* obligations as understood under international law, to be owed to the international community.²⁰ In the section below, the Registry will proceed

²⁰ The preamble of the 1954 Hague Convention states that '[. . .] damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world'. It is noteworthy to highlight that this statement speaks of 'people' and not States, and of 'the cultural heritage of all mankind', so as to underscore its connection to human rights and to foreshadow the idea of an integral obligation owed to the international community as a whole (*erga omnes*) rather than to individual states on a contractual basis. For further information, see the UNESCO Declaration Concerning the Intentional

to analysing these three categories separately *vis-à-vis* the standard of causation and standard of proof.

ii. Standard of causation and standard of proof

26. The Registry submits that the specific context of this Case differs significantly from the context prevailing in the *Lubanga*, *Katanga*, and *Bemba* cases, and therefore recommends that the Chamber determination on what is a “sufficient” proof for the purpose of assessing the victims’ claims for reparations takes into account the specific circumstances of this Case and the crime for which Mr Al Mahdi was convicted.
27. The Registry further notes that, as was highlighted by several interlocutors during its Field mission, obtaining documentary evidence of harm and quantifying the harm itself would prove difficult for most victims. While proving that a victim is an inhabitant of Timbuktu or Malian and thus may have suffered harm may be easy, proving that a victim was “faithful” or was harmed by the destruction of the Buildings may be difficult as well as producing adequate documents to support such claims. Moreover, proving the extent to which victims suffered material harm [REDACTED] may be particularly difficult, given that significant [REDACTED] appear to have been generated through [REDACTED] in Timbuktu.
28. As previously mentioned, the Registry finds it appropriate, in line with the Judgement and Sentence in the instant Case, to propose three categories of

Destruction of Cultural Heritage adopted by the General Conference of UNESCO at its 33rd session, Paris, 19 October 2005, reprinted in *Standard Setting in UNESCO*, vol. II (2007) 733. See also Francioni and Lenzerini, ‘The Destruction of the Buddhas of Bamyán and International Law’, 14 *EJIL* (2003) 619. See also the International Law Commission, *Articles on State Responsibility*, United Nations, International Law Commission, Report on the work of its fifty-third session (23 April-1 June and 2 July-10 August 2001), General Assembly, Official Records, Fifty-fifth Session, Supplement No. 10 (A/56/10), available at <http://www.un.org/law/ilc/>.

victims. Regarding the first category of victims namely, “the faithful and inhabitants of Timbuktu,” following its Field mission, the Registry considers that this category could be subdivided into three further categories, [REDACTED] the inhabitants of Timbuktu.

29. The Registry notes that for the victims assessed as belonging in the first category, the Chamber in the instant Case had already determined that they suffered material harm²¹.
30. For this first category of victims, as regards causation, concerning the psychological harm, the Registry proposes maintaining the same standards used by the Trial Chamber in its previous decisions on victim participation.²² However as regards the standard of proof, it is the Registry’s view that a flexible approach should be adopted when considering evidence of the harm suffered by the victims. It was reported for example during the Field mission that statements signed by witnesses [REDACTED] could be provided as a way to establish [REDACTED].
31. Regarding the second and third category of victims, “people throughout Mali” and “the international community,” based on the Field mission, the Registry considers that these victims may not have suffered harm, be it material or psychological, to the same extent as victims in the first category. In any event, for the victims in the second and third categories, the Registry recommends caution in applying the same standards as those used by this Chamber previously, given the “link” to, or distance of these categories of victims from the Buildings concerned in this Case.

²¹ ICC-01/12-01/15-171.

²² ICC-01/12-01/15-156-Red.ICC-01/12-01/15-97-Red, para. 20; Further see Trial Chamber I, *The Prosecutor v. Laurent Koudou Gbagbo*, Decision on victim participation, 6 March 2015, ICC-02/11-01/11-800, paras. 30 to 33 and 36; Amended order for reparations in Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against the "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012, 3 March 2015, ICC-01/04-01/06-3129-AnxA, paras 6 and 10; Lubanga OA9-OA10 Judgment, ICC-01/04-01/06-1432, para. 32.

Determination and assessment of the relevant forms of harms

32. The Registry will set out below some of the most notable forms of harm reported to it. These forms of harms result from the crime charged against Mr Al Mahdi, based on decisions issued by the Chamber on the merits of the applications for participation in the proceedings transmitted, information extracted from Potential Beneficiaries' applications for reparations collected so far and stored in the VPRS' database, the testimonies of experts and witnesses given at trial, and information obtained from various stakeholders during the Registry's Field mission.
33. The crime of attacking protected objects may not only entail material harm for some victims, but may particularly inflict psychological harm, affecting mental health and communal bonds among victims.²³ As reported by victims and witnesses who testified in the course of the trial proceedings, destroying the Buildings, to which the people of Timbuktu had an emotional attachment, was a war activity aimed at breaking the soul of the people of Timbuktu.²⁴ The Registry notes that the Buildings qualify as both religious buildings and historic monuments, as evidenced by their role in the cultural life in Timbuktu and the status of nine of these buildings as UNESCO World Heritage sites.²⁵

²³ It was for example reported to the Registry during its Field mission that [REDACTED].

²⁴ Trial Chamber, "Judgment and Sentence", dated 27 September 2016, ICC-01/12-01/15-171, para. 80; See for example a/35010/16 "Toute la ville a souffert le jour où les mausolées ont été cassés. J'ai pleuré et beaucoup d'autres gens ont pleuré parce qu'on avait très mal. Les saints sont très importants pour nous, ce sont nos ancêtres à tous. Nous leur demandions des bénédictions et on leur faisait des dons lors de chaque événements de la vie : naissance, mort, maladie, voyage etc. C'est pour ça que la destruction nous a fait du mal. On ne pensait pas que c'était possible. On prenait le sable du mausolée Sidi Moktar pour bénir nos maisons. J'ai eu peur le jour des destructions. J'ai pensé que s'ils s'étaient attaqués aux mausolées ils allaient s'attaquer à nous. Je suis partie en laissant tous mes biens derrière moi." ; See also a/35029/16 "Quand ils ont détruit les mausolées, ils nous ont détruit nous-mêmes. La douleur reste aujourd'hui encore. La ville a changé, Tombouctou n'est plus ce qu'elle était, même si les saints nous protègent toujours ce n'est plus pareil qu'avant. On a tout perdu, on a plus rien aujourd'hui".

²⁵ "Judgment and Sentence", ICC-01/12-01/15-171, para. 46.

It was further added that UNESCO's designation of these buildings reflects their special importance to international cultural heritage, and that attacking these Buildings was an affront to its values.²⁶

34. According to UNESCO, the destruction of cultural heritage sites can be considered a harm done to the society and their culture.²⁷ Culture and heritage, as expressions of peoples' identity, are essential components of a community's identity and social capital.²⁸ Beyond the physical destruction of cultural heritage there is also the human impact of human rights violations, including the right to culture, the right to enjoy, develop, and have access to cultural life and identity, the right to practice one's religion freely and the right to education.²⁹ The destruction of cultural heritage has been known to bring about not just individual harm, but also 'collective harm'.³⁰ The term 'collective harm' expresses the idea that the targeting of a collective can cause harm that differs from the harm caused by targeting the same number of individuals who are not part of a collective. The existence of collective harm was evident in cases such as the Holocaust or the genocide of the Tutsi in Rwanda where their systematic extermination caused harm that transcended the harm that would have resulted from the killing of an equivalent number of people not belonging to that group.³¹

²⁶ *Ibid.*

²⁷ UNESCO's Response to Protect Culture in Crisis, accessed on 11/11/2016, available at <http://unesdoc.unesco.org/images/0024/002449/244984e.pdf>, p. 3.

²⁸ UNESCO's Response to Protect Culture in Crisis, accessed on 11/11/2016, available at <http://unesdoc.unesco.org/images/0024/002449/244984e.pdf>, p. 3.

²⁹ *Ibid.*, at p. 6.

³⁰ See the comprehensive analysis by Paul Dubinsky, "Justice for the collective: the limits of the human rights class action", in *Michigan Law Review*, Vol. 104, 2004, p. 1182. See also Naomi Roth-Arriaza, "Reparations, decisions and dilemmas", in *Hastings International and Comparative Law Review*, Vol. 27, 2004, p. 181.

³¹ Frederick Rosenfeld, "Collective reparation for victims of armed conflict" in 92 *International Review for the Red Cross* 731-746. Available at: < <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/080FA25E56655FBC8EDBA6DECEDD06FD/S1816383110000494a.pdf/collective-reparation-for-victims-of-armed-conflict.pdf> >; For more information on the effects that violations of international law can have on collectives, see Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006*, Berghahn, Oxford, 2009, p. 236.

According to Frederich Rosenfeld (International Committee of the Red Cross), for collective harm to occur it is therefore sufficient that victims share certain bonds, such as common cultural, religious, tribal, or ethnic roots.³²

Information collected from victims' applications for participation and reparations regarding harm

35. The Chamber has previously recognised the personal economic and moral harm suffered by victims as a result of the events in this Case.³³ Information collected from victim applications indicates that all victims were morally harmed as a result of the destruction of the Buildings. Victims reported that the Buildings were a sacred area they frequented for prayers, and in order to receive blessings. It was added that for the inhabitants, the saints were their ancestors, to whom they went for blessings and offerings at every event in life, including birth, death, illness, and journey mercies, and saw this as a treasured tradition. [REDACTED].
36. Regarding the role of [REDACTED] and their importance in the community of Timbuktu, some of the Potential Beneficiaries indicated that they would convene and sing, followed by the tradition of sacrifices and offerings that would be given to [REDACTED]. Some victims elaborated:

“Tous les ans, nous nous réunissons et nous chantons. Nous faisons des sacrifices (sous formes d’argent ou de nourriture) pour ensuite donner aux [REDACTED]. Mais depuis la destruction, nous ne pouvons plus observer notre tradition. Ça fait mal. Notre dignité a été touchée. [...] [REDACTED].”³⁴

³² Frederich Rosenfeld, “Collective reparation for victims of armed conflict” in 92 *International Review for the Red Cross* 731-746. Available at: < <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/080FA25E56655FBC8EDBA6DECEDD06FD/S1816383110000494a.pdf/collective-reparation-for-victims-of-armed-conflict.pdf> >, p. 734; see also the Inter-American Court of Human Rights, *Moiwana Community v. Suriname*, Judgment of 15 June 2005 (Preliminary Objections, Merits, Reparations and Costs), Available at : <http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf >

³³ *Supra* 16, ICC-01/12-01/15-97-Red, para. 34; ICC-01/12-01/15-171, para. 108.

³⁴ See a/35027/16.

“On est très basé sur ces mausolées. [...] J’ai pleuré quand ils ont été détruits. Quand les mausolées étaient encore là, [REDACTED]; on avait des liens forts. [REDACTED.]”³⁵

“Je suis vraiment choqué, cela m’affecte même aujourd’hui psychologiquement. Aujourd’hui nous n’avons plus de privilège [REDACTED]. Avant vu que [REDACTED] le mausolée [REDACTED] mais aujourd’hui cela n’existe presque plus.”³⁶

“Toute la famille a été psychologiquement affecté. C’est la tombe d’un grand saint qui réalisait de nombreux vœux, [REDACTED], [REDACTED] nous somme beaucoup affecté.”³⁷

37. Potential Beneficiaries indicated significant sorrow and pain caused by the destruction of the Buildings. These had been believed to possess protective powers for the inhabitants and it is claimed by some that since their destruction, the city of Timbuktu has not been at peace and has been vulnerable. As indicated in the accounts of two victims in particular:

“J’ai beaucoup pleuré le jour de la destruction. Les mausolées nous protègent. Depuis que les mausolées ont été cassés, les esprits protecteurs se sont déplacés. Depuis ce jour-là et jusqu’à présent Tombouctou n’a pas connu la paix. Tous les jours il y a des problèmes. La population n’a pas l’esprit tranquille. Ce jour-là, j’ai décidé de quitter la ville car j’étais choquée. J’ai eu très peur, j’ai été malade tellement j’ai eu peur.”³⁸

“Les saints nous protègent et voir notre mausolée détruit de la sorte nous a fait mal. Nous nous sentons vulnérables. [...] Tant que les djihadistes étaient présents, nous ne pouvions pas obtenir la bénédiction des saints”³⁹

38. The reparation forms filled in by the victims during the Field mission as well as applications already received and admitted for participation in this Case show correlations between the victims’ answers to the questions on the impact of the crimes and their requests for reparations on the one hand, and the impact of the crime committed on their current financial and economic situation. A majority

³⁵ See a/35033/16.

³⁶ See a/35025/16.

³⁷ See a/35021/16.

³⁸ See a/35009/16.

³⁹ See a/35027/16.

of these victims indicated that, as a result of the destruction of the Buildings, they lost [REDACTED], which has significantly contributed to their current emotional and material harm. A large majority of the victims grieved for the loss of their former way of life, particularly in relation to both the spiritual, traditional [REDACTED] activities that took place in connection to the Buildings, which was said to be a constant and painful reminder of what they had lost as a result of the destruction of the Buildings. Most victims reported that this continued to impact their psychological well-being, as well as that of their families and the community.⁴⁰ The responses received by the Registry regarding the victims who experienced moral and emotional harm included:

“Toute la famille a été psychologiquement affecté. C’est la tombe d’un grand saint qui réalisait de nombreux vœux, [REDACTED].”⁴¹

“ Toute la ville a souffert le jour où les mausolées ont été cassés. J’ai pleuré et beaucoup d’autres gens ont pleuré parce qu’on avait très mal. Les saints sont très importants pour nous, ce sont nos ancêtres à tous. Nous leur demandions des bénédictions et on leur faisait des dons lors de chaque événements de la vie : naissance, mort, maladie, voyage etc. C’est pour ça que la destruction nous a fait du mal. On ne pensait pas que c’était possible. On prenait le sable du mausolée Sidi Moktar pour bénir nos maisons. J’ai eu peur le jour des destructions. J’ai pensé que s’ils s’étaient attaqués aux mausolées ils allaient s’attaquer à nous. Je suis partie en laissant tous mes biens derrière moi.”⁴²

“J’ai été touché intérieurement de voir notre Mausolée se détruit par des pioches, aussi comme tous les habitants de cette ville [...] On a été touché au fond de notre cœur.”⁴³

“Moralement nous avons beaucoup souffert et on continue à souffrir à cause de cette destruction”.⁴⁴

⁴⁰ “J’ai beaucoup pleuré le jour de la destruction. Ma famille, mes amis et tous les Toumbouctiens ont souffert. On n’oubliera jamais. Les Saints de Tombouctou sont les descendants d’Allah. Quand on leur demandait des bénédictions, elles se réalisaient. Quand ils ont détruit les mausolées, ils nous ont détruit nous-mêmes. La douleur reste aujourd’hui encore. La ville a changé, Tombouctou n’est plus ce qu’elle était, même si les saints nous protègent toujours ce n’est plus pareil qu’avant. On a tout perdu”, see a/35029/16.

⁴¹ See a/35021/16.

⁴² See a/35010/16.

⁴³ See a/35000/16.

⁴⁴ See a/35007/16.

“Une destruction qui nous a affecté tous. C’était inimaginable on avait jamais pensé cela [...] Pour moi c’est un lieu sacré et inviolable. [...] J’ai toujours une inquiétude avec le climat d’insécurité permanent actuel.”⁴⁵

“Mes proches, les populations de Tombouctou et moi-même sommes moralement touchés. [...] Ce jour de destruction est un jour que je ne veux jamais oublier [...] en vérité ma souffrance est toujours intacte car j’ai toujours en mémoire ce mauvais souvenir.”⁴⁶

“Ce jour des vieilles personnes humiliées ont quitté la ville et qui ne veulent plus revenir dans les lieux. [...] Ce jour-là, j’étais abattu. [...] j’ai eu des vertiges je ne croyais pas j’étais touché [...]. Je suis resté impuissant car je n’ai aucune arme pour agir. [...] je suis très en colère contre lui et je tremble rien que d’y penser”.⁴⁷

“Les mausolées sont des lieux saints qui ont été détruits. [REDACTED] pour chercher des bénédictions. J’ai été donc choquée intérieurement et profondément blessée. Je ne suis pas la seule à avoir ressenti cela. Jusqu’à présent je ressens cette blessure. [REDACTED].”⁴⁸

“Ça m’a fait mal de voir les mausolées détruits. Tout le monde vient chez nous pour nous visiter car nous sommes la ville des saints. J’ai été choqué, ma mère aussi ainsi que d’autres femmes de Tombouctou qui ont eu peur et ne sortaient plus. Depuis que les mausolées ont été cassés je ne vais pas bien. Je souffre de voir ma mère souffrir aussi.”⁴⁹

“La destruction du mur a laissé la tombe à l’intérieur du mausolée nue. J’ai été touché au plus profond de mon cœur. J’en ai pleuré. Je me suis senti blessé moralement parce que [REDACTED]. Tous mes parents étaient touchés de la même manière que moi. Nous avons été touché dans notre dignité comme s’ils nous avaient bafoués.”⁵⁰

⁴⁵ See a/35003/16.

⁴⁶ See a/35004/16.

⁴⁷ See a/35006/16.

⁴⁸ See a/35032/16.

⁴⁹ See a/35028/16.

⁵⁰ See a/35026/16.

C. Registry's observations on the appropriate types and modalities of reparations

a. *Distinction between individual and collective reparations*

39. The rights of victims to reparations is an individual right provided under numerous international instruments, and is stipulated in the Rome Statute, in article 75 (6). The Registry notes the impact the destruction of the Buildings has had on the community as a whole.⁵¹ Indeed, in general the Registry considers that individual and collective approaches to reparations are complementary and, if awarded together, should work in conjunction in the way that is most appropriate in the circumstances of each case.⁵²
40. The Registry will hereby limit itself to reporting on the information taken from the individual applications from Participating Victims already submitted to the Registry, and to information collected *inter alia* from New Applicants met during its Field mission.⁵³

Participating victims and New Applicants' expressed preferences

41. While most Participating victims thus far have expressed a wish for monetary compensative reparations measures in order to redress the harm suffered in relation to this Case, some of the Participating Victims indicated not knowing what form of reparations they wanted but rather referred to anything that would console them or restore their rights.

⁵¹ "Judgement and Sentence", ICC-01/12-01/15-171, paras. 34, 78, 80.

⁵² See for example, IACtHR *Moiwana Community v. Suriname*, Judgment (15 June 2005) (Preliminary Objections, Merits, Reparations and Costs). Available at:

http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing.pdf >, para. 194, where that court held that "Given that the victims of the present case are members of the N'djuka culture, this Tribunal considers that the individual reparations to be awarded must be supplemented by communal measures; said reparations will be granted to the community as a whole."

⁵³ In the Decision of 29 September 2016, the Registry was given a deadline of 16 December 2016 to file applications for reparations, ICC-01/12-01/15-172 para. 2(iv), as such given the date which the present submission is filed, the views of future New Applicants not yet identified is not reflected herein.

42. Furthermore, while most victims expressed a strong preference for financial compensation, some expressed general frustration or indicated that in spite of restoration attempts, the Buildings would still not be the same as before. A majority of the victims highlighted that, as a result of the destruction of the Buildings, they had lost [REDACTED] and that this was the reason for their persistent suffering. Many of the victims interviewed and whose applications were collected grieved over the loss of their former way of life, [REDACTED].
43. The Registry observes that the most visible trend emerging from the applications received thus far, as well as the Field mission, is the victims' preference for some form of economic development or financial measure to be awarded individually as well as collectively in order to redress the harm that they suffered.
44. Moreover, victims indicated that besides providing them financial assistance, there was: (i) a need to put in place actions or programs aimed at assisting [REDACTED] or women towards generating income; (ii) a need for a construction around the Buildings to protect them; (iii) projects to assist the population in gardening and marketing; (iv) a need to continue the projects that consisted of providing food to the population and rehabilitating the destroyed sites; (v) a need to put in place a micro credit system that would assist the population to generate income; (vi) a need to put in place a water supply system,⁵⁴ a school/ university, a project that would generate jobs not only for the widows⁵⁵ and women, but that included the youth⁵⁶ and others.

⁵⁴ " [...] Mettre en place ensuite un système d'adduction d'eau. [...] Construire des écoles coraniques pour les enfants." See a/35025/16.

⁵⁵ " [...] Il serait bien que des projets générateurs de revenus soient mis en place afin de permettre aux veuves de se prendre en charge" See a/35021/16 -

⁵⁶ " [...] Développer des actions ou projets qui permettraient aux jeunes d'avoir de l'emploi." See a/35023 /16.

45. Some victims indicated their preference for projects that only brought unity and cohesion⁵⁷ within the community. One victim in particular highlighted this view shared by several, stating that *“Il faut aider tous les Tombouctiens car tous les Tombouctiens sont comme une seule et même personne.”*⁵⁸ Few other victims cautioned the Court on the risk of awarding individual compensation only⁵⁹ and not creating projects that include all victims.⁶⁰

Impact of Mr Al Mahdi’s apology

46. As was reported by the LRV during the trial proceedings⁶¹ and observed by the Registry during its Field mission, Mr Al Mahdi’s apology has been generally undervalued. It has consistently been stated that given he was born in Timbuktu, Mr Al Mahdi perfectly knew the value of the Buildings as well as the Qur’an as he used to teach it. Based on the different meetings held during the Field mission, if the request for forgiveness of Mr Al Mahdi at the opening of his trial could be accepted religiously, there is a general feeling that the Court should use the Case as a model in order to prevent similar cases from happening and to allow reconciliation between all communities.

47. Notwithstanding Mr Al Mahdi’s apology during the course of this Case, one victim indicated that besides the monetary compensation, a public apology was needed,⁶² another indicated preference for concrete actions in addition to

⁵⁷ “[...]Je sollicite toute action qui peut apporter la cohésion et la paix dans la population. See a/35030/16.

⁵⁸ See a/35029/16.

⁵⁹ “Donner de l’argent individuellement cela peut créer des frustrations et divisions” ; see a/35024/16.

⁶⁰ “Il y a un projet d’élevage qui a été fait mais uniquement pour les femmes et pas pour les hommes. Il ne faut pas faire de discrimination dans les projets.” See a/35033/16.

⁶¹ Transcript of Hearing, 28 August 2016, ICC-01/12-01/15-T-6-ENG, p. 29, line 22 to p. 31, line 4.

⁶² “Je souhaite que justice soit faite car pour 9 ans c’est peu pour le crime qu’il a fait, il faut que Al Faqui vienne à Tombouctou présenter des excuses publiques.” See a/35031/16.

forgiveness.⁶³ Therefore, it appears that Mr Al Mahdi's apology was not considered as a sufficient form of reparations.

Impact of rehabilitation efforts

48. The majority of victims consulted welcomed rehabilitation initiatives by United Nations Organs and other civil society actors and advocated for their continuation, though a small minority indicated that these efforts were not enough to fully address the harm suffered.
49. Some victims expressed that the rehabilitations of the Buildings, although welcomed, did not respect certain traditions, particularly regarding the traditional beliefs according to which people have to play certain roles according to their status. It was further highlighted that construction was needed to protect them from future incidents. Multiple victim applicants stressed the need for religious leaders ("imams") and [REDACTED] to be consulted, and cautioned against imposing foreign ideas within their context. In particular, one victim noted:

"Il faut que la Cour donne de l'argent pour traiter les mausolées et les garder, les protéger. Il faudrait construire un mur pour protéger les mausolées. Il faut les juges parlent avec les imams, [REDACTED] pour décider quoi faire. Il ne faut pas faire venir des gens de l'extérieur. Seulement les gens de Tombouctou savent ce qu'il faut faire pour Tombouctou. [...] Je sais que certains mausolées ont été reconstruits. [...] La porte de la mosquée Sidi Yahia a été remise. Je suis contente mais ça ne remplace pas l'ancien. Rien ne peut remplacer les anciens mausolées." ⁶⁴

⁶³ "On peut pardonner parce que Dieu l'a dit mais le mal est toujours là. Il faut que le pardon passe par des actes et pas seulement les mots" ; see a/35002/16 application for reparations.

⁶⁴ See a/35010/16.

b. Types of reparations sought

50. The second most popular form of reparation sought, after monetary compensation, is the support for projects for farming, masons or other professional activities. Based on the information collected from victims' applications for reparations, there was a strong preference for victims to be provided with projects or tools allowing them to assert their economic independence. Other forms of preferred reparations included the construction of educational institutions so that the children could receive an education.
51. The results of the meeting with Potential Beneficiaries, their applications and meetings with other relevant stakeholders show a strong preference for awards of reparations where the victims will receive individual material benefits, in addition to those benefitting the community as a whole. The Registry discerned that victims simultaneously considered the harm they suffered to be personal, thus warranting an individual award for reparations. However, they also considered the harm they suffered to be collective, warranting acts or projects aimed at restoring the community somehow. The victims expressed generally positive views regarding collective projects they had experienced, however, a significant part of them felt these should be sustained on a longer term and that more could be done. The preference for individual awards may have been associated with the victims' feeling that it was the only way to allow them to assert control over their lives and restore their self-sufficiency, in a context of ongoing insecurity.
52. From the meetings held with some organisations during the Field mission, the Registry notes that these recommend bringing people together for a forgiveness ceremony so as to let go of pains and feelings of resentment. It was suggested to organise such an event on an important date for the Timbuktu community,

such as the “*maouloud*” (date of birth of the Prophet of Islam), so as to create a symbolic and commemorative event. [REDACTED]. Collective prayers would be done in favour of these persons for their involvement in the maintenance of the Buildings as a form of appreciation and full recognition of their rank and value within the community.

53. It was also reported to the Registry during its Field mission that considering the importance of the religious dimension in the life of the inhabitants of Timbuktu and the Malians in general, a “*fatwa*”⁶⁵ could be issued by religious leaders and scholars to formally prohibit the destruction of these protected buildings and call for a divine curse against those who would commit such acts.
54. Furthermore, during meetings with [REDACTED], it was proposed to strengthen the safety of the Buildings with a security system that would prevent easy access to the cemeteries where the Buildings are located, and which currently lack fencing.⁶⁶ According to them, this would enhance the value of these sites, promote tourism around them and encourage the population to be more involved in their management and maintenance. At the same time, this would discourage undesirable behaviour against the integrity of the Buildings.
55. In the same vein, the idea of creating collective projects for the benefit of all was consistently supported, in particular, projects aiming to revive the spirit of the city of Timbuktu and its inhabitants.⁶⁷

⁶⁵ A fatwa is an Islamic legal pronouncement, issued by an expert in religious law (“mufti”), pertaining to a specific issue, usually at the request of an individual or judge to resolve an issue where Islamic jurisprudence (“fiqh”), is unclear. Typically, such uncertainty arises as Muslim society works to address new issues.

⁶⁶ [REDACTED]. [REDACTED].

⁶⁷Timbuktu was a world centre of Islamic learning from the 13th to the 17th century. It had a university and 180 schools. Hundreds of thousands of manuscripts were collected in Timbuktu over

c. Factors relevant to the types and modalities of reparations to be awarded

56. According to the principles of international human rights and international criminal law, the identification of what might constitute appropriate forms of reparations for victims is fundamental in order to establish an effective reparation scheme.⁶⁸ In the Registry's submission, the way reparations are addressed in any case before the Court needs to be tailored to the particular circumstances of that case. In considering how to address reparations in the specific context of the instant Case, in the Registry's view a number of practical considerations specific to this case need to be taken into account. These include: the current instability in the region, the continuing struggle for the leadership, traditional and religious beliefs and, [REDACTED].

Current instability and insecurity in the region

57. The clearest message received during the Field mission was that there exist serious and well-founded fears for the security of those who are perceived as collaborating with the "foreign power". The existence, extent and seriousness of this threat are explained by several factors such as:

the course of centuries. They now form the collection of several libraries in Timbuktu, holding up to 700,000 manuscripts. During its twelfth session, in December 1988, the World Heritage Committee (WHC) selected parts of Timbuktu's historic centre for inscription on its World Heritage list (based on its holy places which were essential to the spread of Islam in Africa; its mosques which show a cultural and scholarly golden age during the Songhay Empire; as well as the construction of the mosques, which shows the use of traditional building techniques. See "Report of the World Heritage Committee Twelfth Session", Convention Concerning the Protection of the World Cultural and Natural Heritage, Brasilia: UNESCO, 1988; see also Rainier, Chris, "Reclaiming the Ancient Manuscripts of Timbuktu", National Geographic News, 13 July 2010.

⁶⁸ See, for example, United Nations, General Assembly, *Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 16 December 2005, A/RES/60/147.

- a. the increased instability in the Northern part of Mali, notably in light of the tensions between the various existing rebel factions; the increased attacks by violent extremist armed groups against the Malian forces, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and the international community in general;
- b. the current state of emergency which has been extended for the third time until the end of March 2017 because of the terrorist threat which is still assessed as high;
- c. the resumption of armed clashes in particular in the north, and the increased inter-communal violence; and
- d. the fact that violent extremist groups in Mali appear to be strengthened with more frequent, bold, sophisticated, complex and well-coordinated attacks. These extremist groups have increased their propaganda and new groups and alliances have been created. As a consequence of the prevailing insecurity in the North and of the gradual takeover of a number of areas by armed groups, public discontent tends to increase as well in the country.

[REDACTED]

58. The restoration of State authority in the north of Mali continues to be a major challenge. There are power struggles in the region between different rebel groups, and [REDACTED].⁶⁹ The control of the extensive land borders proves to be difficult with the significant rise of narco-terrorist groups. [REDACTED].

⁶⁹ While the 14 October 2016 adoption of a project decree nominating members of the interim authorities for the Timbuktu, Gao, and Kidal regions as well as the transitional council for Taoudéni and Ménaka regions could have had a potential to re-launch the implementation process, armed

Traditional and religious beliefs

59. There is a profound belief in mystical forces within the population in Timbuktu, which is very much reflected in the practices, attitudes, rituals, rites and ceremonies developed around the Buildings. While Muslims currently make up approximately 95 percent of the population of Mali,⁷⁰ Islam in Mali has absorbed mystical elements, ancestor veneration and elements of the “African Traditional Religion”.⁷¹ Timbuktu was the product of an eclectic mixture of West African and Arab influences that found in the religion of Islam a common denominator. Tuareg, Fulani, Berbers, Soninke and Songhai lived side by side, in peace, bound together by their belief in God and their acceptance of the Qur'an as a reference.
60. The Registry also notes that under transitional justice perspectives, Islamic institutions allow for both retributive and restorative justice, depending on the violation in question. The right to compensation and reparation is recognized by all major legal traditions. However, the scope and the requirements for such reparations depend on the particular doctrines used. Such doctrines of responsibility and remedies are highly influenced by a variety of “political, philosophical, religious, legal, and other considerations specific to the context of the particular legal system.”⁷² Among others, Shari’a law prescribes a way of life with varying subject matters, and ranging from religious and ritual, to ethical and legal matters, and it is a system of rules and laws that has evolved through a

movements generally reacted critically showing notably the increasing divisions within the *Coordination des Mouvements de l’Azawad* (CMA).

⁷⁰ See Blakely, Thomas D., Walter E. A. van Beek, and Dennis L. Thomson, eds. *Religion in Africa: Experience and Expression*, Portsmouth, NH: Heinemann, 1994.

⁷¹ Bureau of Democracy, Human Rights, and Labor, U.S. Department of State "International Religious Freedom Report 2015 - Mali", 20 November 2016.

⁷² Abdullahi Ahmed An-Na’im, “Towards a Universal Doctrine of reparation for Violations of International Human Rights and Humanitarian Law”, in (2003) 5, cited in: *International Law Forum du droit international*, Kluwer Law International, at p. 27, available at http://booksandjournals.brillonline.com/docserver/13889036/v5n1_s2.pdf?expires=1479232914&id=id&accname=cid-53000923&checksum=1308658A011D087CC1466DFD83C51B30

process of “interpretation and elaborations on the Qur’an and *Sunna* (traditions of the Prophet) during the first three centuries of Islam (7th to 9th centuries CE) through *Ijma’* (consensus) and *Qiyas* (reasoning by analogy) and other juridical techniques.”⁷³ Given its nature of sources and methodologies, this has led to diverse interpretations amongst Muslim jurists and scholars.

61. In general, Shari’a law aims at protecting the sanctity of life, property, mind, religion, honour and family, but with varying interpretations on who is entitled to protection, to what extent, and how.⁷⁴ According to some jurists, accountability for harm or injury can in some cases include reparation, monetary compensation or restitution, as well as punishment for the crime. Other jurists maintain a choice between one remedy or another, depending on the nature of the harm or injury and the circumstances of the case.⁷⁵

d. The need for a further consultation process

62. A principle recognised by the Appeals Chamber is that victims should be consulted on issues pertaining to reparations.⁷⁶ Experience in the field consistently shows that in order for reparations procedures to have their intended impact and be perceived as such, the views and preferences of the victims must feature in the final order for reparations. In particular, Participating Victims and other Potential Beneficiaries should be consulted so that the reparations award fits their needs, and for them to take ownership of the

⁷³ *Ibid*, at p. 29.

⁷⁴ *Ibid*, at p. 30.

⁷⁵ *Ibid*, at 31. For further considerations on how Islamic principles can impact international law, see Awan Al-Khasawan, “Islam and International Law”, In *Islam and International Law: Engaging Self-Centrism from a Plurality of Perspectives*, Edited by Marie-Luisa Frick and Adreas TH. Muller, Brill, 2013, pp.29-42.

⁷⁶ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Order for Reparations (amended)”, 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 32.

process, an essential factor if reparations are to be successful. This was highlighted by victims and other stakeholders during the Field mission.⁷⁷

63. Organisations and Potential Beneficiaries recommended consulting with Timbuktu's community leaders and other respected people such as religious scholars in the area and dignitaries in addition to a representative sample of the population of Timbuktu, in order to understand the value of the Buildings and the trauma caused to the population by their destruction.⁷⁸ Various stakeholders further added that the value of the Buildings was not only recognised by the Muslim community but by the Christian community of Timbuktu as well.
64. The Registry advises consequently that a consultation exercise in coordination with the Trust Fund for Victims ("TFV") and the LRV might be beneficial in order to provide the Chamber with additional information on the needs of victims and the reparations measures sought.

Conclusion

65. In sum, the Registry emphasises that the religious and social role and function of the Buildings must be thoroughly studied and understood to establish a proper assessment of the harm suffered by victims.
66. The Registry considers that updated information that may be collected by the LRV on the Potential Beneficiaries' situation(s), as well as experts called to elaborate on the types of harm commonly suffered by victims in the light of the specificities of this Case might provide the Chamber with further clarification on the impact of Mr Al Mahdi's crime.
67. Based on the applications for reparations collected so far, there is a preference by victims to receive individual benefits as well as collective benefits from

⁷⁷ See for example, a/35010/16, statement and response to question 3 of the reparations form.

⁷⁸ It was reported during the meeting with the organisations that there is a saying in Timbuktu that "the day when the door of the Sidi Yahya Mosque will be opened, it will be hell".

reparations measures. The preliminary results of the consultations with victims and information gathered from their applications show that individual material benefits are seen as vital to repair the harm suffered, and are overwhelmingly their preferred option. These may be granted by way of individual awards or by way of collective awards framed in such a way as they may result in providing individual benefits, for example through income generating projects.

68. Besides the individuals who thus far have applied to participate in the proceedings or for reparations and the ones met during the Field mission, the Registry presumes that there are other qualifying victims who have not yet been identified and who may be considered for reparations. Bearing in mind the timelines set by the Chamber in the Calendar,⁷⁹ the Chamber may want to consider opening a new period for the submission of further applications for reparations from other Potential Beneficiaries not yet identified.⁸⁰ Alternatively, the Chamber may be minded to proceed in respect of such additional victims after receiving submissions from the parties or other stakeholders, and after hearing testimonies from experts on the subject matter.
69. In awarding individual reparations, the Chamber may wish to consider whether all victims should receive the same award, or whether distinctions should be made based on type of harm, the needs of victims, the category of victims or other criteria. The Registry notes in this regard the difficulty to distinguish between those who suffered different types of harm, and the potentially wide scope of victims affected by the destruction of the Buildings.
70. In this regard, the Registry notes that under rule 98(5) of the Rules, collective reparations may also be awarded. Given that the Registry may have not been

⁷⁹ Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Reparations Phase Calendar, 29 September 2016, ICC-01/12-01/15-172.

⁸⁰ This was suggested by several organisations and stakeholders who the Registry met during its Field mission. In particular these organisations highlighted the difficulty and necessity to disseminate information amongst the population regarding the reparations proceedings in this Case, as well as arranging the logistical aspects of meeting and filling in additional application forms with victims.

able to identify all Potential Beneficiaries related to this Case, the Chamber may want to consider whether these other forms of reparation need to involve an application process so as to potentially benefit a wider group of victims and communities. The Chamber may wish to consider the creation of collective projects for the benefit of all inhabitants of Timbuktu, as this will help both reconcile and rehabilitate the population.