

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/15**
Date: **30 October 2018**

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF MALI

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

Public
With four Confidential Annexes

Public redacted version of “Trust Fund for Victims’ submission of draft application form” ICC-01/12-01/15-289-Conf submitted on 26 October 2018

Source: Trust Fund for Victims

To be notified in accordance with Regulation 31 of the Regulations of the Court to:**Office of the Prosecutor****Counsel for the Defence**

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Legal Representatives of Applicants**Unrepresented Victims****Unrepresented Applicants for
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I. BACKGROUND AND PROCEDURAL HISTORY

1. On 23 April 2018, the Trust Fund for Victims (“Trust Fund”) submitted its draft implementation plan (“DIP”) for reparations in the present case, in which it proposed *inter alia* parameters for the organisation of a screening process of applicants for individual reparations.¹

2. On 12 July 2018, Trial Chamber VIII (“Trial Chamber”) issued its decision on the DIP (“Decision on DIP”),² approving with minor amendments, the organisation of the screening process.³ The Trial Chamber also directed the Trust Fund to produce a draft application form for individual reparation, in consultation with all relevant stakeholders, and to submit it to the Trial Chamber as soon as possible.⁴

3. On 5 September 2018, the Trust Fund emailed a draft of the new application form for individual reparations (“Draft Application Form” or “Form”) to the Legal Representative of Victims (“LRV”), the Defence and the Victims Participation and Reparations Section (“VPRS”),⁵ requesting their feedback by 14 September 2018.⁶ By 14 September, both VPRS and the Defence had replied by email.⁷

4. On 14 September 2018, the Trust Fund filed its second monthly update report of the implementation plan with two confidential annexes, corresponding to a copy of the Draft Application Form sent to the parties and VPRS and an updated list of authorities who may possess signatory authority in the administrative screening process (“Second Monthly Report”).⁸

¹ Draft Implementation Plan for Reparations, notified on 23 April 2018, ICC-01/12-01/15-265-Conf, with one confidential annex. A corrigendum was filed on 30 April 2018: ICC-01/12-01/15-265-Conf-Corr, with one confidential annex. A public redacted version was filed on 18 May 2018: ICC-01/12-01/15-265-Corr-Red.

² Public redacted version of “Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations”, ICC-01/12-01/15-273-Red.

³ Decision on DIP, para. 29.

⁴ Decision on DIP, para. 30.

⁵ Decision on Draft Implementation Plan, para. 30.

⁶ Email sent by the Trust Fund to the Defence counsel, the LRV team and VPRS on 5 September 2018 at 16:59.

⁷ VPRS replied to the Trust Fund on 6 September 2018 at 12:47. The Defence responded to the Trust Fund on 14 September 2018 at 14:50.

⁸ Second Monthly Update report on the implementation plan, ICC-01/12-01/15-283-Conf, with two confidential annexes. The Trust Fund had initially submitted a list of authorities together with the DIP (ICC-01/12-01/15-265-Conf-Anx1).

5. On 24 September 2018, the LRV filed observations on the Second Monthly Report (“LRV Observations”).⁹ In respect of the Form, the LRV submitted that: (i) [REDACTED]”;¹⁰ (ii) the fields contained in the Form seemed to indicate that the Trust Fund was retaining a restrictive interpretation of [REDACTED] (“Exclusive Link Requirement”);¹¹ and (iii) the fields contained in the Form seemed to indicate that the Trust Fund was making a distinction between [REDACTED].¹² [REDACTED].¹³

6. On 5 October 2018, the Defence submitted observations on the Second Monthly Report, requesting clarification as to the [REDACTED].¹⁴

7. On 12 October 2018, following exchanges with the Trust Fund,¹⁵ the LRV sent his observations on the Form.¹⁶ On 17 October 2018, the Trust Fund replied to the LRV and attached an updated version of the Form indicating that it would be finalised by 19 October 2018.¹⁷

8. On 15 October 2018, the Trust Fund submitted its third monthly update report on the updated implementation plan (“UIP”), addressing the LRV Observations (“Third Monthly Report”).¹⁸ The Trust Fund clarified that [REDACTED].¹⁹ The Trust Fund also acknowledged that the Form makes [REDACTED].²⁰ Lastly, the Trust Fund reiterated that, [REDACTED].²¹

9. On 18 October 2018, the LRV requested that further changes be made to the Form,²² which were discussed by phone on 19 October 2018. On the same day, at the invitation of the

⁹ *Observations du Représentant légal sur le Second rapport mensuel d’activité du Fonds au profit des victimes et sur le processus de sélection des victimes aux réparations*, ICC-01/12-01/15-284-Conf.

¹⁰ LRV Observations, para. 61.

¹¹ LRV Observations, paras 62-63.

¹² LRV Observations, paras 64-70.

¹³ LRV Observations, paras 47-51.

¹⁴ *Observations de la Défense sur le deuxième rapport mensuel ICC-01/12-01/15-283-Conf du Fonds au profit des victimes et réponse aux observations ICC-01/12-01/15-284-Conf du représentant légal des victimes*, ICC-01/12-01/15-285-Conf, paras 24, 27.

¹⁵ See Third monthly update report on the updated implementation plan, ICC-01/12-01/15-288-Conf, paras 7-9.

¹⁶ Email sent by the LRV team to the Trust Fund on 12 October 2018 at 9:11 AM.

¹⁷ Email sent by the Trust Fund to the LRV on 17 October 2018 at 10:51.

¹⁸ Third monthly update report on the updated implementation plan, ICC-01/12-01/15-288-Conf.

¹⁹ Third Monthly Report, para. 22.

²⁰ Third Monthly Report, paras 19-21.

²¹ Third Monthly Report, paras 27-28.

²² Email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

Trust Fund, the VPRS sent comments.²³ On 24 October 2018, the Trust Fund met with the LRV to discuss, among other things, the last changes made to the Form.

10. The Trust Fund hereby submits the Draft Application Form as Annex 1 to the present submission.²⁴ It is the result of the thorough and numerous consultations described above, in fulfilment of the Trust Fund's obligation to consult with all the stakeholders.²⁵ To the extent possible, the Trust Fund has endeavoured to include all comments received. Particular consideration was given to the LRV's comments in light of his knowledge of the context and of current and potential applicants. Further, the Trust Fund believes that all comments from VPRS related to their involvement and processes have been taken into account. When debates arose in the course of the consultation process, the Trust Fund set out its position in detail so as to give the opportunity to other parties and participants to make their arguments.

11. In order for the Trial Chamber to be properly informed about the implications of certain choices made by the Trust Fund in shaping the Form, the Trust Fund also submits the legal criteria that must be applied throughout the screening process.

12. The Trust Fund believes that the Draft Application Form and the corresponding legal criteria satisfy the Trial Chamber's requirements and will ensure the proper and efficient functioning of the screening process. As stated in the Third Monthly Report, it is expected that applicants will require assistance to fill in the Form. Guidelines [REDACTED] are currently being drafted ("Guidelines").

II. CLASSIFICATION

13. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, this filing is classified as confidential because it contains information related to the legal criteria for eligibility for individual reparations which, by virtue of the nature of the criteria discussed herein, could identify potential beneficiaries. A public redacted version will be filed shortly.

²³ Email from VPRS to Trust Fund on 19 October 2018 at 16:06.

²⁴ The Trust Fund recognises that the Form is submitted very shortly ahead of the UIP. The Trust Fund believes it is appropriate in light of the extended deadlines for the parties and participants' observations on the UIP (30 days from its submissions in accordance with the Decision on the DIP, Section entitled "Disposition"). The Trust Fund discussed this issue with the LRV during the meeting on 24 October 2018. The Trust Fund is [REDACTED]. In addition [REDACTED], the Trust Fund will request its translation into French as soon as it is approved.

²⁵ Decision on DIP, para. 30.

III. SUBMISSIONS

14. The Trust Funds sets out below its interpretation of the legal criteria set by the Trial Chamber in respect of (i) general considerations such as the nature of the applicant; (ii) individual reparations for economic harm; (iii) individual reparations for moral harm; and (iv) standard of proof and type of proof. When the Trust Fund elected to not incorporate one of the LRV's suggestions, the rationale is made clear to enable proper adjudication of the matter, if necessary.

A. GENERAL CONSIDERATIONS

15. **Personal information** – The Trust Fund has included the LRV's proposal to include additional personal information (such as marital status and current town of residence) on the form. However, at the suggestion of VPRS,²⁶ this information has been included on page five rather than on page one, as page five is the page containing all personal contact information which will be removed from transmission to the Defence.

16. **Nature of the applicant (individual or organisation)** – The Trust Fund has prepared a Form for individuals. As agreed with the LRV,²⁷ should an organisation come forward to apply, the Trust Fund stands ready to prepare a separate adapted form.²⁸ In the Reparations Order, the Trial Chamber found that individual reparations for moral harm were to be awarded “for the mental pain and anguish of those whose ancestors’ burial sites were damaged in the attack”.²⁹ Accordingly, the Trust Fund considers that only individuals are eligible for individual reparations for moral harm. The Trust Fund considers that the situation is different in the case of individual reparations for economic harm to “those whose livelihoods *exclusively* depended upon the Protected Buildings”,³⁰ *i.e.* persons whose livelihood was to maintain and protect the Protected Buildings,³¹ and certain business

²⁶ Email from VPRS to Trust Fund on 19 October 2018 at 16:06.

²⁷ Meeting with LRV on 24 October 2018.

²⁸ The Trust Fund takes the view that having a unique form for individuals and organisations would risk making the form confusing and heighten the chance of errors being made in completing the form.

²⁹ Reparations Order, ICC-01/12-01/15-236, para. 90.

³⁰ Reparations Order, para. 81.

³¹ Reparations Order, para. 81; Decision on DIP, para. 63.

owners.³² The Trust Fund recognises the possibility that a legal entity owned a business and would thus potentially meet the Exclusive Link Requirement.

17. **Gender perspective** –The Trust Fund has duly noted the LRV Observations on the increased difficulties that women may face when applying. The Trust Fund will make sure to include specific directions on this matter in the Guidelines and to administer proper training on this issue so as to ensure that women are not discouraged from applying.³³

B. INDIVIDUAL REPARATIONS FOR ECONOMIC HARM

18. **Eligible Victims: Exclusive Link Requirement** – In the Reparations Order, the Trial Chamber awarded individual reparations for economic harm to those whose livelihood depended *exclusively* on the Protected Buildings.³⁴ The Trial Chamber indicated in the Decision on DIP that [REDACTED] (“Exclusive Link Requirement”).³⁵ On 10 August 2018, the Trust Fund proposed two interpretations of the Exclusive Link Requirement and requested clarification as to which was applicable (“Clarification Request”).³⁶ The Chamber rejected the Clarification Request, but it recalled that the Appeals Chamber rejected one of the LRV’s grounds of appeal that asserted that the Exclusive Link Requirement was too restrictive and required revision or further definition. The Trial Chamber also emphasised that it never intended for the Exclusive Link Requirement to be so limiting as to foreclose any meaningful individual reparations.³⁷ While the LRV did not respond to the Clarification Request, he has continued to indicate to the Trust Fund, by email and in the LRV Observations, that the Trust Fund had not made its interpretation of the exclusive Link Requirement known³⁸ and that it seemed to be too restrictive.³⁹

19. A correct understanding of the meaning of the Exclusive Link Requirement by all actors involved (in particular the Trust Fund and the LRV) ahead of VPRS’ first transmission

³² Reparations Order, para. 81.

³³ The Trust Fund has also made sure that the form is worded neutrally (see question 2.1 “did he or she ...”).

³⁴ Reparations Order, ICC-01/12-01/15-236, para. 81; Decision on DIP, ICC-01/12-01/15-273-Red, para. 63.

³⁵ Decision on DIP, ICC-01/12-01/15-273-Conf, para.64.

³⁶ Request for clarification of the eligibility criteria for individual reparations awards related to economic harm, ICC-01/12-01/15-274-Red (public redacted version notified 15 August 2018). [REDACTED] (Clarification Request, ICC-01/12-01/15-274-Red, para. 12).

³⁷ Decision on TFV Request for Clarification Regarding Individual Reparations for Economic Harm, ICC-01/12-01/15-280.

³⁸ See, in particular, LRV Observations, para. 62.

³⁹ See, in particular, LRV Observations, paras 63-70.

will be crucial to the success of the screening process, in light of its vast practical implications. In order to manage victims' expectations, it is important that [REDACTED] do not encourage applications that would certainly fall outside the scope of the Trial Chamber's interpretation of this criterion. This is particularly important because the LRV – who is playing a very important role in finding new applicants and in collecting supporting documents for applicants whose applications are already in the case record – and the Trust Fund do not seem to have the same understanding. An erroneous interpretation of the Exclusive Link Requirement may also lead to an unduly high number of requests for judicial review to the Trial Chamber. Lastly, the Trust Fund wishes to underline that this debate is not an abstract one, but arose out of information retrieved from the field.

20. The Trust Fund recalls that the Trial Chamber has already found that [REDACTED] meet the Exclusive Link Requirement.⁴⁰ Accordingly, these individuals are expected to produce proof of this status, *i.e.* that they occupied this function at the time of the crime. What remains to be resolved is the position [REDACTED], as the Chamber decided that they may be eligible *provided that they meet the Exclusive Link Requirement*.⁴¹ The Trust Fund's below explained position is premised on: (i) the Reparations Order, as interpreted by the Decision on the DIP and the Clarification Decision; and (ii) information from the field on the factual reality of the situation.

21. First, the Trust Fund understands that the Reparations Order envisages the reparations for the economic harm as primarily collective. Only a discrete sub-group believed to have suffered a more acute harm, in the form of *direct* economic loss (as opposed to consequential economic loss) is intended to be the recipient of individual awards.⁴² The Trust Fund is guided by this rationale of the Trial Chamber and considers that it is not its role to expand the scope of individual awards. As stated by the Trial Chamber in the Reparations Order when it established the Exclusive Link Requirement,⁴³ the Trust Fund emphasises in this respect that individuals not meeting the threshold for individual reparations will nevertheless fall within the reach of collective reparations. Specific directions to this effect will be included in the Guidelines [REDACTED] and they will be encouraged to keep track of individuals clearly

⁴⁰ Decision on DIP, para.63.

⁴¹ Decision on DIP, para.63.

⁴² Reparations Order, paras 73, 74, 81-82.

⁴³ Reparations Order, para. 81.

falling outside the scope of individual reparations, but potentially eligible for collective reparations to ensure that they are reached by the latter.

22. Second, the Trust Fund has received information from the field that in practice no individual depended 100% on the Protected Buildings for their livelihood (even [REDACTED]). Rather, it appears that some individuals were involved to such an extent in the protection or maintenance of the Protected Buildings that it can be confidently stated that their livelihood exclusively depended on this occupation, even if they benefited from marginal subsidiary sources of income.

23. Accordingly, the Trust Fund considers that an applicant (other than [REDACTED]) who will be in a position to demonstrate that his livelihood exclusive depended on the Protected Buildings in a comparable way to [REDACTED] will be considered eligible. This interpretation is reflected in questions 2.3 and 3.3 of the Form: “[REDACTED]”

24. The Trust Fund considers that this approach strikes the appropriate balance between ensuring that individual reparations are reserved for a reduced group of people who suffered greater economic harm than other members of the community of Timbuktu, while providing sufficient flexibility to adapt to the reality on the ground and making sure that individual reparations ordered by the Chamber remain possible and meaningful.

25. The Trust Fund understands that the LRV’s concern revolves primarily around the issue of evidence and the standard of proof. As further detailed below, the Trust Fund will apply the standard of proof of balance of probabilities (as ordered by the Trial Chamber) and will exercise flexibility in respect of the supporting documents produced.⁴⁴

26. In this respect, the Trust Fund has noted VPRS’ position that an applicant would need to demonstrate that [REDACTED].⁴⁵ The Trust Fund will not apply this quantitative assessment [REDACTED]⁴⁶ but a qualitative one [REDACTED].⁴⁷ The Trust Fund would like to draw to the Trial Chamber’s attention the fact that the Trust Fund’s field presence and

⁴⁴ An [REDACTED], attached as Annex 2 to the present submission, can be produced to this effect.

⁴⁵ Annex 1 to Third Registry Report on Applications for Individual Reparations, 10 October 2018, ICC-01/12-01/15-287-Conf-AnxI, para. 10.

⁴⁶ In light of the generalised lack of records, the Trust Fund deems it unfeasible for an applicant to [REDACTED].

⁴⁷ *Supra*, para. 22.

the cooperation with the VPRS and the LRV and the review of the expert reports submitted have not permitted any of the actors involved in the screening process to gain a full factual understanding of the system of protection and maintenance of the Protected Buildings that existed prior to the attack. Thus, the Trust Fund cannot exclude the possibility that new information is discovered providing additional indicators. Should this be the case, the Trust Fund will promptly inform the Chamber as well as all parties and participants.

27. **Individual reparations for economic harm** – The Trust Fund has identified certain functions that may qualify for individual reparations – provided that they meet the Exclusive Link Requirement – [REDACTED] and has added an “Other” check box to ensure that no applicant is improperly excluded. The Trust Fund has noted the LRV’s proposal to expand the list of functions by including [REDACTED], for instance.⁴⁸ As discussed with the LRV,⁴⁹ in order to not overburden the Form, the Trust Fund will include the fact that individuals who occupied these functions may also be eligible in the Guidelines and will make sure to administer proper training on this issue [REDACTED].

28. **Business that depended exclusively on the Protected Buildings** – The LRV submitted on two occasions⁵⁰ that the term “business” was too narrow and risks excluding craftsmen who have no proof of their activity. The LRV requested that it be replaced by “material harm caused by the destruction”. The Trust Fund reiterates that the term “business” is that used by the Trial Chamber itself and finds that the LRV’s suggestion is too broad and seems to suggest that individuals not meeting the Exclusive Link Requirement are eligible. Accordingly, the Trust Fund has retained the term “business” in the form.⁵¹

29. [REDACTED] – The Trust Fund has noted the Trial Chamber’s direction that “when determining the amount to be awarded to an individual [REDACTED].⁵² As will be described in detail in the UIP, the Trust Fund has carefully taken this direction into account and, if approved by the Trial Chamber, [REDACTED].

⁴⁸ Email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

⁴⁹ Phone conversation with the LRV on 19 October 2018.

⁵⁰ LRV Observations, para. 61; email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

⁵¹ See Third Monthly Report, paras 19-21.

⁵² Decision on DIP, ICC-01/12-01/15-273-Red, para. 65.

30. In respect of the proof required, the Trust Fund agrees with the LRV's suggestion⁵³ to establish this by way of an attestation [REDACTED].⁵⁴

31. To guarantee the integrity of the screening process, the Trust Fund deems it necessary to verify [REDACTED].⁵⁵ This is because [REDACTED]. The Trust Fund will make sure that there is a way to keep track of [REDACTED].⁵⁶ The Trust Fund will include directions in its Guidelines to ensure that applicants are properly guided when filling the form. If an applicant [REDACTED].

C. INDIVIDUAL REPARATIONS FOR MORAL HARM

32. **Eligible victims: direct descendency** – The Trial Chamber awarded individual reparations for moral harm to descendants in direct kinship with the saints⁵⁷ due to the “different kind of emotional connection to the destroyed sites than the rest of the Timbuktu population.”⁵⁸

33. The Trust Fund has been made aware that there is a different meaning and scope given to this category of beneficiaries in the local context. [REDACTED];⁵⁹ as well as [REDACTED].

34. The Trust Fund considers that the interpretation of descendency based on *filiation spirituelle* sits outside the definition of kinship, even when broadly conceived; and that this category of people who feel strongly attached to a saint would rather benefit from the collective reparations for the mental pain/anguish and disruption of culture addressed to the community of Timbuktu as a whole.⁶⁰

⁵³ Meeting with the LRV on 24 October 2018.

⁵⁴ An [REDACTED], attached as Annex 3 to the present submission, can be produced to this effect.

⁵⁵ The Trust Fund has noted that the VPRS' database does not permit automatic tracking of [REDACTED] (Email from VPRS to Trust Fund on 24 October 2018 at 16:15).

⁵⁶ In respect of the difficulty to [REDACTED], the Trust Fund will apply the standard of balance of probabilities.

⁵⁷ Decision on DIP, para. 67.

⁵⁸ Reparations Order, para. 89.

⁵⁹ Email by LRV to TFV sent on 18 October 2018 at 15:29.

⁶⁰ Reparations Order, para. 90.

35. As to the interpretation [REDACTED]. [REDACTED]. In this regard, [REDACTED],⁶¹ whereas [REDACTED].⁶² The Malian Family Code acknowledges this difference explaining that [REDACTED],⁶³ and [REDACTED].⁶⁴ The Trust Fund therefore considers that [REDACTED],⁶⁵ would qualify in light of their heightened [REDACTED] emotional connection to the affected burial sites.

36. Given the remoteness in time of the saints⁶⁶ and the generalised lack of records, it would be extremely difficult to trace their lineage from the time they lived to today. Therefore, in order to determine the direct descendants of the saints, the Trust Fund proposes [REDACTED]. [REDACTED].⁶⁷

37. The assumption [REDACTED] is premised on (1) the LRV's early observation that [REDACTED];⁶⁸ and (2) consultations with two anthropologists specialised in Northern Mali. Both independently expressed the view [REDACTED].⁶⁹

38. In order to reach female-based lines [REDACTED], the Trust Fund will [REDACTED].⁷⁰ This is because family lineages are male-based: women marry into the

⁶¹ Steven H. Gifis, *Dictionary of Legal Terms* (New York: Barrons, 2008), p. [REDACTED].

⁶² Steven H. Gifis, *Dictionary of Legal Terms* (New York: Barrons, 2008), p. [REDACTED].

⁶³ *Loi n° 2011-087 du 30 Décembre 2011 Portant Code Des Personnes et de la Famille* ("Malian Family Code"), art. [REDACTED].

⁶⁴ Malian Family Code, art. [REDACTED].

⁶⁵ Decision on DIP, para. 67

⁶⁶ Annex III to the Third Expert Report, ICC-01/12-01/15-214-Conf-AnxIII-Red, pp. 16-19.

⁶⁷ The Trust Fund believes that this adequately responds to the Trial Chamber's order to implement reparations, to every extent possible, "in a gender and culturally sensitive manner which does not exacerbate – and in fact addresses – any pre-existing situation of discrimination preventing equal opportunities to victims", *Reparations Order*, para. 105.

⁶⁸ Submissions of the Legal Representative of Victims on the principles and forms of the right to reparation, 2 December 2016, ICC-01/12-01/15-190-Conf-tENG, para. 25(f). In addition, reports from the field refer unequivocally to the concept of [REDACTED].

⁶⁹ Phone conversation with cultural anthropologist specialised in Northern Mali, 15 October 2018; Consultation n.1 with expert specialised in the politics of heritage management, received by the Trust Fund on 4 September 2018; follow-up email received on 19 October 2018 at 14:32.

⁷⁰ Decision on Draft Implementation Plan, para. 67. *See also* Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals against "Decision establishing the principles and procedures to be applied to reparations" of 7 August 2012 with AMENDED order for reparations (Annex A), ICC-01/04-01/06-3129-AnxA, paras 16,18.

husband's family, and her children bear the name of the father.⁷¹ [REDACTED],⁷² those men's [REDACTED].

39. Thus, [REDACTED] not covered by the presumption (*e.g.* [REDACTED]) would have two alternative ways to establish [REDACTED]: (i) referral [REDACTED];⁷³ or (ii) submission of documents [REDACTED].

40. In relation to the documents to prove [REDACTED], to the Trust Fund's knowledge, there are at least two types of documents that could perform such a function: historical genealogy records [REDACTED]⁷⁴ and, according to a local expert,⁷⁵ genealogical references [REDACTED] in two books which contain some genealogical information with respect to the saints of Timbuktu.⁷⁶

41. **Minors** – The Trust Fund has been faced with the question of whether minors who are direct descendants of the saints, but were born after the crime (*i.e.* 11 July 2012) should receive individual reparations for moral harm.

42. [REDACTED].⁷⁷

43. [REDACTED].

D. SUPPORTING DOCUMENTS

44. **Standard of proof** – The Trust Fund will apply the standard of balance of probabilities, as ordered by the Chamber.⁷⁸

45. **System of attestations** – In respect of the type of proof and supporting documents, the Trust Fund has faced difficulties arising primarily from the general lack of written

⁷¹ See *e.g.* Malian Family Code, art. 559: “[t]ous les membres d'une famille qui descendent par les mâles d'un auteur commun portent le même nom”. Further, customary and religious norms confer most inheritance rights to men.

⁷² See Malian Family Code, art. 546: “[l]a parenté par alliance a pour fondement le mariage”.

⁷³ An [REDACTED] (attached as Annex 4 to the present submission) can be produced to this effect.

⁷⁴ Phone conversation with cultural anthropologist specialised in Northern Mali, 15 October 2018.

⁷⁵ Email from Trust Fund's hired local expert to the Trust Fund on 17 October 2018 at 09:15.

⁷⁶ Ould Elhadje, Salem. “*Les saints de Tombouctou*” (Étude historique, 2015); and Saad, Elias N., “Social History of Timbuktu: The Role of Muslim Scholars and Notables 1400-1900” (Cambridge University Press, 1983).

⁷⁷ See *e.g.* Convention concerning the Protection of World Cultural and Natural Heritage, art. 4.

⁷⁸ Decision on DIP, para. 60.

records, as well as the volatile security situation in northern Mali, and Timbuktu specifically. In its DIP, the Trust Fund had indicated that attestations (properly notarized and witnessed) would be an acceptable form of supporting documents.⁷⁹ In this context, the LRV has prepared templates of attestations.⁸⁰ As indicated to the LRV, the Trust Fund has amended them to ensure that their content strictly match that of the application form. They are attached as annexes 2-4 to the present submission.⁸¹ It is expected that an individual submitting an application supports it with these attestations. Applications submitted without the relevant attestations will not be excluded *in limine* provided that they are supported by a comparable form of supporting document.

46. **Authorities** – The system of attestations relies on the fact that they will [REDACTED] of attesting to the veracity of the information contained in the application. In the DIP, the Trust Fund proposed [REDACTED].⁸² In its Decision on the DIP, the Chamber approved this system and directed the Trust Fund to [REDACTED].⁸³ [REDACTED].⁸⁴

47. In the course of these consultations, the Trust Fund's attention was directed to the fact that [REDACTED]. The Trust Fund updated [REDACTED].⁸⁵ At that stage, the Trust Fund did not include [REDACTED].⁸⁶ It is not – and it was not –⁸⁷ the Trust Fund's position that [REDACTED]. [REDACTED].⁸⁸ [REDACTED].⁸⁹

48. The Trust Fund wishes to clarify several points. First, [REDACTED]. Second, the Trust Fund agrees with the LRV's submissions on the appropriateness of relying *inter alia* on

⁷⁹ DIP, para. 168 and Annex I.

⁸⁰ The Trust Fund endorsed these attestations on a provisional basis pending the finalisation of the Form to ensure that the collection of supporting documents could unfold.

⁸¹ Annex 2 is the [REDACTED] for applicants for reparations of economic harm; Annex 3 is the [REDACTED] for applicants for reparations of economic harm claiming that [REDACTED] and Annex 4 is the [REDACTED] for applicants for reparation of moral harm. The Trust Fund recognises that some of the *attestations* are in English and French: this is so because they must track strictly the language of the Form, which is not translated yet.

⁸² DIP, para. 168 and Annex I; *see also* Annex II to Second Monthly Report, ICC-01/12-01/15-283-Conf-anxII-Corr.

⁸³ Decision on DIP, para. 61.

⁸⁴ The Trust Fund has been in regular contact with the [REDACTED] and the [REDACTED] on the issue of the [REDACTED] *modèles d'attestation* (for instance, email exchange of 29 August 2018 on the attestations, of 30 August 2018 on the [REDACTED], meeting on 24 October 2018 with the [REDACTED]).

⁸⁵ Second Monthly Report, para. 20.

⁸⁶ Second Monthly Report, paras 21-23.

⁸⁷ Third Monthly Report, para. 27; Second Monthly Report, para. 21.

⁸⁸ LRV Observations, paras 49-52.

⁸⁹ Email from the LRV to the Trust Fund on 18 October 2018 at 15:29.

[REDACTED]. The Trust Fund is prepared to rely on the attestations [REDACTED]. Third, the Trust Fund will accept an attestation if [REDACTED]. [REDACTED];⁹⁰ [REDACTED].

49. [REDACTED].

50. Finally, in respect of the attestations already in the record of the case, in order to not unduly complicate the work of the LRV and VPRS, the Trust Fund agrees with the LRV's suggestion to complement the applications by providing by email the missing information on [REDACTED]. The Trust Fund has been informed by VPRS that certain [REDACTED].

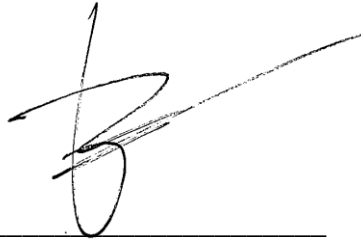
51. After thoughtful consideration and extensive consultations, the Trust Fund understands that the foregoing parameters respond both to the criteria provided by the Trial Chamber, and the situation in the field.

52. The Trust Fund expresses its gratitude to the LRV and the VPRS for their cooperation throughout the process leading to this submission.

⁹⁰ The following question has been added to the attestations: [REDACTED].

FOR THE FOREGOING REASONS

The Trust Fund respectfully requests that the Trial Chamber adopt the Form attached as Annex 1.



Pieter W.I. de Baan
Executive Director of the Trust Fund for Victims,
On behalf of the Board of Directors of the Trust Fund for Victims

Dated 30 October 2018

At The Hague, The Netherlands