

1 International Criminal Court  
2 Trial Chamber VIII  
3 Situation: Republic of Mali  
4 In the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi - ICC-01/12-01/15  
5 Presiding Judge Raul Pangalangan, Judge Bertram Schmitt and  
6 Judge Antoine Kesia-Mbe Mindua  
7 Delivery of Reparations Order - Courtroom 3  
8 Thursday, 17 August 2017  
9 (The hearing starts in open session at 10.01 a.m.)  
10 THE COURT USHER: [10:01:02] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE PANGALANGAN: [10:01:21] Good morning, everyone.  
14 Welcome back.  
15 Court officer, please call the case.  
16 THE COURT OFFICER: [10:01:42] Thank you, Mr President. The situation in the  
17 Republic of Mali in the case of The Prosecutor versus Ahmad Al Faqi Al Mahdi, case  
18 reference ICC-01/12-01/15.  
19 For the record, we are in open session.  
20 PRESIDING JUDGE PANGALANGAN: [10:01:57] Thank you. Thank you so  
21 much.  
22 The Court will now take appearances from the parties. We start with the Prosecutor.  
23 MR MOURAD: [10:02:04] Good morning, Mr President, Honourable Judges. The  
24 Prosecution team is represented today by Meritxell Regue, appeals counsel;  
25 Marie-Jeanne Sardachti, trial lawyer; Yayoi Yamaguchi, associate legal advisor;

1 Sarah Coquillaud, assistant legal officer; Sanja Bokulic, case manager. My name is  
2 Hesham Mourad, trial lawyer. Thank you very much.

3 PRESIDING JUDGE PANGALANGAN: [10:02:38] Thank you.

4 And for the victims, please.

5 MR KASSONGO: [10:02:46] (Interpretation) Thank you, your Honours. The  
6 Representatives of Victims are as follows: Ms Lydia El Halw, who is providing  
7 assistance to me, and myself, Mayombo Kassongo, counsel.

8 PRESIDING JUDGE PANGALANGAN: [10:03:03] Thank you. Thank you,  
9 Mr Kassongo.

10 And for the Defence.

11 MR AOUINI: [10:03:06] (Interpretation) Good morning, your Honours. My name  
12 is Mohamed Aouini, senior counsel, representing Mr Ahmad Al Faqi Al Mahdi.

13 With me today is Sylviane Glodjinon and Judith Akebe. Thank you, your Honour.

14 PRESIDING JUDGE PANGALANGAN: [10:03:42] Thank you.

15 And for the Trust Fund for Victims, please.

16 MR DE BAAN: [10:03:49] Good morning, Mr President. The Trust Fund for  
17 Victims today is represented by Ms Erin Rosenberg, associate legal officer;

18 Ms Andrada Matauanu, legal intern; and myself, Pieter De Baan, executive director.

19 Thank you very much.

20 PRESIDING JUDGE PANGALANGAN: [10:04:04] Thank you.

21 On 27 September 2016, following an admission of guilt, the Chamber convicted  
22 Mr Al Mahdi of the war crime of attacking protected objects as a co-perpetrator under  
23 Articles 8(2)(e)(iv) and 25(3)(a) of the Statute. Ten protected objects were attacked in  
24 Timbuktu, Mali, between around 30 June 2012 and 11 July 2012. All these were  
25 historic and religious mausoleums and mosques and all but one of them were

1 designated by UNESCO as World Heritage Sites.

2 Today, the Chamber will summarise its award on reparations following this  
3 conviction. This order sets out, one, the applicable reparations principles; two, the  
4 findings on the harms suffered in this case; and, three, sets Mr Al Mahdi's liability.  
5 The Chamber will also give preliminary considerations to guide the implementation  
6 of this order.

7 This order will be released in writing today at the end of this hearing in both English  
8 and French. Very special thanks to the Translation Unit for making it possible to  
9 render the order simultaneously in both working languages. What I will read out  
10 today is only a summary of this order; the authoritative language for today's order is  
11 that which appears in the written decision.

12 In rendering this order, the Chamber considered the observations of the Prosecution,  
13 the Defence, the Legal Representatives of Victims representing the 139 reparations  
14 applicants, the Trust Fund for Victims, the Registry, the four appointed experts and  
15 amici curiae, including UNESCO.

16 The Chamber will now address the importance of cultural heritage as an essential  
17 component of the charges against Mr Al Mahdi. The Chamber also recalls briefly the  
18 principles on reparations and applicable law underlying its order.

19 Because of their purpose and symbolism, most cultural property and cultural heritage  
20 are unique and of sentimental value. As a result, they are not fungible or readily  
21 replaceable. The destruction of international cultural heritage thus carries a message  
22 of terror and helplessness; it destroys part of humanity's shared memory and  
23 collective consciousness; and renders humanity unable to transmit its values and  
24 knowledge to future generations.

25 Reparations in the present case are designed - to the extent achievable - to relieve the

1 suffering caused by the serious crime committed, address the consequences of the  
2 wrongful act committed by Mr Al Mahdi and enable the victims to recover their  
3 dignity and deter future violations. Reparations may also assist in promoting  
4 reconciliation between the victims of the crime, the affected communities and the  
5 convicted person.

6 As a general principle, all victims are to be treated fairly and equally as regards  
7 reparations, irrespective of whether they participated in the trial proceedings. This  
8 said, during the implementation phase it may be appropriate to prioritise reparations  
9 to those victims who were the most harmed by the convicted person's conduct.  
10 Whenever possible, reparations should reflect local cultural and customary practices  
11 unless these are discriminatory or exclusionary or they deny victims equal access to  
12 their rights.

13 As indicated by one of the Chamber's appointed experts, women and girls may face  
14 gender-specific risks, challenges and discrimination in gaining access to and  
15 defending cultural heritage.

16 I will now proceed to the order for reparations against Mr Al Mahdi.

17 First, the Chamber will explain who are the relevant victims for the purposes of its  
18 assessments. In its judgment, the Chamber concluded that the destruction of the  
19 Protected Buildings affected not only the direct victims of the crimes, namely the  
20 faithful and inhabitants of Timbuktu, but likewise people throughout Mali and the  
21 international community.

22 However, the Chamber has noted that the degree and nature of harm suffered varies  
23 for each of the three groups identified.

24 It is self-evident that the community of Timbuktu suffered disproportionately more  
25 harm as a result of the attack on the Protected Buildings. The Chamber only

1 received reparations applications pertaining to the community of Timbuktu - no  
2 application has been submitted solely for the interests of the national or international  
3 community beyond Timbuktu. Notably, UNESCO itself did not submit any  
4 application for reparation and stated instead that local communities are the principal  
5 victims.

6 Nevertheless, the Chamber is well aware of the specific nature of the crime for which  
7 Mr Al Mahdi was convicted. The destruction of cultural heritage erases part of the  
8 heritage of all mankind, and the Chamber finds it appropriate to acknowledge the  
9 suffering endured by the Malian community and the international community as a  
10 whole as a result of the destruction of the Protected Buildings, all but one of which  
11 were UNESCO World Heritage Sites.

12 The Chamber considers that addressing the harm suffered by the community of  
13 Timbuktu will also effectively address the broader harm suffered by Malians and the  
14 international community as a whole. If the Chamber limits its harm assessment only  
15 to the Timbuktu community, that will also maximise the effect of the reparations  
16 awarded. In the words of one of the appointed experts: "Since ultimately it is the  
17 local population that is in the best position to preserve the heritage in question,  
18 therefore the measures of reparation might most sensibly be aimed at strengthening  
19 their capacity to do so".

20 I will now proceed to the kinds of harm suffered, the types of reparations and  
21 modalities.

22 The Chamber will summarise its analysis on the different kinds of harm to the  
23 community of Timbuktu in the information before it.

24 The Chamber notes the Defence's argument that it is necessary for the Chamber to  
25 identify the specific eligible victims to be in a position to subsequently evaluate the

1 harm. The Chamber rejects this argument to the extent that it assumes that  
2 reparations can be assessed only on the basis of individual applications. As regards  
3 individual reparations, and as discussed further, the Regulations of the Trust Fund  
4 for Victims specifically contemplate awarding individual reparations in cases when  
5 the Court does not identify individual beneficiaries. As regards collective  
6 reparations, when considering whether the number of victims in a case makes a  
7 collective reparations award more appropriate, and consistent with the Appeals  
8 Chamber in Lubanga, the Chamber is not limited to the number of victims, number of  
9 victim applicants before it.

10 Five harms are discussed in today's order. The Chamber will summarise its findings  
11 on each. We begin with harm to the Protected Buildings and the apology.

12 First, the Chamber analysed the damage caused to the ten Protected Buildings in this  
13 case. The attacks on the Protected Buildings lie at the heart of this case and form the  
14 basis for Mr Al Mahdi's conviction.

15 The Defence submits that, when considering reparations for repairing the Protected  
16 Buildings, the Chamber should take into account the fact that they have been restored.  
17 The Chamber is unconvinced. The fact that the Protected Buildings have been  
18 restored by UNESCO and others has no impact on whether Mr Al Mahdi is liable for  
19 the damage caused. Remedial efforts by a third party in the time between the  
20 destruction and the issuance of the reparations order do not alter the amount of  
21 damage originally caused. To place undue weight on restoration work would be to  
22 understate the amount of harm actually caused and the corresponding reparations  
23 required.

24 The fact that UNESCO has no intention of collecting any reparations is likewise  
25 immaterial. The Chamber will not speculate on the extent to which the bona fide

1 third parties may assert their rights against the convicted person once the reparations  
2 order is issued. The Chamber's only role at this point is to decide on the convicted  
3 person's liability, taking into account the scope and extent of any damage, loss or  
4 injury caused. Accordingly, the Chamber finds that Mr Al Mahdi is liable for the  
5 destruction of the Protected Buildings.

6 As for the types and modalities of reparations needed, the Protected Buildings  
7 belonged to the entire community of Timbuktu and their loss was felt by the  
8 community as a whole. The Chamber considers that collective reparations are the  
9 most appropriate way to address the damage caused. As for the modalities, the  
10 Chamber considers that the harm caused by the destruction of the Protected Buildings  
11 will be satisfactorily addressed by measures for their protection and maintenance.  
12 The Chamber emphasises that these reparations should be tailored to the individual  
13 concerns regarding each of the Protected Buildings.

14 As regards the damage to the Protected Buildings, certain applicants, the LRV, amici  
15 curiae and appointed experts stress that there are victims in the present case who  
16 view Mr Al Mahdi's apology as insufficient.

17 The Chamber recognises that it is ultimately up to each individual victim to decide  
18 whether he or she considers Mr Al Mahdi's apology sufficient. This is inevitable and  
19 eminently understandable. But the Chamber must engage with the sufficiency of the  
20 apology on some level in order to determine what reparations are appropriate in this  
21 case.

22 The Chamber has already concluded that it considered Mr Al Mahdi's apology to be  
23 genuine, categorical and empathetic. The Chamber does not order any further  
24 apology above and beyond what Mr Al Mahdi has already given. However, as a  
25 symbolic measure to ensure that all victims have access to Mr Al Mahdi's apology, the

1 Chamber orders the Registry to produce an excerpt of the video of the apology and  
2 post it on the Court's website with a corresponding transcript translated into the  
3 primary languages spoken in Timbuktu. If any of the victims wish to receive a hard  
4 copy of the apology in a language they fully understand and speak, the Registry shall  
5 make this available to them upon request. Further ways of using Mr Al Mahdi's  
6 existing apology may be advanced by the Trust Fund during the implementation  
7 phase of the present order.

8 I now proceed to the consequential economic loss.

9 The Chamber's appointed experts say that the general consequential economic loss  
10 caused by the attack reverberated across the entire community in Timbuktu. The  
11 Chamber considers that the harm caused by Mr Al Mahdi's actions is primarily  
12 collective in character. It is much larger and of a different nature than the harm  
13 suffered by the 139 applicants grouped together. Aggregating their losses and  
14 prioritising their compensation would risk dramatically understating and  
15 misrepresenting the economic loss actually suffered.

16 Nevertheless, the LRV argues that compensation should be given to all reparations  
17 applicants who suffered financial losses, and that a further 250 euros be granted  
18 across the board to each victim applicant to address their collective harm.

19 When focusing on the extent of compensation, the Chamber considers it more  
20 equitable to use individual reparations to compensate victims on the basis of the  
21 extent of the harm suffered or sacrifice made, rather than solely on whether or not an  
22 applicant had applied for reparations.

23 The Chamber notes that reparations applicants in the present case already obtain  
24 several procedural advantages which are not necessarily available to other members  
25 of the Timbuktu community who suffered similar harm. These applicants will have



1 their claims considered first in the screening procedure that the Chamber will address  
2 later. And by virtue of having already prepared applications and supporting  
3 materials, these applicants can take part in the screening procedure without  
4 significant additional effort. Moreover, the applicants provided information  
5 considered by the Chamber in tailoring the reparations award, giving them more  
6 influence over the parameters set in the present order. The applicants also continue  
7 to avail themselves of the assistance of the LRV, a Court-appointed lawyer who  
8 receives legal assistance to represent their interests and advocate for them.  
9 However, going beyond these procedural advantages by compensating the  
10 applicants - to the exclusion of similarly harmed people - puts undue emphasis on the  
11 filing of applications rather than on the extent of the harm suffered or the sacrifice  
12 made by the victims. There is no reason to believe that the reparations applicants,  
13 simply by virtue of applying, suffered to a different degree compared to the rest of  
14 the Timbuktu community. As noted by the LRV himself, there is a large risk of  
15 frustration in awarding reparations solely to those who have reparations applications  
16 pending before the Chamber. The Chamber's appointed experts also recommended  
17 that reparations should be awarded on a collective basis as far as possible.  
18 Accordingly, the Chamber awards individual reparations for consequential economic  
19 loss only to those whose livelihoods exclusively depended upon the Protected  
20 Buildings. An individualised response is more appropriate for them, as their loss  
21 relative to the rest of the community is more acute and exceptional.  
22 The Chamber considers that the number of victims and the scope of the consequential  
23 loss make a collective award more appropriate for those beyond this identified group.  
24 This is not to say that individual businesses and families could not receive financial  
25 award in the implementation of collective reparations. As indicated by the Appeals

1 Chamber, "the decision not to award reparations on an individual basis does not  
2 prejudice the individuals who filed individual reparations requests with respect to  
3 their eligibility to participate in any collective reparations programme".  
4 Therefore, the Chamber considers that the economic harm caused by Mr Al Mahdi  
5 necessitates individual reparations for those whose livelihoods exclusively depended  
6 upon the Protected Buildings and collective reparations for the community of  
7 Timbuktu as a whole.

8 As for the modalities, the Chamber considers that individual reparations are to be  
9 implemented through compensation to address the financial losses suffered. The  
10 modalities for collective reparations should be aimed at rehabilitating the community  
11 of Timbuktu in order to address the economic harm caused. Collective measures in  
12 this regard may include community-based educational and awareness-raising  
13 programmes to promote Timbuktu's important and unique cultural heritage,  
14 return/resettlement programmes, a "microcredit system" that would assist the  
15 population to generate income, and other cash assistance programmes to restore some  
16 of Timbuktu's lost economic activity.

17 I will now proceed to the moral harm caused by Mr Al Mahdi's crime.

18 Every victim applicant before the Chamber alleges some sort of moral harm as a  
19 result of the attack. The Chamber considers that the victims established to the  
20 requisite standard the following forms of moral harm: First, mental pain and  
21 anguish, including losses of childhood, opportunities and relationships among those  
22 who fled Timbuktu because the Protected Buildings were attacked and, second,  
23 disruption of culture.

24 The LRV argues at length that the moral harm suffered is best addressed by giving  
25 compensation to the applicants as individual and collective reparations. For the

1 same reasons provided when discussing consequential economic loss, the Chamber  
2 considers such a compensation-centric approach for the benefit of the reparations  
3 victims to be problematic. The Chamber again emphasises that it considers that such  
4 a course understates the variety of other information proving that Timbuktu's  
5 community at large, and not only the victim applicants, suffered harm.  
6 The Chamber considers that the community-wide impact of moral harm is minimised  
7 by the Defence when it argues in its submissions that psychological harm in the  
8 present case can be proven only by asking for a direct kinship between the people  
9 claiming the harm and the deceased whose mausoleums were attacked. The  
10 Chamber agrees with the Defence - and the LRV, for that matter - that those whose  
11 ancestors' burial sites were damaged in the attack (such as the "descendants of the  
12 saints") have a different kind of emotional connection to the destroyed sites than the  
13 rest of the Timbuktu population. The Chamber therefore considers that individual  
14 reparations through compensation are necessary to address the mental pain and  
15 anguish they suffered. But the remainder of the reparations awarded to the entire  
16 community of Timbuktu must be collective in character.  
17 The Chamber therefore orders that the moral harm caused by Mr Al Mahdi  
18 necessitated: One, collective reparations for the mental pain and anguish of those  
19 whose ancestors' burial sites were damaged in the attack and, two, collective  
20 reparations for the mental pain and anguish and disruption of culture for the  
21 Timbuktu community as a whole.  
22 As for the modalities, the Chamber considers that individual reparations are to be  
23 implemented through compensation and collective reparations through rehabilitation  
24 to address the emotional distress suffered as a result of the attack on the Protected  
25 Buildings. These collective reparations can also include symbolic measures, such as

1 a memorial, commemoration or forgiveness ceremony, to give public recognition of  
2 the moral harm suffered by the Timbuktu community and those within it.

3 Fourth and fifth, the Chamber analysed allegations of bodily harm and damage to  
4 property other than to the Protected Buildings.

5 The Chamber convicted Mr Al Mahdi only for directing an attack against the  
6 Protected Buildings. The common plan underlying this conviction was to attack  
7 these sites only. He was not convicted of any crimes against persons or other  
8 property damage, nor did the Chamber make any factual findings along these lines.

9 The Chamber considers that many victims allege bodily harm and other property  
10 damage with only the most summary of assertions that this happened during the  
11 attack, making it difficult to ascertain the circumstances of these acts and how they  
12 occurred in the course of the attack. This makes it impossible to tell if these harms  
13 were caused by those attacking the Protected Buildings with Mr Al Mahdi or by  
14 others in a manner which he neither knew of nor could reasonably anticipate. At  
15 times, the lack of detail also makes it unclear whether reparations are being sought on  
16 account of harm suffered in the attack on the Protected Buildings or, on the contrary,  
17 on account of other events that occurred during the occupation of Timbuktu.

18 On the basis of the information before it, the Chamber does not consider that these  
19 harms suffered were sufficiently foreseeable as to conclude that Mr Al Mahdi's crime  
20 is their actual and proximate cause.

21 As such, the Chamber orders no reparations for these two harms. In this regard, the  
22 Chamber emphasises the relatively narrow scope of this case relative to the wider  
23 range of human rights violations alleged to have occurred in Timbuktu and elsewhere  
24 throughout Mali. Mr Al Mahdi cannot be held responsible for these broader  
25 tragedies, but the Chamber encourages the Trust Fund for Victims to consider acting

1 under Rule 98(5) of the Rules to provide general assistance to those affected.

2 To summarise the conclusions on the harms suffered, the Chamber finds that

3 Mr Al Mahdi's crime caused three kinds of harm to the requisite standard of proof:

4 First, damage to the Protected Buildings; second, consequential economic losses; and,

5 third, moral harm.

6 Although the Chamber recalls its general consideration that it has limited its

7 assessment only to the community of Timbuktu, it notes the LRV's request to award

8 nominal damages to the Malian State for the harm suffered. With regard to the

9 considerations stated previously, the Chamber considers a symbolic gesture of this

10 kind to be appropriate and further directs that the Malian State receive one euro as

11 part of the reparations award.

12 Similarly, the Chamber considers that one symbolic euro should equally be granted to

13 the international community, which is best represented by UNESCO given the

14 specific nature of the case.

15 I will now proceed to the scope of liability.

16 The Chamber notes the Defence's argument that the amount of reparations should be

17 a set and reasonable amount that reflects Mr Al Mahdi's financial abilities. Given

18 that all the information before the Chamber confirms that Mr Al Mahdi is indigent,

19 accepting this argument would entail setting Mr Al Mahdi's liability at or near zero.

20 The Chamber disagrees that Mr Al Mahdi's indigence has an impact on its reparations

21 award. The Appeals Chamber has determined that it is an error to conclude that a

22 convicted person's indigence is relevant to whether he or she should be liable for any

23 reparations awarded. Taking such circumstances into account would inevitably lead

24 to understating the harm suffered and depriving the victims of their right to a remedy.

25 A convicted person's financial circumstances may affect how a reparations award is

1 enforced - such as by affording an option to make reasonable payments in  
2 instalments - and the Chamber does not intend to impose hardships on Mr Al Mahdi  
3 that make it impossible for him to reintegrate into society upon his release. But the  
4 enforcement of reparations awards is under the auspices of the Presidency and is  
5 beyond the current question of setting Mr Al Mahdi's personal liability.

6 In this connection, the Chamber is not persuaded by the Defence submission that it is  
7 within the Chamber's competence to limit the term of imprisonment -- to limit to the  
8 term of imprisonment the time period within which the Trust Fund for Victims is  
9 authorised to claim any reimbursement from Mr Al Mahdi. No such power can be  
10 derived from the statutory scheme or from the Lubanga Reparations Appeals  
11 Judgment. Even if setting such a limitation was possible, the Chamber considers it  
12 would be unfair to do so. After all, it is Mr Al Mahdi, not the Trust Fund, who is  
13 responsible for the harm caused to the victims.

14 The written order discusses the relevant figures advanced to the Chamber by its  
15 appointed experts, considering other information and adjusting these figures as  
16 needed. The Chamber does not consider it necessary to decide whether its  
17 conclusions on the applicable figures constitute the sum total of harm suffered in the  
18 course of the attack on the Protected Buildings. Its conclusions are specific to  
19 Mr Al Mahdi and what it considers to be a fair assessment of his liability alone.

20 Mr Al Mahdi, after adding up your liability across the different -- the various kinds of  
21 harm caused by your crime, the Chamber sets your total liability at 2.7 million euros.

22 The Chamber will now proceed to discuss the implementation of this reparation  
23 award, understanding that you are indigent and mindful of the role of the Trust  
24 Fund.

25 Mr Al Mahdi is liable for this amount in expenses for individual and collective

1 reparations. The Chamber has also ordered some symbolic measures.

2 The Chamber notes the Trust Fund's mandate as an implementing agency upon being  
3 seized of a reparations award and considers that the present order is the first of three  
4 Chamber determinations to be made during the reparations proceedings. Following  
5 this order, the Trust Fund for Victims will propose a plan to implement the  
6 Chamber's order, including the objectives, outcomes and necessary activities that  
7 comprehensively respond to all of the reparations modalities that can be realistically  
8 implemented. The deadline for this draft plan is set in the disposition of the present  
9 order, and the plan will be subject to the Chamber's approval in a second decision.

10 Upon approval, the Trust Fund for Victims will then identify discrete implementation  
11 partners in order to implement the Chamber's award, and in a third decision the  
12 Chamber will approve the selected projects.

13 Bearing all this in mind, the Chamber will not give detailed information about the  
14 implementation component of the reparations phase. However, the Chamber will  
15 advance the following preliminary considerations to guide the implementation of its  
16 order.

17 First, noting Mr Al Mahdi's indigence, the Chamber appreciates that it is within the  
18 Trust Fund's discretion to complement any individual or collective reparations. The  
19 Chamber encourages the Trust Fund for Victims to complement the individual and  
20 collective awards to the extent possible and to engage in fundraising efforts to the  
21 extent necessary to complement the totality of the award.

22 Second, the Chamber notes that the modalities of reparations it has ordered mutually  
23 reinforce each other. In other words, addressing the discrete moral harm may have  
24 residual effects that ameliorate the discrete forms of economic harm and vice versa.

25 As such, the Chamber does not consider that the TFV is limited to the Chamber's

1 intermediate liability calculations set out in the written order when designing an  
2 implementation plan, but only to its final determination on Mr Al Mahdi's total  
3 liability.

4 Third, the Chamber emphasises its view that the limited number of individual  
5 reparations ordered should be prioritised in implementing the award. The TFV's  
6 general position is to prioritise collective awards, but, as indicated above, the groups  
7 identified by the Chamber for individual reparations are singled out because of the  
8 particular extent to which they were harmed by Mr Al Mahdi's conduct. The  
9 Chamber would like this prioritisation to be reflected in the implementation phase to  
10 the extent possible, insofar as individual reparations do not hinder broader  
11 reconciliation or stigmatise individual victims vis-à-vis the community of Timbuktu.  
12 Fourth, recalling its previous findings on a wide variety of harm suffered in the  
13 present case, the Chamber notes that the number of victim applications that it has  
14 received is a fraction of the number of persons who were actually harmed. The  
15 Chamber has received only 139 applications during the reparations phase, despite  
16 determining that collective harm was suffered across Timbuktu, a city of  
17 approximately 70,000 people around the time of the attack. The LRV acknowledges  
18 that "the victims whom he met on his assignment in Mali represent just a fraction of  
19 the victims in this case".

20 The Chamber also notes the information received that the security situation in  
21 Timbuktu makes travelling there or contacting victims difficult. For these reasons,  
22 the Chamber considers that the names of all the victims meeting its parameters for  
23 individual reparations are simply not known and considers that it would be  
24 impracticable for the Chamber to attempt to identify and assess them all itself.  
25 In these circumstances, the Chamber will not make such an assessment when



1 awarding individual reparations, making administrative screening through the TFV  
2 an approach that is compatible with the statutory framework.

3 As also recognised by the Appeals Chamber, the Regulations of the TFV explicitly  
4 contemplate individual reparations for unidentified beneficiaries, side by side with  
5 other TFV Regulations on individual reparations in cases where the Court identifies  
6 the beneficiary. When the Court does not identify the beneficiaries, it falls upon the  
7 TFV to establish a verification procedure to determine that any persons who identify  
8 themselves to the TFV are in fact members of the beneficiary group. The Chamber  
9 considers that proceeding in this manner is an alternative to an application-based  
10 process, whereby the Chamber assesses the reparation requests of identified  
11 beneficiaries filed pursuant to Rule 94 of the Rules.

12 For these reasons, the Chamber considers that the impracticability of identifying all  
13 those meeting its individual reparations parameters justifies an eligibility screening  
14 during the implementation phase. Some general parameters for this screening are  
15 set out in today's order.

16 Fifth, the Chamber has received conflicting information about the extent to which  
17 traditional justice mechanisms should be used in implementing the Chamber's order.  
18 Some note the paramount role these play in Timbuktu's culture and how the validity  
19 of any reparations order depends on using them. Others emphasise that certain  
20 traditional justice mechanisms in Timbuktu have a history of discrimination,  
21 especially against women, and that care should be taken in relying upon them.

22 Given this conflicting information, the Chamber will not require that traditional  
23 justice mechanisms be part of the implementation of this award.

24 Lastly, the Chamber emphasises that implementation of the present order must be  
25 responsive to local conditions while being consistent with the Court's reparations

1 principles, including the principle of non-discrimination. The TFV is expected to  
2 devise a draft implementation plan bearing this dichotomy in mind, consulting all  
3 relevant stakeholders, including the parties, and recommending any implementation  
4 measures it considers appropriate. The parties will also be given an opportunity to  
5 file written submissions on the draft implementation plan proposed. As emphasised,  
6 the TFV's discretion in drafting the implementation plan will be subject to approval  
7 by way of a second decision of this Chamber.

8 I will now proceed to the disposition.

9 To conclude, the Chamber will now read out the disposition of its order. For the  
10 following reasons, the Chamber:

11 First, orders individual, collective and symbolic reparations for the community of  
12 Timbuktu as specified in the relevant paragraphs of the written order;

13 Second, acknowledges that the destruction of the Protected Buildings has caused  
14 suffering to the people throughout Mali and the international community;

15 Third, assesses Mr Al Mahdi's liability for these reparations at 2.7 million euros;

16 Fourth, encourages the TFV to take steps to complement the reparations award and  
17 provide broader assistance for victims in Mali;

18 Fifth, orders the Registry to comply with the symbolic measures in relation to  
19 Mr Al Mahdi's apology forthwith;

20 Sixth, sets a deadline for the TFV's draft implementation plan for 16 February 2018;  
21 and

22 Seventh, directs the LRV and Defence to file any observations on the draft  
23 implementation plan within 30 days of its notification.

24 This concludes the Chamber's summary and today's hearing.

25 The Chamber wishes to thank again the interpreters and the other Registry staff in

- 1 facilitating this hearing.
- 2 This hearing is adjourned.
- 3 THE COURT USHER: [10:43:02] All rise.
- 4 (The hearing ends in open session at 10.43 a.m.)