

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **5 April 2022**

**TRIAL CHAMBER VIII**

**Before:** Judge Antoine Kesia-Mbe Mindua, Presiding Judge  
Judge Bertram Schmitt  
Judge María del Socorro Flores Liera

**SITUATION IN THE REPUBLIC OF MALI**

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

**Confidential**

**Decision on the TFV's Twenty-third update report on the updated implementation plan**

**To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:****The Office of the Prosecutor**  
Mr Karim A. A. Khan**Counsel for the Defence**  
Mr Mohamed Aouini**Legal Representative of Victims**  
Mr Mayombo Kassongo**Legal Representatives of Applicants****Unrepresented Victims****Unrepresented Applicants for  
Participation/Reparation****The Office of Public Counsel for  
Victims****The Office of Public Counsel for the Defence****States Representatives****Trust Fund for Victims**  
Mr Pieter de Baan**REGISTRY**

---

**Registrar**  
Mr Peter Lewis**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section**  
Mr Philipp Ambach**Others**

**Trial Chamber VIII** of the International Criminal Court, in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi* (the ‘*Al Mahdi case*’), having regard to article 75 of the Rome Statute issues this Decision on the TFV’s Twenty-third update report on the updated implementation plan (the ‘Decision’).

## I. PROCEDURAL HISTORY

1. On 17 August 2017, the Chamber issued its Reparations Order, awarding victims individual, collective, and symbolic reparations for the harm suffered as a result of the crime for which Mr Al Mahdi was found guilty.<sup>1</sup> The Trust Fund for Victims (‘TFV’) was also instructed to submit a draft implementation plan (‘DIP’) reflecting the parameters of the Reparations Order.<sup>2</sup>
2. On 20 April 2018, the TFV submitted its DIP.<sup>3</sup> On 13 July 2018, the Chamber issued a decision approving the DIP, subject to amendments and further directions as specified therein. The Chamber also ordered the TFV to file an updated implementation plan (‘UIP’), setting out all the selected reparations projects and other required information.<sup>4</sup>
3. On 2 November 2018, the TFV filed the UIP.<sup>5</sup> On 4 March 2019, the Chamber issued a decision approving the UIP’s selected projects pertaining to individual, collective, and symbolic reparations, subject to certain conditions and specific deadlines (‘Decision on the UIP’).<sup>6</sup>
4. On 24 February 2020, the Chamber issued a decision extending the deadline for applications for individual reparations (‘February 2020 Decision’).<sup>7</sup> On 29 April 2020, the

---

<sup>1</sup> Reparations Order, 17 August 2017, [ICC-01/12-01/15-236](#), disposition.

<sup>2</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 136.

<sup>3</sup> Draft Implementation Plan for Reparations, notified on 23 April 2018, ICC-01/12-01/15-265-Conf, with one confidential annex. Corrigendum filed on 30 April 2018, ICC-01/12-01/15-265-Conf-Corr, and public redacted version filed on 18 May 2018, [ICC-01/12-01/15-265-Corr-Red](#).

<sup>4</sup> Public redacted version of ‘Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations’, 13 July 2018, [ICC-01/12-01/15-273-Red](#), disposition.

<sup>5</sup> Public redacted version of “Updated Implementation Plan”, submitted on 2 November 2018, ICC-01/12-01/15-291-Conf-Exp, 22 November 2018, [ICC-01/12-01/15-291-Red2](#) (with three annexes).

<sup>6</sup> Decision on the Updated Implementation Plan from the Trust Fund for Victims (‘Decision on the UIP’), 4 March 2019, ICC-01/12-01/15-324-Conf, public redacted version filed on the same date, [ICC-01/12-01/15-324-Red](#), paras 113-114.

<sup>7</sup> Decision on Joint Request for Extension of Reparations Application Deadline (‘February 2020 Decision’), 24 February 2020, ICC-01/12-01/15-348-Conf, para. 12.

Chamber extended once again the deadline for applications for individual applications, subject to three conditions related to the COVID-19 pandemic restrictions ('April 2020 Decision').<sup>8</sup>

5. On 25 February 2022, the TFV filed its Twenty-third update report on the UIP ('Twenty-third report'), *inter alia*, providing information regarding the applications and implementation of individual, collective, and symbolic reparations awards, as well as to funding.<sup>9</sup> The parties did not submit responses.

## II. ANALYSIS

### a) Deadlines and timeframe for the completion of reparations

#### i. Timeframe for the implementation of reparations as a whole

6. In the Decision on the UIP, the Chamber noted that the UIP generally envisaged a three-year time frame for the implementation of the individual, collective, and symbolic reparations.<sup>10</sup> The Chamber agreed that the proposed three-year time frame was reasonable, and ruled that extensions beyond that time frame required the Chamber's authorisation 'unless the measure in question is a service-based measure that the TFV wishes to keep available to the victims for longer.'<sup>11</sup>

7. In its Twenty-third report, the TFV indicates its understanding that 'extending the period of implementation of the individual reparations would require the Trial Chamber's approval – as opposed to collective and symbolic reparations that can be extended at the Trust Fund's Discretion'.<sup>12</sup>

8. Within this context, the TFV informs the Chamber that, regarding collective reparations for economic harm, during the reporting period some progress has been made in relation to a market survey within the community to gather data on the economic harm suffered and opportunities currently existing to ensure that 'the notion of reparative value is translated into possible economic actions', aiming at 'fine-tuning of the design of the services offered' and as 'an opportunity to increase the community knowledge of the upcoming measures'.<sup>13</sup> Regarding

---

<sup>8</sup> Decision on the LRV Request for Extension of Time to Submit Individual Reparations Applications ('April 2020 Decision'), ICC-01/12-01/15-359-Conf, para. 14.

<sup>9</sup> Twenty-third update report on the updated implementation plan ('Twenty-third report'), 25 February 2022, ICC-01/12-01/15-438-Conf (with 2 confidential, *ex parte*, annexes) (public redacted version filed on the same day, [ICC-01/12-01/15-438-Red](#)), paras 8-42.

<sup>10</sup> Decision on the UIP, [ICC-01/12-01/15-324-Red](#), para. 9.

<sup>11</sup> Decision on the UIP, [ICC-01/12-01/15-324-Red](#), para. 21.

<sup>12</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), para. 11.

<sup>13</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), paras 30-33.

collective reparations for psychological harm, the TFV informs that the four committees in Timbuktu, the Bamako committee, and the female-only sub-committees continued working enabling 'all components of the community to feel represented and have a forum of expression on the appropriate form of memorialisation', with a second year of activities planned 'to identifying the memorialisation measure, if any and to identifying potential beneficiaries for psychological support'.<sup>14</sup> Regarding the reparations for the protected buildings, the TFV informs that after the contract was signed with UNESCO in November 2021 and the first instalment distributed in December, UNESCO started internal arrangements to permit the launching of the project.<sup>15</sup> Regarding symbolic reparations, the TFV informs that, following the symbolic ceremony, the TFV has organised a number of follow-up activities including a movie on the role of the mausoleums in the Timbuktu society, activities that are funded outside the liability amount.<sup>16</sup>

9. At the outset, the Chamber commends the TFV's efforts to conduct extensive consultations with the victims on the measures to be adopted regarding the collective reparations for economic and psychological harm, in order to make the community part of the process for the measures to be endorsed and accepted. Similarly, the Chamber appreciates the TFV's initiative to organise follow-up activities to the symbolic reparations already implemented, which are funded outside the liability amount. At the same time, the Chamber is cognisant that the restrictions imposed by the COVID-19 pandemic have impacted the TFV's ability to swiftly proceed with the implementation of service-based reparation measures.

10. However, the Chamber notes that the clear wording of the Decision on the UIP does not, as the TFV's interprets it, allow for an indefinite extension of collective and symbolic reparations at the TFV's discretion. Much to the contrary, the Decision on the UIP clearly reflects the Chamber's expressed intention that all reparations ordered in the case, i.e. individual, collective, and symbolic, should have been fully completed by the end of the three-year time frame, with the TFV only being allowed to 'keep available to the victims for longer' service-based measures already being provided.

11. In light of the above, the Chamber directs the TFV to commence with the implementation of the collective reparations in the shortest time possible and provide the Chamber in its next update report with detailed information regarding the future planned

---

<sup>14</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), paras 34-37.

<sup>15</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), para. 38.

<sup>16</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), para. 39.

activities for the implementation of collective reparations and a concrete timeline for the completion of all reparations ordered in the case.

## **ii. Deadline for applications for individual reparations**

12. As to the deadline for the collection of applications for individual reparations, it should be stressed that, although the TFV had suggested two years after the beginning of collective reparations, the Chamber clearly ruled that it was ‘not persuaded that the remote likelihood of identifying a meaningful group of additional victims [was] a reasonable justification for keeping the application window open for two whole years’.<sup>17</sup> Accordingly, the Chamber determined that one year from the notification of the Decision on the UIP was a reasonable and appropriate deadline ‘to ensure the efficient conduct of the reparations proceedings’, which could not be extended without the Chamber’s approval.<sup>18</sup>

13. In the February 2020 Decision, the Chamber only partly granted the joint request of the Legal Representative of Victims (‘LRV’) and the TFV, extending the deadline for the collection of individual applications only by two months, in light of the prospect of collecting ‘many more applications’ from eligible victims, but stressing that the ‘process must conclude expeditiously for the greater good of the victim community’.<sup>19</sup> In the April 2020 Decision, the Chamber extended once again the deadline to eight weeks after the following three conditions related to the COVID-19 restrictions would be met: (i) the lifting of travel restrictions; (ii) the lifting of prohibitions of gatherings in Mali; and (iii) the lifting of restrictions put in place by MINUSMA.<sup>20</sup> The Chamber noted that the extension was exclusively aimed at allowing the LRV to consolidate 200 applications collected until 18 March 2020 and new applications collected since, but ‘not [...] to gain more effective working time for its activities’.<sup>21</sup> The Chamber took into account the impact of the extension on the expectations regarding the reparations timeline and instructed the LRV and the TFV to implement mitigation measures to continue collecting, consolidating, and submitting reparations applications, to the extent possible.<sup>22</sup>

---

<sup>17</sup> Decision on the UIP, ICC-01/12-01/15-324-Conf, para. 36.

<sup>18</sup> Decision on the UIP, ICC-01/12-01/15-324-Conf, paras 36, 114 (i), fn. 53.

<sup>19</sup> February 2020 Decision, ICC-01/12-01/15-348-Conf, para. 12.

<sup>20</sup> April 2020 Decision, ICC-01/12-01/15-359-Conf, para. 13.

<sup>21</sup> April 2020 Decision, ICC-01/12-01/15-359-Conf, paras 6, 12.

<sup>22</sup> April 2020 Decision, ICC-01/12-01/15-359-Conf, paras 15-16.

14. Already in August 2020, the TFV informed the Chamber that the situation related to the COVID-19 pandemic improved progressively and the TFV resumed the collection of applications.<sup>23</sup> In December 2020, the TFV indicated to the Chamber that it expected to have completed the collection of applications in Mali by March 2021 and that the LRV was already organising the collection of applications outside Mali, for which preparations would start in early January 2021.<sup>24</sup> As from March 2021, the TFV has noted that the three conditions set out by the Chamber have not yet been cumulatively fulfilled and that the TFV with the LRV have continued consolidating the jointly collected applications for individual reparations, the TFV further stressed that it did *not* actively continue the collection of applications and it did *not* expect the number of applicants to grow much more.<sup>25</sup> In its most recent Twenty-third report, the TFV reiterates to be following a ‘passive approach’, not actively continuing the collection applications, but only receiving ‘residual applications’ from individuals approaching the TFV or the LRV on their own initiative.<sup>26</sup> Nevertheless, the TFV requests to be permitted to continue collecting applications following the passive approach and noting that there were still a number of victims residing outside Mali ‘whom the LRV intends to approach’.<sup>27</sup>

15. The Chamber notes that, since the extension granted in April 2020, only meant to allow the LRV to consolidate approximately 200 applications, hundreds of additional applications appear to have been collected, transmitted, and administratively decided by the TFV.<sup>28</sup> Although the three conditions set out by the Chamber may not have been cumulatively fulfilled yet, it is apparent that for more than one year now, the COVID-19 restrictions have not been a real impediment for the LRV and the TFV to complete their work. As to the victims residing outside Mali, for more than one year now the Chamber has been informed that the LRV was planning to collect those applications. Accordingly, and keeping with the Chamber approach to ensure the efficient conduct of the reparation proceedings, the Chamber directs the LRV and

---

<sup>23</sup> Sixteenth update report on the updated implementation plan, 24 August 2020, ICC-01/12-01/15-371-Conf, para. 11.

<sup>24</sup> Eighteenth update report on the updated implementation plan, 29 December 2020, ICC-01/12-01/15-377-Conf, para. 25, fn. 33.

<sup>25</sup> Nineteenth update report on the updated implementation plan, 1 March 2021, ICC-01/12-01/15-381-Conf, paras 15-18; Twentieth update report on the updated implementation plan and request to reclassify as public portions of the case record, 19 May 2021, ICC-01/12-01/15-386-Conf, para. 11; Twenty-first update report on the updated implementation plan, 26 August 2021, [ICC-01/12-01/15-405-Red](#), paras 9, 18, 20.

<sup>26</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), paras 8-10.

<sup>27</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), para. 12.

<sup>28</sup> The TFV informed to have rendered so far 870 positive eligibility decisions. Twenty-third report, [ICC-01/12-01/15-438-Red](#), para. 27. In addition, the Chamber notes that in its report preceding the April 2020 Decision, the TFV reported its estimations that there would be approximately 600 potentially eligible individuals. Thirteenth update report on the updated implementation plan, 20 February 2020, [ICC-01/12-01/15-346-Red2](#), para. 11.

the TFV to conclude the collection of all remaining applications for individual reparations, at the latest, within four weeks from the notification of the present Decision.

### **iii. Timeline for the distribution of individual reparations awards**

16. As regards the distribution of the individual awards, in the Decision on the UIP the Chamber stressed that a shorten timeframe than the three years envisaged for collective reparations was necessary to provide clarity as to how money was going to be distributed between individual and collective awards, to allow for any individual surplus to be reinvested in collective reparations.<sup>29</sup> In the February 2020 Decision, the Chamber reiterated the need for the implementation of individual reparations to be concluded as soon as possible, due to its impact on ‘the collective programmes envisaged to be the primary part of the reparations award’.<sup>30</sup>

17. In its Twenty-third report, the TFV requests the Chamber’s authorisation to continue with the implementation of individual reparations, at the latest, until the completion of the implementation of collective reparations.<sup>31</sup> The Chamber notes that the TFV has so far rendered 870 positive eligibility decisions, with 824 beneficiaries having received their individual reparations award by 25 November 2021 and the remainder set to receive it shortly thereafter.<sup>32</sup> The Chamber also notes that, in support of its request to continue the implementation of the individual reparations, the TFV refers to the security situation in Mali, the existence of victims outside of Mali which the LRV intends to contact, and the fact that its approach would be not prejudicial to the parties, but ensures the fairness of the overall reparations process and contributes to the growing acceptance and ownership of the community.<sup>33</sup>

18. However, having been already determined that the collective programmes should be the primary part of the reparations award and that any individual surplus should be reinvested in collective reparations, the Chamber considers that the implementation of individual reparations should be concluded as soon as possible. Consequently, the Chamber directs the TFV to complete the implementation of individual awards, at the latest, within four months from the notification of the present Decision.

---

<sup>29</sup> Decision on the UIP, ICC-01/12-01/15-324-Conf, paras 33-36.

<sup>30</sup> February 2020 Decision, ICC-01/12-01/15-348-Conf, paras 8-11.

<sup>31</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), para. 12.

<sup>32</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), paras 27-28.

<sup>33</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), paras 12, 43.



**b) Funding**

19. The Chamber welcomes and appreciates the agreement between the TFV and the government of Canada, securing four million Canadian dollars which will enable the implementation of reparations to the full amount of Mr Al Mahdi's liability. The Chamber also commends and encourages the TFV's ongoing fundraising efforts which are still necessary to cover the indirect costs arising in the implementation of reparations.<sup>34</sup>

---

<sup>34</sup> Twenty-third report, [ICC-01/12-01/15-438-Red](#), para. 40.

**FOR THE FOREGOING REASONS, THE CHAMBER HEREBY,**

**DIRECTS** the TFV to commence with the implementation of the collective reparations in the shortest time possible;

**DIRECTS** the TFV to provide in its next update report detailed information regarding the future planned activities for the implementation of collective reparations and a concrete timeline for the completion of all reparations ordered in the case;

**DIRECTS** the LRV and the TFV to conclude the collection of applications for individual reparations, at the latest, within four weeks from the notification of the present Decision;

**DIRECTS** the TFV to complete the implementation of individual awards, at the latest, within four months from the notification of the present Decision.

Done in both English and French, the English version being authoritative.



**Judge Antoine Kesia-Mbe Mindua**  
**Presiding Judge**



**Judge Bertram Schmitt**



**Judge María del Socorro Flores Liera**

Dated this Tuesday, 5 April 2022

At The Hague, The Netherlands