

1 International Criminal Court
2 Appeals Chamber
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 Howard Morrison, Judge Silvia Fernández de Gurmendi, Judge Sanji
6 Monageng, Judge Christine Van den Wyngaert, Judge Piotr Hofmanski
7 Delivery of Reparations Order - Courtroom 2
8 Thursday, 8 March 2018
9 (The hearing starts in open session at 1.59 p.m.)
10 THE COURT USHER: [13:59:07] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE MORRISON: [13:59:32] Good afternoon, everybody. The
14 Court is in session.
15 Would the court officer please call the case.
16 THE COURT OFFICER: [13:59:53] Good afternoon, Mr President, your Honours.
17 The situation in the Republic of Mali in the case of The Prosecutor versus Ahmad Al
18 Faqi Al Madi, case reference ICC-01/12-01/15.
19 PRESIDING JUDGE MORRISON: [14:00:06] Thank you.
20 I'm Judge Howard Morrison, and I'm the Presiding Judge in this appeal in the case of
21 the Prosecutor against Mr Ahmad Al Faqi Al Mahdi.
22 Today, on behalf of the Appeals Chamber, I will be delivering the judgment on the
23 Legal Representative of Victims' appeal against the Reparations Order of
24 Trial Chamber VIII, filed in accordance with Article 82(4) of the Statute. The Trial
25 Chamber's decision was rendered on 17 August 2017. In today's summary I will

1 refer to it as the Impugned Decision, and I will refer to Trial Chamber VIII as the Trial
2 Chamber.

3 The other Judges of the Appeals Chamber on this appeal and who join me today are
4 Judge Silvia Fernández De Gurmendi, Judge Sanji Monageng, Judge Christine Van
5 den Wyngaert, and Judge Piotr Hofmanski.

6 I am also joined by legal staff of the Appeals Division, Mr Volker Nerlich, Ms
7 Barbara Roche, Mr Anthony Abato, Mr Chitragada Singh and Ms Annabel Gary.
8 Now may I ask the parties and participants to introduce themselves for the record,
9 starting with the Legal Representative of the Victims.

10 MR KASSONGO: [14:01:23] (Interpretation) Thank you, your Honour.

11 Your Honours, I am Counsel Kassango Mayombo, lawyer representing the victims,
12 and my team is composed of Aline Delehayé, who is assisting me, with
13 Sarah Benaissa, who compose this team. Thank you.

14 PRESIDING JUDGE MORRISON: [14:01:45] Merci.

15 And now for the Defence.

16 MR AOUINI: [14:01:46] Your Honour, I am counsel Mohamed Aouini. I am
17 counsel for the Defence of Mr Al Mahdi, and I'm accompanied by Madam Sylviane
18 Emma Glodjinon and Madam Judith Akebe. Thank you, your Honour.

19 PRESIDING JUDGE MORRISON: [14:02:09] Merci.

20 And now the Trust Fund for Victims.

21 MR DE BAAN: [14:02:11] Mr President, your Honours, good afternoon. I'm
22 Pieter de Baan. I'm the Executive Director for the Trust Fund for Victims, and I'm
23 joined by Ms Erin Rosenberg, associate legal officer with the Secretariat of the Trust
24 Fund.

25 PRESIDING JUDGE MORRISON: [14:02:25] Thank you very much.

1 Now I shall summarise the public version of the Appeals Chamber's judgment, which
2 was taken unanimously. This summary is not part of the written judgment. And
3 please note that only the written judgment is authoritative. The written judgment
4 will be filed in a confidential version and a public version and it will be notified to the
5 parties shortly after this hearing.

6 During the course of today's hearing, I will refer to Mr Ahmad Al Faqi Al Mahdi as
7 Mr Al Mahdi and the Legal Representatives of Victims as the LRV.

8 Before I summarise the Appeals Chamber's judgment, I recall that Mr Al Mahdi was
9 convicted as a co-perpetrator under Articles 8(2)(e)(iv) and 25(3)(a) of the Statute for
10 intentionally attacking ten protected objects in Timbuktu, Mali, between around 30
11 June 2012 and 11 July 2012 and was sentenced to nine years of imprisonment. I will
12 refer to those ten protected objects as "the Protected Buildings".

13 I shall begin with a brief account of the relevant procedural history. The LRV filed
14 its notice of appeal in this case on 18 September 2017 and its appeal brief on 18
15 October 2017. Pursuant to the Appeals Chamber's directions on the conduct of the
16 appeal proceedings, the Trust Fund filed its observations on the LRV's appeal brief on
17 29 November 2017, to which Mr Al Mahdi and the LRV responded on the 11
18 December 2017. Mr Al Mahdi did not file a separate response to the LRV's appeal
19 brief, although general arguments related to the appeal were included in its response
20 to the LRV's appeal brief.

21 And I now turn to the merits of the appeal.

22 The LRV raises two grounds of appeal, and I will treat them in order.

23 Under his first ground of appeal, the LRV submits that the Trial Chamber erred in
24 limiting individual reparations for economic loss to those whose livelihoods
25 exclusively depended upon the Protected Buildings.

1 The Appeals Chamber notes first that a trial chamber, in making an award for
2 reparations, has discretion, explicitly circumscribed only by the "scope and extent of
3 any damage, loss and injury" as per article 75(1) of the Statute and Rule 97(1) of the
4 Rules of Procedure and Evidence. In reaching its decision, a trial chamber shall take
5 account of parties' submissions, as per Article 75(3) of the Statute, and it "may appoint
6 appropriate experts to assist it in determining the scope, extent of any damage, loss
7 and injury" pursuant to Rule 97(2) of the Rules of Procedure and Evidence.

8 The Appeals Chamber notes that the Trial Chamber, in analysing "the different kinds
9 of harm alleged in the information before it", stated that it "freely considered all
10 submissions, applications, supporting materials, expert reports and other relevant
11 information".

12 The Appeals Chamber finds that the LRV has not shown the Trial Chamber abused its
13 discretion in reaching the decision it did, given the information it had before it and it
14 finds no error in the Trial Chamber's determination of the category of victims who
15 should be entitled to individual reparations for economic loss in this case.

16 Turning to the second ground of appeal, the LRV argues that the Trial Chamber erred
17 in delegating a "power of adjudication" for reparations to the TFV, a non-judicial
18 entity. He also challenges the Trial Chamber's findings on the confidentiality of the
19 victims' identifying information.

20 On his first argument related to the alleged delegation of power to the TFV, the
21 Appeals Chamber notes that the Trial Chamber considered that "the names of the
22 victims meeting its parameters for individual reparations were simply not known and
23 considered that it would be impracticable for the Chamber to attempt to identify and
24 assess all of them itself". The Trial Chamber therefore considered it "best that
25 individual reparations be awarded on the basis of an administrative screening by

1 the TFV."

2 The Appeals Chamber considers that the Trial Chamber's decision is in conformity
3 with Rule 98(2) of the Rules of Procedure and Evidence and the underlying rationale
4 of this provision, namely that there may be situations in which it may be "impossible
5 or impracticable to make individual awards directly" and that the Trial Chamber may
6 need to rely upon the TFV to enhance the efficiency and effectiveness of the
7 reparations process.

8 The Appeals Chamber finds that it is within the discretion of a trial chamber to
9 request, on a case-by-case basis, the assistance of, for instance, the TFV to undertake
10 the administrative screening of beneficiaries of individual reparations meeting the
11 eligibility criteria set out by the trial chamber.

12 The Appeals Chamber therefore finds that the Trial Chamber did not err in this
13 respect. However, the Appeals Chamber finds that it is for the Trial Chamber, in the
14 exercise of its judicial functions, to make final determinations on individual victim
15 applications where administrative decisions of the TFV are contested or proprio
16 motu.

17 Therefore, the Appeals Chamber amends the Impugned Decision to the extent that
18 applicants for individual reparations should be able to contest before the Trial
19 Chamber the decision taken by the TFV on their eligibility for individual reparations,
20 and it is for the Trial Chamber to make the final determination in this respect.

21 In relation to the second argument raised by LRV under his second ground of appeal,
22 regarding confidentiality issues, the Appeals Chamber first notes that the LRV
23 requests that the Appeals Chamber grant "initial measures of confidentiality" in order
24 to ensure that identifying information of victims who sought anonymity is not
25 transmitted to the TFV or Mr Al Mahdi without their consent. In this respect, the

1 Appeals Chamber observes that the Trial Chamber stated that "no identity of
2 a reparations applicant may be transmitted to the TFV or Defence without the victim's
3 consent". Therefore, in the view of the Appeals Chamber, the Trial Chamber did not
4 lift any protective measures and the Appeals Chamber dismisses the LRV's argument
5 as not arising from the Impugned Decision.

6 Second, the Appeals Chamber notes that in his submissions before the Appeals
7 Chamber, the LRV also raises more general concerns as to the disclosure of
8 information relating to the identity of applicants to both the TFV and Mr Al Mahdi.
9 The Appeals Chamber recalls that the Trial Chamber stated that, "anyone who wishes
10 to be considered for individual reparations must make their identity known to both
11 the TFV and the Defence".

12 The Appeals Chamber notes that, in the proceedings prior to the issuance of the
13 Impugned Decision, the identifying information of applicants had been withheld
14 from Mr Al Mahdi. The Appeals Chamber recalls that when ruling on requests for
15 redactions, a trial chamber must take into account and balance the rights and interests
16 of the parties as per Article 68 of the Statute, that provides that "the Court shall take
17 appropriate measures to protect the safety ... of victims and witnesses ... These
18 measures shall not be prejudicial to or inconsistent with the rights of the accused and
19 a fair and impartial trial".

20 The Appeals Chamber notes that Mr Al Mahdi's interests at this stage of the
21 proceedings are limited. The Trial Chamber has already set Mr Al Mahdi's
22 monetary liability and, as argued by LRV, the results of the screening process will
23 have no impact upon this.

24 Given the particular circumstances of this case, the Appeals Chamber finds that, in
25 balancing the interests of the parties at issue, the Trial Chamber failed to justify why it

1 was appropriate to essentially place the victims in the position where they would
2 have to choose between security concerns and their eligibility to be granted
3 individual reparations. The Appeals Chamber finds that the Trial Chamber erred in
4 ordering that access to applicants' identifying information should be granted to
5 Mr Al Mahdi, as a condition for the applicants to have their applications for
6 reparations reviewed by the TFV. This finding is reversed and the Impugned
7 Decision amended to the extent that the TFV is authorised to also consider
8 applications for individual reparations made by applicants who do not wish to have
9 their identifying information disclosed to Mr Al Mahdi.

10 The Appeals Chamber also notes that LRV has also argued against disclosure of
11 identifying information to the TFV. The Appeals Chamber considers that for the
12 TFV to exercise the screening, it needs to be able to verify the identity of the
13 applicants. Therefore, victims who wish to obtain individual reparations must make
14 their identity known to the TFV or consent for such information to be transmitted to
15 the TFV.

16 The overall conclusion is thus:

17 The "Reparations Order" is amended to extent that:

18 (i) The victim applicants who wish to be considered for individual reparations but do
19 not wish that their identities be disclosed to Mr Al Mahdi may nevertheless
20 participate in the administrative screening process that the Trust Fund for Victims
21 will carry out. In that case, their identities will be disclosed to the Trust Fund for
22 Victims, but will not be disclosed to Mr Al Mahdi.

23 (ii) Victim applicants, who the Trust Fund for Victims finds, as a result of the
24 administrative screening, are ineligible for individual reparations are entitled to
25 request that the Trial Chamber review the assessment by the Trust Fund for Victims.

- 1 The Trial Chamber may also review the assessment by the Trust Fund for Victims
2 proprio motu.
3 The remainder of the "Reparations Order" is confirmed.
4 This concludes my summary of the judgment. And I thank the interpreters, the
5 court officer, the parties and the participants.
6 And this session is now closed.
7 We are delivering a judgment in the case of the Prosecutor against Germain Katanga
8 and the appeal that is attached to that, and we will do that in approximately 15
9 minutes' time.
10 THE COURT USHER: [14:13:50] All rise.
11 (The hearing ends in open session at 2.13 p.m.)