

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 May 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

Public redacted version of “Corrected version of *Draft Implementation Plan for Reparations, With public redacted Annex I, 20 April 2018, ICC-01/12-01/15-265-Conf*”, 30 April 2018 ICC-01/12-01/15-265-Conf-Corr+Corr-Anx

Source: The Trust Fund for Victims

To be notified in accordance with regulation 31 of the *Regulations of the Court* to:**Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Mr Gilles Dutertre

Counsel for the Defence

Mr Mohamed Aouini

Legal Representatives of Applicants**Legal Representatives of Victims**

Mr Mayombo Kassongo

**Unrepresented Applicants for
Participation/Reparation****Unrepresented Victims****Office of Public Counsel for
Victims****Office of Public Counsel for the
Defence****States' Representatives****REGISTRY****Registrar**

Mr Peter Lewis

Counsel Support Section**Victims and Witnesses Unit**

Mr. Nigel Verrill

Detention Section**Victims Participation and Reparations
Section**

Mr Philipp Ambach

[REDACTED]

[Redacted text block]

[Redacted text block]



I. CLASSIFICATION OF THE PRESENT SUBMISSION

1. The Trust Fund has classified the present filing as confidential pursuant to regulation 23 *bis* (1) of the Regulations of the Court due to the preliminary and currently unapproved nature of the proposed individual and collective reparation awards outlined in this submission and the need to avoid inappropriately raising expectations or exposing partner entities to premature public attention and to the details of any proposed programme components. The Trust Fund will file a public redacted version of this submission as soon as possible.

II. BACKGROUND

2. On 27 September 2016, following his admission of guilt, Trial Chamber VIII (hereinafter: “Trial Chamber”) convicted Mr Ahmad Al Faqi Al Mahdi (hereinafter: “Mr Al Mahdi”) of the war crime of attacking protected objects, namely nine mausoleums and the door of one mosque in Timbuktu, Mali (hereinafter: “Protected Buildings”) between the dates of 30 June 2012 and 11 July 2012 (hereinafter: “Crime”).¹

3. On 17 August 2017, the Trial Chamber issued its reparations order in the case (hereinafter: “Reparations Order”).² Therein, the Trial Chamber:

1) identified three categories of harm caused by Mr Al Mahdi’s Crime, namely physical damage to the Protected Buildings, economic harm, and moral harm;

2) awarded individual compensation for certain economic and moral losses, collective rehabilitative reparation measures for the economic and moral harm suffered by the Timbuktu community, collective rehabilitative reparations measures for the care and maintenance of the Protected Buildings, and symbolic reparations for the harm suffered by the Malian people and international community;

3) held Mr Al Mahdi liable for these above reparations in the [REDACTED] and [REDACTED]

4) instructed the Trust Fund for Victims (hereinafter: “Trust Fund”) to submit a draft plan relevant to implementation of the Reparations Order (hereinafter: “Draft Implementation Plan” or “Plan”) by 16 February 2018,⁴ including

¹ Judgment and Sentence, [ICC-01/12-01/15-171](#).

² Reparations Order, [ICC-01/12-01/15-236](#).

³ [Reparations Order](#) [REDACTED]

⁴ Reparations Order

therein information relevant to the identification and verification process of beneficiaries of the individual compensation awards.

4. Noting Mr Al Mahdi's indigence, the Trial Chamber "[...] encourage[d] the Trust Fund to complement the individual and collective awards to the extent possible, and to engage in fundraising efforts to the extent necessary to complement the totality of the award" (hereinafter: "Complement Request").⁵

5. Similarly, the Trial Chamber held that it could not "conclude to the requisite standard of proof that Mr Al Mahdi is liable for bodily harm or other kinds of property loss or damage" and "emphasise[d] the relatively narrow scope of this case relative to the wider range of human rights violations alleged to have occurred in Timbuktu and elsewhere throughout Mali".⁶ The Trial Chamber therefore requested that the Trust Fund consider "acting under Rule 98(5) of the Rules to provide general assistance to those affected" (hereinafter: "Assistance Activity Request").⁷

6. On 8 September 2017, the Trust Fund organised a meeting with the various relevant directorates and sections of the Registry to discuss collaboration and support in relation to the development of the Trust Fund's Draft Implementation Plan.

7. On 15 September 2017, the Trust Fund held an introductory consultation meeting with UNESCO officials in Paris, France. Follow up meetings were conducted via phone conference as well as in a second visit to UNESCO in Paris, on 20 October 2017.

8. On 16 October 2017, the Trust Fund conducted [REDACTED] to discuss, *inter alia*, relevant activities [REDACTED] in northern Mali, and to be informed about the general situation of either internally displaced persons or those residing in refugee camps outside of Mali.

9. A joint Trust Fund, legal representative for victims (hereinafter: "LRV"), and Registry [REDACTED] in relation to the development of the Draft Implementation Plan. [REDACTED]

⁵ [Reparations Order](#), para. 138.

⁶ [Reparations Order](#), para. 108.

⁷ [Reparations Order](#), [REDACTED]

10. On 5 and 6 December, the Trust Fund Board of Directors (hereinafter: “TFV Board”) held a board meeting in New York City, USA during the Assembly of States Parties conducted at the same time. At its meeting, the TFV Board discussed, *inter alia*, the Trial Chamber’s Complement Request and fundraising opportunities related to the Reparations Order.

11. From [REDACTED]
[REDACTED]

12. From [REDACTED]
[REDACTED]
[REDACTED].

13. On 9 February 2018, the Trust Fund submitted a progress report on its preparatory activities for the Draft Implementation Plan.⁸

14. On 12 February 2018, following a request, The Trial Chamber granted the Trust Fund an extension of time until 6 April 2018 to submit its Draft Implementation Plan.

15. On 8 March, 2018, the Appeals Chamber rendered its judgment on the appeal by the LRV in this case.⁹

16. [REDACTED]
[REDACTED]
[REDACTED].

17. On 31 March 2018, Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (hereinafter: “Mr Al Hassan”) was surrendered and transferred into the custody of the Court in relation to war crimes and crimes against humanity allegedly committed in 2012 and 2013 in Timbuktu, Mali.

18. On 5 April 2018, the Trial Chamber granted the Trust Fund an extension of time to file its Draft Implementation Plan until 20 April 2018,¹⁰ stating its expectation that the Trust Fund would address therein any impacts on the implementation of the reparations in this case by the developments in the *Al Hassan* case.

⁸ Draft Implementation Plan: Progress Report on a Field Mission, ICC-01/12-01/15-256-Red (hereinafter: “Trust Fund Progress Report”).

⁹ Judgment on the appeal of the victims against the ‘Reparations Order’, ICC-01/12-01/15-259-Red2 (hereinafter: “[Appeals Chamber Judgment](#)”).

¹⁰ Decision on the Second Trust Fund for Victims’ Request for Extension of Time, [ICC-01/12-01/15-261](#).

19. The Trust Fund hereby submits its requested Draft Implementation Plan, notifies the Trial Chamber of the Trust Fund Board decision pursuant to regulation 56 of the Regulations of the Trust Fund for Victims¹¹ (hereinafter: “TFV Regulations”) to the Complement Request, and responds to the Assistance Activity Request.

III. INTRODUCTION TO THE DRAFT IMPLEMENTATION PLAN

A. A consultative approach

20. Responding to the Reparations Order, this Draft Implementation Plan seeks to address with greatest care the substantive matters and operational feasibility that are related to the implementation of individual and collective reparation measures awarded by the Trial Chamber to the victims of Mr Al Mahdi’s Crime, as well as to ensure the rights of victims, and of other parties in the proceedings, at all relevant stages.

21. The Trust Fund has consulted [REDACTED] LRV, [REDACTED] and with a wide variety of other relevant stakeholders [REDACTED]. [REDACTED] The cooperation and consultation with the LRV and his team has been of invaluable importance to the development of the Draft Implementation Plan.

22. The Trust Fund has consulted with the recipients of the symbolic awards, the Government of Mali and [REDACTED].

23. Further, the Trust Fund has relied on extensive consultations with the Court’s Registry, in particular those sections which are to play an important supportive and informational role throughout the implementation phase. In this regard, the Trust Fund wishes to express its sincere appreciation for the significant support, contributions and information received from the Victims Participation and Reparations Section (VPRS), the Victims and Witnesses Section (VWS), the Country Analysis Unit (CAU), Security, and the External Relations Support and Cooperation Unit (ERSCU).

24. The Trust Fund remains the final author of the Plan and is solely and fully accountable for its content.

¹¹ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth Session, 28 November to 3 December 2005, [ICC-ASP/4/Res.3](#).

B. From plan to implementation

25. The Trust Fund wishes to inform the Trial Chamber that it considers the Draft Implementation Plan to be as detailed as possible at the present moment, noting the various contextual factors that have affected its development and which may impose further feasibility constraints during the implementation phase. The most serious of these factors relate to the continuing volatile security situation in Mali, and especially in the central and north of the country, which continue to affect the city and population of Timbuktu. The next section addresses this matter in more detail, including foreseeable risk mitigation measures.

26. Similar to draft implementation plans submitted by the Trust Fund in other reparations proceedings before the Court, this Plan presents the Trial Chamber with a mixture of reparations measures that are directly implementable and some which may require further exploration as well as further practical steps, mostly in relation to the collective awards and including the [REDACTED] of such awards.

27. The Trust Fund is confident that the present Plan offers a solid operational foundation for the implementation of the individual and collective awards, for consideration by the Trial Chamber and for observations by parties and participants, which in turn should serve to validate the Plan's major propositions as well as enable the final steps towards implementation.

C. Implementation timeframe of the individual and collective awards

28. The Trust Fund estimates an implementation period of three years for the entire plan, assuming favourable implementation [REDACTED]. Since this is a precarious assumption in the present and foreseeable context, the Trust Fund wishes to convey to the Trial Chamber that the implementation of the Plan will need to be adaptable to contextual factors and developments, which may affect the feasibility and/or the pace of implementation of both the individual and the collective awards. This adaptive approach may well result in a longer implementation calendar.

29. This prospect is not problematic in and by itself, as the Trust Fund considers ensuring all possible measures to achieve full implementation of the awards to victims to be of paramount importance in responding to the victims' right to reparations. The Trust Fund commits to report to the Trial Chamber about significant events affecting both the pace and

feasibility of implementation, including the scope of the collective awards, and to seek the Chamber's advice on, and consent to, any new proposed remedial and mitigation measures.

30. The Trust Fund differentiates between the foreseen implementation time frames for the symbolic, individual, and the collective awards.

31. The symbolic awards to the Government of Mali [REDACTED] will be awarded after approval of the Plan on a mutually agreeable date to the [REDACTED] in accordance with an agreed ceremonial programme.

32. The implementation of individual awards, including to beneficiaries to be newly identified, is expected to [REDACTED] This is inclusive of the administrative review of negative verification decisions by the Trust Fund, discussed in further detail below.

33. The implementation of the collective awards is expected to take [REDACTED] This activity will depend highly on [REDACTED] for which the procurement process may be initiated – as explained in more detail below – by the Trust Fund as soon as the Trial Chamber approves the Plan.

D. Notification of the TFV Board decision on the Complement Request

34. As decided in the meeting of the TFV Board in December 2017, the Trust Fund is committing to its intent to raise the requisite financial resources to ensure a full complement to the payment of the reparations awards in the *Al Mahdi* case, and for this to be done in accordance with the TFV Regulations and the Board's relevant policy priorities. At the time of submission of the Plan, the [REDACTED] has not yet been secured.

35. During the drafting period, the Trust Fund received pledges and contributions from donors, [REDACTED] [REDACTED] of which the latter is earmarked for the collective awards in this case. The Trust Fund is following up on other promising leads that cannot at present be disclosed. The approval of the Plan would be a significant additional impetus for the Trust Fund's resource mobilisation efforts.

36. The Trust Funds recalls the Board's considerations and positive decision in response to the Court's request to consider complementing the payment of symbolic individual awards

in the *Katanga* reparations proceedings¹². In this decision, the Board clarified that regulation 56 of the TFV Regulations, governing its decision-making on complements, may be silent on complementing individual awards, in contrast to collective and organisation awards, yet that a comprehensive reading of the TFV Regulations allows it to consider such a complement nonetheless. The Board further concluded that the language of the regulation 56, in particular the second sentence, compels a resource prioritisation scheme, according to which “a complement of an individual award for reparations must not prejudice the Trust Fund’s ability to fund its assistance mandate activities and should only be done after the TFV Board has determined that the Trust Fund has adequate resources to first complement any collective or organizational awards ordered in the same case and in regard to ongoing cases where a collective or organizational award may be ordered”.¹³

37. The Trust Fund is mindful of the Chamber’s indication that the implementation of individual awards to victims should be prioritised. Given the present state of fundraising and of the Trust Fund’s reparations reserve, the Board may not yet be in a position to provide the Chamber with a definitive determination on its ability to complement the individual awards. Yet the emerging pattern of current and potential donors willing to contribute to the implementation of the reparations awards to victims in the *Al Mahdi* case is encouraging to the extent that the Board is confident to arrive at this determination prior to the actual implementation of the awards. The Board will be considering the matter during its Annual Meeting in The Hague, from 22-24 May 2018, and would be available to discuss this matter, as well as other matters related to the implementation of reparation awards in the *Al Mahdi* case, with the Trial Chamber.

E. Reporting on implementation and related matters

38. The Trust Fund proposes that its substantive reporting to the Trial Chamber on the implementation of the reparation awards, pursuant to regulation 58 of the TFV Regulations, take place on a bi-annual basis. In addition, the Trust Fund undertakes to report to the Chamber on an incidental basis on developments and events that are of significance to the pace and feasibility of the implementation process.

¹² [ICC-01/04-01/07-3740](#), Notification pursuant to regulation 56 of the TFV Regulations regarding the Trust Fund Board of Directors decision relevant to complementing the payment of the individual and collective reparations awards as requested by Trial Chamber II in its 24 March 2017 order for reparations, 17 May 2017.

¹³ *Ibid.*, para. 33.

F. Procurement of services to be delivered [REDACTED]

39. While the Trust Fund is and remains the main implementing agency for the reparation awards, certain elements and in particular the collective awards will [REDACTED]

[REDACTED] In the Trust Fund's experience, this arrangement enables the efficient and effective implementation of awards [REDACTED]

[REDACTED] of the beneficiary group.

40. The various [REDACTED] an explorative mapping of [REDACTED] resulting in the [REDACTED]

[REDACTED] the Trust Fund's implementation of the Plan.

41. [REDACTED]

G. Redacted version of the Draft Implementation Plan

42. Complexities arising from the security situation in Mali and the related sensitivities, especially in regard of victims, Court and Trust Fund staff and [REDACTED] have in the past highlighted the importance of exceptionally sensitive redaction procedures in the *Al Mahdi* reparations proceedings.

43. As instructed by this Trial Chamber, the Registry and the Trust Fund have discussed and agreed on a redaction protocol for the *Al Mahdi* case, which will be reflected in the forthcoming public redacted version of the Plan. The *Al Mahdi* redaction protocol provides for a close reading of the confidential submission of the Trust Fund, to be conducted by different sections within the Registry, requiring sufficient time and care to mitigate all conceivable risk. Hence a short delay is to be expected between the submission of the present filing and public redacted version.

[REDACTED]

[REDACTED]

B. Risk assessment and mitigation strategies

52. In this section, the Trust Fund addresses the risks, both security and operational, of the above specifically in regards to its reparations implementation activities and, where possible, presents the strategies and actions it intends to put in place to mitigate these risks. This section is organised by the impacted reparations activity.

[REDACTED]

54. The Trust Fund has therefore engaged in consultations with the Registry to identify the risks and mitigation strategies specific to the implementation of this award. In order to [REDACTED] the Trust Fund respectfully requests

15 [REDACTED]

that the [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] While the Trust Fund understands and respects the public's interest in following the progress made towards the implementation of the Court's reparations orders, the Trust Fund considers this interest must be balanced against the real risks posed to victims by implementing reparations in ongoing conflict areas where the [REDACTED]
[REDACTED].

55. In light of the security situation in northern Mali and [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Trust Fund respectfully requests that this include the Trial Chamber's eventual approval of the Draft Implementation Plan relevant to the implementation of the individual compensation awards.

56. The success of this mitigation strategy will also be to a large degree dependent upon [REDACTED] The Trust Fund intends to work closely with
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

57. Second, regarding the method of implementation of this award, the Trust Fund discussed three potential options with the Registry. With regard to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

58. In regards to the option of [REDACTED] the Registry has informed the Trust Fund in this respect that [REDACTED]

64. Rather, they will be implemented [REDACTED] and in the current security environment. To the extent possible, the Trust Fund will [REDACTED]

4. Collective moral rehabilitation reparations programme

65. With respect to the collective reparations programme relevant to the moral harm suffered, the Trust Fund observes that some of its proposed activities are by their nature [REDACTED]

[REDACTED] In order to mitigate this risk, the Trust Fund intends to [REDACTED]

[REDACTED] This will hopefully permit these events to [REDACTED] thus lessening the risk of attack.

66. Further, certain proposed activities may, according to the Registry, [REDACTED]

5. Monitoring of project implementation

67. The Trust Fund is [REDACTED]

68. The Trust Fund will conduct trainings [REDACTED] ith respect to the implementation protocols and [REDACTED]

the Trust Fund performs periodic financial-administrative spot checks [REDACTED] are subject to annual audits by a Trust Fund approved independent firm, organizations need to [REDACTED] [REDACTED] and the Trust Fund performs monitoring of project activities in the field and through consultation with relevant stakeholders [REDACTED] government officials, victims, and focus groups).

V. THE DRAFT IMPLEMENTATION PLAN

69. In its Reparations Order, the Trial Chamber expressed its expectation that the Draft Implementation Plan would reflect: “[...] the parameters of the Chamber’s order, including the objectives, outcomes and necessary activities that comprehensively respond to all of the reparations modalities that can realistically be implemented”.¹⁸ In assessing the scope of harm as well as in determining the modalities and potential addressees of its reparations award, the Trial Chamber reiterated the reparations principles enunciated by the Appeals Chamber in *Lubanga*.¹⁹

70. The Trial Chamber also set out in its Reparations Order specific parameters to inform the design of the Trust Fund’s administrative screening process as it relates specifically to individual awards.²⁰ As well, on March 8, 2018, the Appeals Chamber opined on various matters pertaining to the Reparations Order and ruled on the questions raised by the LRV in its appeal.

71. The Trust Fund considers all of the aforesaid as informing the conceptualisation and delivery of the reparations award.

72. While not exhaustive, the Trust Fund considers it worthwhile to set out the reparations principles it considers paramount, as well as parameters raised by the Trial Chamber in its Reparations Order.

¹⁸ [Reparations Order](#), para. 136.

¹⁹ The Trial Chamber found that the “principles formulated by the Appeals Chamber in *Lubanga*” ([Reparations Order](#), para. 26) were sufficient to address losses in relation to cultural heritage, and thus there was no reason to derogate from same: *id.* In so stating, it cited to: “*Lubanga* Reparations AO, [ICC-01/04-01/06-3129-AnxA](#), paras 1-22 and 29-49. *See also Katanga* Reparations Order, [ICC-01/04-01/07-3728](#), paras 29-63”: [Reparations Order](#), footnote 50. The Trial Chamber then set out a number of these principles: *id.*, [Reparations Order](#), paras 27-38.

²⁰ [Reparations Order](#), para. 146.

A. Key considerations relevant to screening for individual awards

1. Victim identification and outreach

73. “Reasonable efforts must be made to identify individuals who may be eligible under the screening process, within a timeframe to be proposed by the TFV”.²¹

2. Prioritization considerations

74. The implementation of individual reparations is to precede collective reparations “to the extent possible”²² because limited and specific classes of persons have been singled out for same “because of the particular extent to which they were harmed”.²³ However, the Trial Chamber instructs that such prioritization should occur only “insofar as individual reparations do not hinder broader reconciliation or stigmatise individual victims vis-à-vis the community of Timbuktu”.²⁴

75. Furthermore, those who have already applied to the Trial Chamber for reparations by way of an application and supporting documents “*should* be considered first by the TFV if they also apply to be screened”²⁵ (emphasis added).

3. Applications to the Trust Fund

76. Applicants to the administrative screening process must provide a “reparations application and any supporting documents”.²⁶ In order for the Trust Fund to be able to undertake its charge of screening beneficiaries for individual reparations in the present case,

“[...] it needs to be able to verify the identity of the applicants, and assess the authenticity of documents submitted in support of the applications. Therefore, victims who wish to obtain individual reparations must make their identity known to the TFV or consent for such information to be transmitted to the TFV.”²⁷

Furthermore, “[...] in remitting the matter to the TFV, the Trial Chamber left open the possibility for new victims to submit applications, but also for those who had already submitted their applications, to submit additional supporting documents of such a nature as to

²¹ [Reparations Order](#), para. 146(i).

²² [Reparations Order](#), para. 140.

²³ [Reparations Order](#), para. 140.

²⁴ [Reparations Order](#), para. 141.

²⁵ [Reparations Order](#), para. 146(ii).

²⁶ [Reparations Order](#), para. 146(ii).

²⁷ [Appeals Chamber Judgment](#), para. 96.

prove the ‘exclusive link’ [...],²⁸ as at the time of their earlier submission, such applicants were unaware of the ‘exclusive link’ requirement that the Trial Chamber later imposed.²⁹

4. Victim right of response

77. “Both the applicant, on his or her own or through a legal representative, and the Defence must be given an opportunity to make representations before the TFV assesses any applicant’s eligibility. [...]”³⁰

5. Communication of the individual award

78. “The result of the screening for each applicant is to be communicated to both the applicant and the Defence”.³¹

[REDACTED]

B. Intermediate liability calculation and discretion to derogate therefrom

80. The Trial Chamber’s intermediate liability calculations in assessing the total amount of harms for which Mr Al Mahdi is liable ar [REDACTED]

[REDACTED]

81. In estimating the scope of harm in each of these three categories, the Trial Chamber did not apportion values as between the individual and collective reparations awards it ordered nor did the Trial Chamber [REDACTED]³⁷

²⁸ [Appeals Chamber Judgment](#), para. 57.

²⁹ [Appeals Chamber Judgment](#), para. 57.

³⁰ [Reparations Order](#), para. 146(iii).

³¹ [Reparations Order](#), para. 146(v).

³² [Reparations Order](#)

³³ [Reparations Order](#)

³⁴ [Reparations Order](#)

³⁵ [Reparations Order](#)

³⁶ [Reparations Order](#)

³⁷ [Reparations Order](#), paras 134, 135.

82. The Trial Chamber also specified that as the modalities it ordered in its reparations award “mutually reinforce” each other, the Trust Fund can derogate from the “Trial Chamber’s intermediate liability calculations when designing an implementation plan [...]”.³⁸

83. At the present time, the Trust Fund sees no reason to derogate from the Trial Chamber’s intermediate liability calculations.

84. Hence, its budget for the implementation costs of the reparations award is:

- 1) [REDACTED] *individual and collective reparations awards in respect of economic harms* (hereafter: “Economic Harms Envelope”).

[REDACTED]
[REDACTED] for the collective reparations award.

The *Franc CFA* is the locally relevant currency in Mali, and its value is tied to valuation of the Euro. The Trust Fund considers it most advisable to note that the quantum of individual monetary awards will be paid out in an equivalent value of *Franc CFA*. Estimations and calculation of the appropriate award amounts have been performed in Euros in preparation of this Plan.

Under the framework of the administrative screening process for: [REDACTED]
[REDACTED]

[REDACTED] on establishing eligibility under the class of persons of [REDACTED]
[REDACTED]
[REDACTED]

Note that the above proposed apportionment of the Economic Harms Envelope is an estimation based on the likely number of [REDACTED] and a reasonable programmatic allocation towards collective economic harm rehabilitation programming. That is to say that the apportionment of the [REDACTED] [REDACTED] collective awards is an estimation. The final allocated amount between the two categories is not fixed and subject to circumstances specifically [REDACTED]
[REDACTED]

³⁸ [Reparations Order](#) [REDACTED]

³⁹ [Reparations Order](#) [REDACTED]

- 2) [REDACTED]
(hereafter: “Moral Harms Envelope”).

The Moral Harms Envelope is currently apportioned at: (i) an [REDACTED]
[REDACTED] for the
collective reparations award; and

Under the framework of the administrative screening process for [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Note that the above proposed apportionment of the Moral Harms Envelope is an estimation based on the likely number [REDACTED] and a reasonable programmatic allocation towards collective moral harm rehabilitation programming. That is to say that the apportionment of the moral harm allocation between [REDACTED] collective awards is an estimation. The final allocated amount between the two categories is not fixed and subject to circumstances [REDACTED]
[REDACTED]

- 3) [REDACTED] *the costs of collective reparations award in respect of material damages to the Protected Buildings* (hereafter: “Material Damages Envelope”).

85. At any time deemed reasonable by it, the Trust Fund reserves the right:
- a) to re-allocate monies as between [REDACTED] and the collective reparation awards within either or both of the Economic Harms Envelope and the Moral Harms Envelope;
 - b) to re-allocate sums as between any of the Economic Harms Envelope, the Moral Harms Envelope, and the Material Damages Envelope; and

⁴⁰ [Reparations Order](#) [REDACTED]

[REDACTED] Where such a decision is taken in respect of a category [REDACTED] this gross-up will be applied equally, without distinction, to each eligible individual within said category. The amount of gross-up applied to the [REDACTED]

86. For further clarity, the Trust Fund's powers referenced in *supra*, para. 85 shall be exercised by it in its entire discretion.

87. The Trust Fund in determining [REDACTED] consultations, stakeholder interviews, the parameters of [REDACTED] the equitable traditions of economic activities, customary practice of [REDACTED] in relation the Protected Buildings, and jurisprudence with respect to the relative valuation of moral and economic compensation.

88. With respect to [REDACTED] deemed it unlikely to be able to individually assess with a strong degree of certainty and confidence the precise amount of economic harm endured by a victim due to the informal nature of the respective economic activities, the lack of available financial documentation and record keeping. For these reasons the Trust Fund determined that [REDACTED] was a [REDACTED] for economic harms. The factors stated above lead the Trust Fund to determine that [REDACTED] [REDACTED] oral harm.

89. In addition, "[...] internal administration costs incurred by the [Trust Fund] during the implementation phase [...]"⁴¹ will be borne separately and solely by the Trust Fund, and the cost of the specific symbolic reparations the Trial Chamber ordered under para. 71 of its Reparations Order, will be borne separately and solely by the Registry.⁴²

⁴¹ [Reparations Order](#), para. 134.

⁴² [Reparations Order](#), paras 71, 135.

VI. INDIVIDUAL AWARDS

A. Introduction

90. In its Order for Reparations, the Trial Chamber awarded individual

[REDACTED]
[REDACTED]
[REDACTED]⁴³

91. In the following sections B through E, the Trust Fund sets out its understanding of Trial Chamber's eligibility criteria.

B. Beneficiaries contemplated by the economic loss category

[REDACTED] the Trial Chamber [REDACTED]
[REDACTED]

93. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴⁷

1. Sub-group A: [REDACTED]
[REDACTED]

94. Within this sub-group A, it appears⁴⁸ that the Trial Chamber accepted that, *at a minimum*, this consists in: [REDACTED]
[REDACTED]

[REDACTED] in the Trust Fund's interpretation, it may also extend to: [REDACTED]

⁴³ [Reparations Order](#), [REDACTED]

⁴⁴ [REDACTED]
[REDACTED]

⁴⁶ [Reparations Order](#) [REDACTED]
[REDACTED]

The Appeals Chamber referred [REDACTED]
[REDACTED]

Supra, footnote 4

⁴⁹ [Reparations Order](#) [REDACTED]

⁵⁰ [Reparations Order](#) [REDACTED]

[REDACTED]

95. When discussing “this identified group” [REDACTED] two things are noted by the Trust Fund.

96. Firstly, the Trial Chamber did not expressly include the *family members* of the persons mentioned above and stated they could receive support under the collective reparations⁵². On this combined basis, the Trust Fund understands that *family members* of the aforesaid persons are excluded hereunder.

97. Secondly, [REDACTED]

[REDACTED]⁵³.

98. However, especially as regards [REDACTED] the Trust Fund would request confirmation from the Trial Chamber as to whether [REDACTED] of the aforesaid fall outside the criteria for the economic harm individual compensation award.

[REDACTED]

⁵¹ As stated in the [Reparations Order](#) at [REDACTED]

[Reparations Order](#), [REDACTED]

⁵⁵ [Appeals Chamber Judgment](#) [REDACTED]
[Reparations Order](#), [REDACTED]

[REDACTED] : [Reparations Order](#), [REDACTED]

99. This category as described by the Trial Chamber consists in [REDACTED]

[REDACTED] For example, “[...] owners of businesses *with broader purposes* who have been harmed by the loss of the Protected Buildings” are not included. Hence, hotels, restaurants, and other shops that cater to tourists visiting Timbuktu are excluded. However, a [REDACTED]

100. [REDACTED] employees thereof do not qualify despite suffering income losses as indirect victims. As such, [REDACTED]

[REDACTED] that they otherwise would have earned through the business, no matter how constituted (formally or informally). [REDACTED]

[REDACTED] but the Trust Fund seeks the Trial Chamber’s confirmation in this regard.

101. Of significance, the Trust Fund [REDACTED] he Trust Fund furthermore highlights the importance of this inclusion in terms of gender-sensitivity, as women’s roles around the Protected Buildings are concentrated in the periphery, with prominent roles and vocations being reserved to men. For exampl [REDACTED]

1. Summary

102. In verifying claims before it in an administrative screening process, it is incumbent upon the Trust Fund “[...] to examine [the applicants’] eligibility for reparations, that is, it

⁵⁶ [Reparations Order](#), [REDACTED]

⁵⁷ Considering that organizations may only seek economic reparations for property damage, under Rule 85(b) of the Rules of Procedure, [REDACTED] hence, they are by definition excluded from the award for income losses.

⁵⁸ [Reparations Order](#), [REDACTED]

must ascertain that they meet the conditions laid down by rule 85(a) of the Rules of Procedure and Evidence”.⁵⁹

103. In the Trust Fund’s interpretation, where an applicant establishes on a balance of probabilities membership in Sub-group A or B as specified below, his/her particular economic harms suffered and the causal link between the Crime and such losses can be presumed (*infra*, paras 121 to 128).

2. Elements

a) *Establishing identity*

104. An applicant for economic losses under the individual award must establish according to the balance of probabilities his or her identity.

105. This may be established by formal and informal means, consistent with practice before the Court.⁶⁰

b) *Establishing Sufficiency of Connection to Timbuktu*

106. An applicant must establish according to the balance of probabilities his or her connection to Timbuktu at the date of the Crime.⁶¹ This may be accomplished by demonstrating that *at the relevant time*: (i) the applicant was “[...] ordinarily residing in Timbuktu [...]”,⁶² or (ii) that while not ordinarily a resident in Timbuktu, that the applicant was “otherwise so closely related to the city that [he or she] can be considered to be part of this community at the time of the attack [...]”.⁶³

⁵⁹ Order Directing Further Information from the Trust Fund for Victims on the Procedure for Determining Victim Status at the Implementation Stage of [Reparations , ICC-01/04-01/06-3391-tENG](#), para. 3. In *Lubanga*, by way of its “*Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu*” of 15 December 2017 [ICC-01/04-01/06-3379-Red](#), as modified on 21 December 2017 in Rectificatif de la « *Décision fixant le montant des réparations auxquelles Thomas Lubanga Dyilo est tenu* », ([ICC-01/04-01/06-3379-Red-Corr](#)) (hereinafter: “15 December 2017 *Lubanga* Decision”). Therein, Trial Chamber II set out a detailed analysis of the eligibility criteria it had established in that case, with a view to setting out a methodology it expected the Trust Fund to replicate when screening for eligibility in regards individualized services within the context of the collective reparations award ordered in that case. It is referenced here as helpful to a screening for individual awards.

⁶⁰ 15 December 2017 [Lubanga](#) Decision, para. 74, 75.

⁶¹ That is, “between around 30 June 2012 and 11 July 2012”: [Reparations Order](#), para. 1

⁶² [Reparations Order](#), para. 56.

⁶³ [Reparations Order](#), para. 56.

c) *Establishing membership in Sub-group A* [REDACTED]
[REDACTED]

107. An applicant must establish according to the balance of probabilities [REDACTED] at the relevant time – that is, when the Crime was committed, “between around 30 June 2012 and 11 July 2012”.⁶⁴

108. Again, the Trust Fund [REDACTED] as belonging to those contemplated by the Exclusive Link Requirement. Hence, such persons need not assert or prove anything else to establish membership in this class.

109. In other words, once each of the two elements mentioned in paragraph 107 are proven on the balance of probabilities [REDACTED]

110. Furthermore, the Trust Fund reasonably interprets that if circumstances arise where a [REDACTED] is attached to *more than one Protected Building*, compensation hereunder is *only to be awarded once*.

(2) [REDACTED]

111. An applicant must establish according to the balance of [REDACTED] one or more of the Protected Buildings [REDACTED] associated with the Protected Buildings at the relevant time – that is, “between around 30 June 2012 and 11 July 2012”.⁶⁵

112. While [REDACTED] within Sub-group A, the latter also includes an *open category*. In the Trust Fund’s interpretation, the latter should not require elements of proof more onerous than [REDACTED].

113. The Trial Chamber did not require [REDACTED] to assert and prove that he/she *only* exercises this vocation in relation to one or more Protected Buildings, *and does nothing else* as a means of earning income or otherwise.

114. The Trust Fund infers from this that the focus of the inquiry under Sub-group A is *the exclusivity of one’s role and commitment* in terms of [REDACTED] one or more of the Protected Buildings and its heritage. Proving this characteristic will be required to establish membership within [REDACTED] associated with the Protected Buildings.

⁶⁴ [Reparations Order](#), para. 1.

⁶⁵ [Reparations Order](#), para. 1.

115. Upon proving each of the two elements mentioned in paragraph 111 on the balance of probabilities, the applicant establishes his/her membership in this class.

116. Lastly, the Trust Fund reasonably interprets that if circumstances arise where [REDACTED] exercises said role in relation to more than one Protected Building, [REDACTED] *only once*.

d) Establishing membership in Sub-group B [REDACTED]

117. An applicant must establish according to the balance of probabilities his/her status in the [REDACTED] at the relevant time – that is, “between around 30 June 2012 and 11 July 2012”.⁶⁶

118. In this Sub-group B, the Trial Chamber enunciated an open category. The "principled" intention therein was to compensate for the more extensive losses of income suffered by some as a result of [REDACTED]. Hence, persons asserting eligibility under this sub-group B must establish that [REDACTED].

119. Considering this latter point (b), and thus contrary to Sub-group A, there is indeed a requirement inherent to Sub-category B wherein an applicant must assert and prove that [REDACTED].

120. Lastly, the Trust Fund reasonably interprets that if circumstances arise where [REDACTED] that meets the above requirements, [REDACTED] *only once*.

e) Establishing economic harm

121. Generally speaking, an individual applicant for reparations would be required to establish harm suffered, according to the requisite standard of proof.

122. In this case, the Trial Chamber has defined eligibility under the Exclusive Link Requirement in a way that leads to a logical inference of harm having been suffered.

123. Hence, the Trust Fund is satisfied that if a person meets the requirements of Sub-group A or Sub-group B as set out above, their losses can be presumed.⁶⁷

⁶⁶ [Reparations Order](#), para. 1.

124. In practical terms, this means that each applicant need not assert or prove the existence of such harms in his/her application to the Trust Fund, or the quantum thereof.⁶⁸

f) *Establishing causation between the Crime and the economic harm*

125. Generally speaking, an individual applicant for reparations would be required to establish the causal link between harms suffered and the Crime, according to the requisite standard of proof.⁶⁹

126. Of note however, in designing the individual reparations award, the Trial Chamber determined that persons who met the Exclusive Link Requirement suffered harms that were both the actual and proximate cause of the Crime.⁷⁰

127. Hence, the Trust Fund is satisfied that if a person meets the requirements of Sub-group A or Sub-group B as set out above, the causal link between the Crime and the harms of such individuals can be presumed.

128. In practical terms, this means that each applicant need not assert or prove such causation in his/her application to the Trust Fund.⁷¹

D. Beneficiaries contemplated by the Moral Harms Category

129. In its Reparations Order, the Trial Chamber emphasized the “extent of the harm suffered or sacrifice made”⁷² as underlying its decision as to [REDACTED]

[REDACTED] In designing this award in respect of moral harms,⁷³ the Trial Chamber sought to acknowledge and repair the more pronounced “emotional distress”⁷⁴

⁶⁷ Note that similar practice is not unfamiliar to the Court in cases at the reparations phase of proceedings. For example, Trial Chamber II came to the following conclusion in *Lubanga*: 15 December 2017 *Lubanga* Decision, para. 180, 185.

⁶⁸ On this last point, the Trust Fund is not administering a burdensome process whereby a person must establish the *exact scope or quantum* of harms suffered. On the contrary, it will award a *uniform, fixed amount to each beneficiary* who establishes their [REDACTED] for either of economic or moral harms.

⁶⁹ 15 December 2017 *Lubanga* Decision, paras 65, 67.

⁷⁰ [Reparations Order](#), paras 73-75.

⁷¹ Note that similar practice is not unfamiliar to the Court in cases at the reparations phase of proceedings: 15 December 2017 *Lubanga* Decision, paras 188, 189.

⁷² [Reparations Order](#), para. 78, 81, 140. *See also*: [Appeals Chamber Judgment](#), paras 27, 35, 37.

⁷³ The Trial Chamber explained that “[f]or the same reasons provided when discussing consequential economic loss, the Chamber considers such a compensation-centric approach for the benefit of the reparations applicants to be problematic. 147 [...]”: [Reparations Order](#), para. 88. This footnote 147 refers back to paras 77-82 of the [Reparations Order](#) setting out the Exclusive Link Requirement. Thus, also in the context of moral harms, persons not contemplated in the “identified group” ([Reparations Order](#), para. 82) of individual beneficiaries for moral harms, are to be more appropriately targeted by the collective award for moral harms.

⁷⁴ [Reparations Order](#), para. 90.

suffered by certain persons owing to their “emotional connection”⁷⁵ to the Protected Buildings,⁷⁶ as compared to moral harms suffered by the broader community.⁷⁷

130. In sum, the Trial Chamber ordered that the individual award hereunder was to compensate for “[...] (i) *the mental pain and anguish of those whose ancestors’ burial sites were damaged in the attack [...]*”⁷⁸ (emphasis added), pointing to the fact that *this included* “[...] *the descendants of the saints*”⁷⁹ (emphasis added).

131. On this topic of *the burial sites themselves*, the Trust Fund notes that while a saint’s name is generally associated with the mausoleum where he came to rest, sometimes there are disciples who are also buried in a Protected Building alongside a principal saint. The Trial Chamber appears to have contemplated this eventuality in designing this award when referring to those buried at the Protected Buildings (i.e. by using the inclusive words, “such as”).

132. However, it is understood by the Trust Fund that this eventuality does not arise in respect of the Protected Buildings. In other words, there is only a single saint buried in each thereof.

133. On the further topic of *the specific breadth of descendants of the relevant saints*, three elements in the Reparations Order influence the Trust Fund in its interpretation.

134. Firstly, the Trial Chamber referred only to [REDACTED] (emphasis added) with the persons buried at the Protected Buildings. The Trust Fund understands the [REDACTED] was intended to protect the notion of ‘victim’ within the *Rome Statute* which necessitates that harms were *personally* suffered, per Rule 85(a) of the Rules of Procedure and Evidence. In other words, distant relatives (such as second or third cousins in the descending line) are not eligible for [REDACTED]

⁷⁵ [Reparations Order](#), para. 89.

⁷⁶ [Reparations Order](#), para. 78. “[...] An individualised response is more appropriate for them, as their loss relative to the rest of the community is more *acute and exceptional*” (emphasis added): [Reparations Order](#), para. 81.

⁷⁷ “The attack on the Protected Buildings not only destroyed cherished monuments, but also shattered the community’s collective faith that they were protected.145”: [Reparations Order](#), para. 89.

⁷⁸ [Reparations Order](#), para. 90.

⁷⁹ [Reparations Order](#), para. 89.

⁸⁰ [Reparations Order](#), para. 89.

⁸¹

[REDACTED]

– as in such cases, the “emotional connection”⁸² the Trial Chamber was seeking to recognize and reaffirm in designing its [REDACTED] on balance – would not exist.

135. Secondly, in discussing individual reparations for both economic and moral harms – specifically, “(i) those whose livelihoods exclusively depended upon the Protected Buildings and (ii) those whose ancestors’ burial sites were damaged in the attack”⁸³ –, the Trial Chamber explained that “[g]iven the *role of the descendants of the saints in guarding and maintaining* the Protected Buildings, *it is likely that many of those identified in each of these groups will be the same individuals [...]*”⁸⁴ (emphasis added).

136. Hence, the Trial Chamber contemplated that those who were ordinarily recognized as [REDACTED] [REDACTED] could often not only suffer economic harms but also suffer moral harms from the Crime.

137. Thirdly, if beneficiaries in Sub-groups A and B in respect of economic harms and beneficiaries in respect of moral harms, are expected to be substantially the same people, then it can be deduced that beneficiaries in respect of moral harms *should comprise only of persons in Sub-groups A and B*, plus some *limited number* of additional persons.

138. On this particular point, the Trust Fund notes that the [REDACTED] [REDACTED] associated with the Protected Buildings (Sub-groups A and B, respectively) *will predominantly if not always be men*. This considered, it is reasonable to understand that the *limited number* of additional persons sought by the Trial Chamber to be covered by the [REDACTED] – while they are among the [REDACTED] persons buried at the Protected Buildings – are nonetheless precluded from exercising any of the high-profile and central roles in the community such as those occupied in Sub-groups A and B.

E. Methodology for Determining Eligibility for Moral Harms

1. Summary

139. The Trust Fund understands this award to require that when it seeks to uphold Rule 85(a) of the Rules of Procedure and Evidence in its eligibility assessment exercise, where an applicant establishes on a balance of probabilities membership in the [REDACTED]

⁸² [Reparations Order](#), para. 89.

⁸³ [Reparations Order](#), para. 145.

⁸⁴ [Reparations Order](#), para. 145.

Requirement class as specified below (*infra*, para. 143), his/her particular moral harms suffered and the causal link between the Crime and such losses can be presumed (*infra*, para. 146 - 155).

140. Furthermore, the Trust Fund states that in all cases, *on an eligible per person basis*, [REDACTED] *nly once*.

a) *Establishing Identity*

141. An applicant hereunder must establish according to the balance of probabilities his or her identity, in the manner stated above (*supra*, paras 104 - 105).

b) *Establishing Sufficiency of Connection to Timbuktu*

142. An applicant hereunder must establish according to the balance of probabilities his or her connection to Timbuktu at the date of the Crime (*supra*, para. 106).⁸⁵

c) *Establishing Membership in the Direct Descendant Category*

143. An applicant in this category must establish on a balance of probabilities that:

a) in relation to a saint who is buried at one of the Protected Buildings;

b) he/she is a [REDACTED].

((a) to (b) combined, hereinafter: [REDACTED]).

144. Instructions will be provided to community members that this class of intended beneficiaries will not be subject to any distinction as to status. For instance, if an applicant is: male or female; child or adult; married, divorced, separated, or not yet married; widowed; someone with no children; or someone who is disabled, they may apply hereunder, and the determination of eligibility under this award will in no way be affected by any such status.

145. The Trust Fund alerts the Trial Chamber that some of the cited bases reflected sources of discrimination in Timbuktu society. For example, the Trust Fund learned during its field missions that a person only attains adulthood in Timbuktu once he/she is married. Until then, it is customary that one lives with his or her parents. This scenario would give rise to an expectation that [REDACTED] parents of an unmarried descendant living in the parents' household, i.e. although he/she is already well into their twenties for instance. On finding this, the Trust Fund has already explained that the Reparations Order will not allow for such distinctions.

⁸⁵ That is, "between around 30 June 2012 and 11 July 2012": [Reparations Order](#), para. 1

d) *Establishing Moral Harm Suffered*

146. Generally speaking, an individual applicant for reparations would be required to establish harm suffered, according to the requisite standard of proof (*supra*, para. 121).⁸⁶

147. In defining eligibility according to the [REDACTED] requirement, it appears the Trial Chamber sought to limit the [REDACTED] it could reasonably foresee would actually have suffered heightened distress at the destruction of the Protected Buildings, i.e. as compared to broader members in the community.

148. In other words, the Trial Chamber limited this category of beneficiaries to those it could reasonably presume would *actually have suffered* “mental pain and anguish”⁸⁷ or the “emotional distress”⁸⁸ owing to their “emotional connection”⁸⁹ to the Protected Buildings.

149. Such inference is all the more justified if one considers that some of the potential beneficiaries hereunder will have focused the thrust of his family and/or social life prior to the Crime to [REDACTED] the spiritual, cultural, and societal contributions an ancestor had made during his time on earth. In such circumstances, it is natural and expected that such [REDACTED] would actually suffer emotional distress on the destruction of such ancestor’s burial place.

150. All of this considered, the Trust Fund is satisfied that if a person meets the [REDACTED] Requirement as set out above, their losses can be presumed.

151. In practical terms, this means that each applicant need not assert or prove the existence of such harms in his/her application to the Trust Fund, or the quantum thereof.

e) *Establishing Causation between the Crime and the Moral Harm*

152. Generally speaking, an individual applicant for reparations would be required to establish the causal link between harms suffered and the Crime, according to the requisite standard of proof.

153. In designing [REDACTED] the Trial Chamber clearly stated that the persons who correspond to the [REDACTED] Requirement, suffered harms that were both the proximate and actual cause of the Crime.⁹⁰

⁸⁶ *Supra*, note 69.

⁸⁷ [Reparations Order](#), para. 85.

⁸⁸ [Reparations Order](#), para. 90.

⁸⁹ [Reparations Order](#), para. 89.

⁹⁰ “The Chamber is satisfied that Mr Al Mahdi’s crime is both the actual and proximate cause of this moral harm. It was reasonably foreseeable that attacking cultural property integral to the community in Timbuktu would cause these kinds of distress”: [Reparations Order](#), para. 87.

154. Hence, the Trust Fund is satisfied that once an applicant establishes that: (i) he/she meets [REDACTED] requirement as set out above, *the causal link between the Crime and the harms of such individuals can be presumed.*

155. In practical terms, this means that each applicant need not assert or prove such causation in his/her application to the Trust Fund.

F. Screening Process for Individual Awards

1. The Role of Legal Counsel

156. The Trust Fund recalls that, in its Reparations Order, the Trial Chamber held that applicants, “on his or her own *or through a legal representative [...] must be given an opportunity to make representations before the TFV assesses any applicant’s eligibility*” (emphasis added).⁹¹ In this regard, the Trust Fund also notes that the LRV in this case has, following the issuance of the Reparations Order, submitted reparations applications to VPRS for additional individuals beyond the 137 victim participants who initially submitted reparations applications. However, it is not clear to the Trust Fund whether the LRV has, or whether he desires to have, the mandate to represent future applicants who may come forward.

157. The Trust Fund considers that it is necessary to request that the Trial Chamber provide guidance regarding the modalities and scope of legal representation in the screening process, including the process by which a victim would select (or have appointed) a legal representative and at which point of the process.

158. The Trust Fund takes no position in relation to who would provide legal representation to the currently unknown future applicants, but would make one brief observation for the Trial Chamber’s consideration. The Trust Fund notes that there is the potential for a conflict of interest to arise between the interests of the LRV’s current clients and a future applicant, requiring the appointment of different counsel. The Trust Fund therefore respectfully suggests that it may be prudent to have alternative counsel at least in cases of conflict of interest. Beyond this observation, however, the Trust Fund considers that it is not its role, nor within its area of experience, to make further observations in relation to

⁹¹ Reparations Order, para. 146 (iii).

the role of counsel for victims. The Trust Fund notes that VPRS does have experience in this area and would respectfully suggest that the Trial Chamber consider seeking its view.

2. Screening Priorities and Timing Estimates

159. As instructed by the Trial Chamber⁹² the Trust Fund will prioritize those of the 137 victim participants who applied for reparations during the judicial phase in its screening process (hereinafter: “First Intake” [REDACTED]

[REDACTED]⁹³

160. Next, the Trust Fund Secretariat will verify the applications of the additional applicants that the LRV identified outside of the judicial proceedings, but before the approval of the Plan (hereinafter: “Second Intake”). It is estimated that the Second Intake will be verified and notified of a decision [REDACTED] with straightforward applications in this Second Intake being verified in [REDACTED]

[REDACTED] In a third intake, the Trust Fund Secretariat will verify the applications of currently unidentified applicants (hereinafter: “Third Intake”). Identification procedures for this group are proposed take place at the same time as verification procedures in the First Intake and Second Intake. It is estimated that the Third Intake will be verified and notified of a decision [REDACTED] with straightforward applications being verified in [REDACTED] (persons applying through the Trust Fund administrative screening process for an eligibility assessment in any of the First, Second, or Third Intake, hereinafter: “Applicant(s)”).

⁹² Reparations Order, para. 146 (ii).

⁹³ This is based on an assumption of supplements to said applications, as necessary, being received from the LRV by about [REDACTED] the Plan’s approval; and an assessment period of: (i) [REDACTED] straightforward applications; and (ii) [REDACTED] contested or problematic applications. For these timing estimates, applications are herein characterized as “straightforward” where they do not raise any reliability or credibility concerns; where the Defence has not contested an application; and/or where there is no need for victims’ legal counsel to make further representations to the Trust Fund before a decision is taken.

⁹⁴ This is based on an assumption of supplements to said applications, as necessary, being received from the LRV by about the [REDACTED]. These applications will likely pertain more comprehensively to the full range of the 10 Protected Buildings, and the Trust Fund will group claims together on a per Protected Building basis to facilitate verification. The earliest completed groups of applications pertaining to a particular Protected Building will be verified [REDACTED], and latter completed groups of applications pertaining to other Protected Buildings may [REDACTED]

⁹⁵ [REDACTED] n assumption that such applications will be completed by about the [REDACTED]. The earliest completed groups of applications pertaining to a particular Protected Building will be verified [REDACTED], and latter completed groups of applications pertaining to other Protected Buildings may take up to [REDACTED]

161. At the current time and in light of the potential difficulties applicants may face coming forward or completing their application, the Trust Fund proposes that there should not be a fixed deadline for applying. Rather, the Trust Fund suggests that applicants should in principle be able to apply throughout the [REDACTED]

3. Identification activities relevant to the Third Intake

162. In its Reparations Order, the Trial Chamber instructed the Trust Fund to make “reasonable efforts [...] to [REDACTED] under the screening process”.⁹⁶

163. As a preliminary matter, mindful of the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] however, given the outreach and identification is only relevant for a limited group of victims and the fact that the [REDACTED]
[REDACTED] the Trust Fund is of the view that the majority of currently unknown potential beneficiaries should become aware the possibility of applying for [REDACTED]
[REDACTED] by this information being communicated across [REDACTED]. In addition, the Trust Fund also intends to transmit information about the screening process to [REDACTED]
[REDACTED]

164. With respect to individuals who have been displaced from Timbuktu, the Trust Fund recalls that it [REDACTED]
[REDACTED] This person will be [REDACTED]
[REDACTED]
[REDACTED].

165. Regarding the identification process, the Trust Fund has consulted with VPRS and been informed of the following. First, while VPRS did not oversee victim identification activities for the *Al Mahdi* case, [REDACTED]
[REDACTED] t the pre-trial stage. The Trust Fund understands that [REDACTED]
[REDACTED]

⁹⁶ Reparations Order [REDACTED] See also Regulation 61 of the TFV Regulations.

[REDACTED]

166. Therefore, the Trust Fund proposes to use the VPRS model of victim mobilization and application practices through the utilization of [REDACTED]

4. Reparations Application and supporting documentation

167. With regard to the application to be used, the Trust Fund notes that the LRV has to date been using the only form available to him, which is the VPRS form relevant to the pre-order stage of proceedings and was not designed to capture the specific information relevant to eligibility for the [REDACTED] in this case. The Trust Fund considers that there is a need, in consultation with VPRS, to create a new reparations application for the purposes of this specific process.

168. With regards to supporting documentation, the Trust Fund observes that, as has been stated consistently by the LRV in this case, official documentation does not appear to exist with regard to establishing either the Exclusive Link or [REDACTED] Requirements. Accordingly, the Trust Fund considers that attestations [REDACTED] would be an acceptable form of supporting documentation. In this regard, the Trust Fund has compiled a [REDACTED] that could serve [REDACTED] that the person has met the Exclusive Link and/or [REDACTED] Requirement and [REDACTED] as an annex to the filing so that the Defence and LRV can make observations in their responses to the present submission.

5. Screening Process – General Approach

169. As an overview, the eligibility screening and determination process for the individual reparations award entails the following: 1) *an identification phase* – where a person who seeks to have his or her eligibility for the individual award determined by the Trust Fund comes forward to provide his or her personal information and supporting documentation; and 2) *a verification phase* – in which an individual eligibility determination is finalised by the TFV Board.

170. In conceiving the best means through which to carry out each of the identification and verification phases of its mandate in the *Al Mahdi* case, the Trust Fund pays due regard to the fact that it is only one of the many actors that interact with victims under the Court’s jurisdiction.

171. The Trust Fund recognises that other Court actors have developed specific expertise and, through practice, fine-tuned various processes – ranging from but not limited to assessing victim status and evaluating supporting documentation.

172. With the aim of respecting the principles of ‘Do No Harm’ and principle 15 of the UN Basic Principles on Reparation for Victims requiring that victims receive “prompt” reparations –, the Trust Fund will thus adopt an approach during implementation that seeks to utilise whenever possible the resources and knowledge available to it throughout the Court in order to put in place the most stream-lined and efficient processes possible.

173. In the particular context of this case, the Trust Fund will rely on VPRS Headquarters in The Hague for data input, processing, and preliminary analysis of applications and relevant supporting documents.⁹⁷ This applies to applications that VPRS has already received to date, as well as in regards those to be received prospectively.⁹⁸

174. Trust Fund submits it is appropriate to so rely on VPRS given its specialized expertise in handling the storage and processing of data and documentation of up to thousands of

⁹⁷ In meetings between the Trust Fund and VPRS in April 2018, VPRS agreed to provide said services for the purposes of the Trust Fund’s eligibility screening and determinations in the *Al Mahdi* case.

⁹⁸ The Trust Fund’s estimates on how long each of a variety of steps will take to get from VPRS’ data entry of applications up until the issuance of an eligibility recommendation depends on an assumption of ongoing access to VPRS human resources for ongoing data processing and for periods of surge capacity. For the latter, the Trust Fund will consult with VPRS and provide it advance notice so that VPRS can commit additional resources to such tasks at a specific time. VPRS’ availability will however be subject to its resource demands arising out its responsibilities in other situations or cases before the Court.

potential victims and in making initial eligibility assessments in the context of both trial participation and judicial reparations proceedings.

175. At the same time, the Trust Fund Secretariat and the TFV Board, as applicable, will maintain final authority over eligibility decisions. At all times, the TFV Board will remain responsible for all policy matters arising in relation to the victim identification and verification process.

6. Verification on a Per Building Basis

176. With respect to the Second and Third Intakes, VPRS will forward its recommendations to the Trust Fund Secretariat in batches on a Protected Building basis. Concretely this means that the Trust Fund will verify large numbers or substantially all applications asserting a link to a particular Protected Building at the same time. The Trust Fund considers that not only will this method provide some form of administrative and operational coherency, but it will also provide both VPRS in its preliminary analysis function, and the Trust Fund Secretariat in its verification function, a supplementary means by which to assess credibility and reliability.⁹⁹

177. While proceeding in this manner offers the above-mentioned benefits, thus making it the Trust Fund Secretariat's default approach, the Trust Fund recognizes that delays caused to VPRS in processing incomplete, contested, or otherwise more complicated applications may cause undue delay for other more straightforward applications that assert a link to the same Protected Building. The Trust Fund Secretariat will monitor such risks in its ongoing consultations with VPRS. Where in fact it appears that undue delay may so be caused, the Trust Fund will ask VPRS to transmit applications and eligibility recommendations to it on a different basis, as determined by the Trust Fund Secretariat.¹⁰⁰

⁹⁹ tance, grouping applications in this way may reveal that several applicants assert they were the [REDACTED] of a Protected Building at the time of the Crime. This being the case, grouping applications for verification purposes will allow reliability and credibility issues to be flagged.

¹⁰⁰ For instance, straightforward claims may – as a smaller sub-group – be extracted and verified separately from incomplete, contested, or otherwise more complicated applications in a larger grouping.

7. VPRS File Review for Defence Disclosure and Defence Response

178. Once VPRS enters information from each application into its computer system, all such information will be reviewed and processed by VPRS for purposes of the next step of disclosure to the Defence.¹⁰¹

179. The Trust Fund seeks to establish a process from this point forward that combines necessary operational efficiencies with the fairness standard owing to the Defence.

180. In order to do so, and as has been accepted in a different context in other cases before the Court,¹⁰² the Trust Fund proposes a procedure that seeks to provide disclosure of specific applications and supporting materials to the Defence only where there is a need for such fully contextualized disclosure. This would consist in circumstances where an application does not give rise to a straightforward determination, such as (but not limited to) where there exist internal inconsistencies. In other cases where applications are straightforward, the Trust Fund proposes that VPRS resources not be dedicated to redacting such applications and supporting materials themselves, but rather to redacting VPRS summaries pertaining to such applications. If for instance, Applicants have consented to their identity being made available to the Defence, such summaries would not need to be redacted.

181. As VPRS is in a neutral position as an inherent part of the Court's Registry, the Trust Fund proposes this procedure in the hopes that the Defence accepts that the summaries produced by VPRS of applications will accurately reflect the existence of *any* issues within any application.

182. The Defence will have the following timelines to make observations:

- **2 weeks** where summaries were provided (*straightforward cases*).
- **4 weeks** where applications and supporting materials were provided (*non-straightforward cases*).

8. VPRS Eligibility Recommendations – Process

183. Once the observations are submitted by the Defence, VPRS will undertake its preliminary assessment of each application in a grouping and provide eligibility recommendations to the Trust Fund, resulting in either of a: *Positive Eligibility Recommendation*, or a *Preliminary Negative Eligibility Recommendation*.

¹⁰¹ Reparations Order, para. 146(iii). Note also that at para. 146(v) of the Reparations Order the Trial Chamber stated that “No administrative review mechanism is available to the Defence for victims screened as eligible”, thereby limiting the Defence observations to applications prior to Trust Fund decision.

¹⁰² See [ICC-01/04-02/06-449](#), para. 24(ii).

a) *Positive Eligibility Recommendations*

184. Applications that have received Positive Eligibility Recommendations by VPRS *at this stage* will generally be set aside while other applications in the same group are sent forward for legal counsel of the applicant to exercise a right to reply. Hence, the Trust Fund Secretariat's main intervention at this point will be to take the necessary steps required to allow legal counsel of the applicant to exercise a right to reply, as set out in paragraphs 188 - 189.

185. Nonetheless, once the Trust Fund Secretariat receives a grouping of VPRS eligibility recommendations for applications pertaining to a particular Protected Building, it will conduct an *overview* of the applications therein that correspond to VPRS' Positive Eligibility Recommendations.

186. At this initial stage, this *overview* will only aim:

- to get a broad familiarity with such applications to determine whether the Trust Fund Secretariat discerns issues arising therein that VPRS has not considered; and
- to determine whether the Trust Fund Secretariat should proceed besides in its default manner and undertake its verification function *immediately in respect of these Positive Eligibility Recommendations*, so that the latter are not held up by applications in the same grouping as a result of Preliminary Negative Eligibility Recommendations. If so, the Trust Fund Secretariat will proceed immediately to a full verification relevant to these Positive Eligibility Recommendations.

b) *Preliminary Negative Eligibility Recommendations*

187. On receiving a grouping of VPRS eligibility recommendations for applications pertaining to a particular Protected Building, the Trust Fund Secretariat will *immediately conduct an in depth review* of the applications that correspond to VPRS' Preliminary Negative Eligibility Recommendations.

188. Where the Trust Fund Secretariat agrees with VPRS observations that there are elements in the application that may give rise to a negative determination by the Trust Fund Secretariat, it will briefly itemize same and notify the legal representative, and VPRS will furnish a consolidated report – now including Defence observations.

189. The legal representative will be given **4 weeks** from the receipt of the above to submit its representations to VPRS. Upon receipt thereof, VPRS will carry out a *second analysis* as

complemented by such materials, and issue either a *Positive Eligibility Recommendation*, or *Final Negative Eligibility Recommendation* for the benefit of the Trust Fund Secretariat.

190. When all of the above has occurred, it is generally speaking at this point that the Trust Fund Secretariat will undertake its verification *as relates to all or substantially all applications pertaining to a particular Protected Building*. This is because – in respect of said grouping – the Trust Fund will then be in possession of:

- all initial Positive Eligibility Recommendations (*supra*, para. 184 - 186);
- Positive Eligibility Recommendations for applications examined after the legal representative's reply; and
- Final Negative Eligibility Recommendations for applications examined after the legal representative's reply.

9. VPRS Eligibility Recommendations - Substance

191. VPRS will provide a recommendation to the Trust Fund Secretariat setting out its assessment of eligibility according to the governing criteria for each application. Summarily this consists of setting out whether each of the following has been established on a balance of probabilities: identity; sufficiency of connection to the Timbuktu community; the Exclusive Link Requirement; and/or the [REDACTED] requirement.

192. For each application, VPRS will furthermore provide the Trust Fund Secretariat its assessment of the authenticity of supporting documents and make such supporting documents accessible to the Trust Fund.

193. In addition to the above (*supra*, paras 191 and 192):

- for its Positive Eligibility Recommendations, VPRS will provide the Trust Fund Secretariat with a brief description of the basis for its recommendation; and
- for its Preliminary and Final Negative Eligibility Recommendations, VPRS will provide the Trust Fund with concise reasons in writing for its rejection recommendation. So long as the essential information motivating such a negative assessment is set out, VPRS may use standardized formats to motivate its recommendation.

10. Trust Fund Secretariat Verification Decisions and TFV Board Approvals of Eligible Beneficiaries

194. Generally speaking, the Trust Fund Secretariat will undertake its verification of all applications that pertain to a particular Protected Building once all of the steps in *supra*, para. 190 have occurred.

195. The verification consists in the Trust Fund Secretariat undertaking a review of only the materials referred to in *supra*, paras 191 - 193 and supporting documents themselves as necessary.

196. Where the Trust Fund Secretariat considers that, on a balance of probabilities, Applicants have indeed established eligibility¹⁰³ under the Exclusive Link Requirement and/or the [REDACTED] Requirement, it will render a verification decision to such effect.¹⁰⁴

197. Emanating from same, the Trust Fund Secretariat will constitute a list of Applicants it determined established eligibility for [REDACTED]

198. The Trust Fund Secretariat will then transmit such list(s) to the TFV Board that will, in its discretion, approve said list.¹⁰⁵

199. Once the TFV Board has approved this “final list of beneficiaries”,¹⁰⁶ the Trust Fund Secretariat will notify both the beneficiaries’ legal representative and the Defence¹⁰⁷ of the TFV Board’s approval.

200. This approval of the list of beneficiaries will also be “final” in the sense that the Defence has no access to the Independent Review Panel discussed below.¹⁰⁸

201. Where the Trust Fund Secretariat considers however that, on a balance of probabilities, Applicants have *not* established eligibility: (a) under the Exclusive Link Requirement or (b) under the [REDACTED] requirement (*in each case of (a) or (b)*,

¹⁰³ This can arise by the Trust Fund Secretariat agreeing with VPRS’ Positive Eligibility Recommendations and from it differing with VPRS’ Final Negative Eligibility Recommendations.

¹⁰⁴ Regulation 62 of the [TFV Regulations](#) entrusts the Trust Fund Secretariat with the verification of applications wherein persons assert that they are members of the beneficiary group for individual reparations awards, as defined by a trial chamber’s eligibility criteria. Specifically: “The Secretariat shall verify that any persons who identify themselves to the Trust Fund are in fact members of the beneficiary group, in accordance with any principles set out in the order of the Court”.

¹⁰⁵ Regulation 64 of the [TFV Regulations](#) thereafter provides that “[a] final list of beneficiaries shall be approved by the Board of Directors”.

¹⁰⁶ Regulation 64 of the [TFV Regulations](#).

¹⁰⁷ “The result of the screening for each applicant is to be communicated to both the applicant and the Defence”: [Reparations Order](#), para. 146(v).

¹⁰⁸ “No administrative review mechanism is available to the Defence for victims screened as eligible.”: para. 146(v), [Reparations Order](#).

hereinafter: a “*Rejected Applicant*”), it will render a verification decision rejecting the application.¹⁰⁹

202. If in reviewing a Final Negative Eligibility Recommendation of VPRS, the Trust Fund Secretariat agrees with the concise reasons that VPRS provided therein for reaching its recommendation, then the Trust Fund Secretariat will adopt those reasons. In all other cases,¹¹⁰ the Trust Fund Secretariat will set out its own concise reasons for rejecting an application¹¹¹.

203. The Trust Fund Secretariat will then notify both the legal representative of the Rejected Applicant and the Defence,¹¹² including its reasons for rejection.

204. In its notice of decision, the Trust Fund Secretariat will inform the Rejected Applicant that:

- he/she can seek administrative review of such decision before an Independent Review Panel that has been established under the authority of the TFV Board (see *infra*, para. 222 - 234);
- he/she can seek judicial review before the Trial Chamber (see *infra*, para. 220); and
- that he/she has a *right* to legal counsel for such purpose.

205. The Trust Fund estimates that it will take about 3-5 days to verify the materials mentioned *supra*, paras 191 - 193 once VPRS forwards its recommendations in respect of each grouping of applications organized around a particular Protected Building.

206. Considering there are 10 Protected Buildings that were destroyed in the attacks, the verification exercise may take 3-5 days for a grouping that is the first to be verified by the Trust Fund Secretariat, whereas other groupings that are transmitted from VPRS much later will also take 3-5 days to verify, but this may occur up to 8-10 weeks later.

207. Hence, the Trust Fund has budgeted 8-10 weeks for the Secretariat’s verification of applications associated with all 10 Protected Buildings. For positive decisions, the TFV Board will require a further 5 days *for each list of beneficiaries* that it will review and approve, generally provided to it on a per Protected Building basis. This means that up to a

¹⁰⁹ Regulation 62 of the [TFV Regulations](#).

¹¹⁰ This can occur if the Trust Fund Secretariat differs with VPRS’ Positive Eligibility Recommendations or if it agrees with VPRS’ Final Negative Eligibility Recommendations, but for different reasons.

¹¹¹ So long as the essential information motivating a negative assessment is set out, the Trust Fund Secretariat may use standardized formats to motivate its decision.

¹¹² “The result of the screening for each applicant is to be communicated to both the applicant and the Defence”: [Reparations Order](#), para. 146(v).

further 5 weeks will be required for TFV Board approvals of beneficiaries to receive individual awards.

208. Notification of decisions as set out in paras 203 and 204 are included in such time estimates.

G. Individual Awards – Access to a Review Procedure

1. Victim’s ability to contest a negative verification

209. The Trust Fund wishes to reiterate that the applicable legal instrument at the implementation stage of reparations, following a Trial Chamber’s issuance of an order for reparations – including notably during including victim identification and verification – is the TFV Regulations¹¹³ –as supplemented by “any principles set out in the order of the Court”.¹¹⁴

210. The Members of the TFV Board consider the TFV Regulations– as promulgated by the Assembly of States Parties – to be of fundamental guidance as regards their duties and establishing their responsibilities. The TFV Board Members further consider themselves, in both their individual capacities and as a subsidiary organ of the States Parties, to be bound by way of the confidence conferred upon them through their election by the States Parties, to require them to exhaustively acquit themselves of their duties and responsibilities as described in the TFV Regulations, as well as to ensure the full effect of the related provisions of the TFV Regulations.

211. In this regard, the Trust Fund notes that the victim identification and verification process contemplated in the TFV Regulations is administrative in nature. Regulation 62

¹¹³ See in this regard, First submission of victim dossiers, [ICC-01/04-01/06-3208](#), paras 52 (holding that the Regulations of the Trust Fund are an instrument to the Rome Statute), 55 (“If the Trial Chamber has ordered that reparations be made through the Trust Fund pursuant to rules 98 (3) and 98 (4) of the Rules of Procedure and Evidence, or that the award for reparations be deposited with the Trust Fund pursuant to rule 98 (2) of the Rules of Procedure and Evidence, the Trust Fund plays an important role in this phase and the Regulations of the Trust Fund apply.”). See also: Judgment on the appeals against the “Decision establishing the principles and procedures to be applied to reparations” of 7 August 2012 with amended order for reparations (Annex A) and public annexes 1 and 2, [ICC-01/04-01/06-3129 \(hereinafter: “2012 Lubanga Appeals Chamber Judgment”\)](#), para. 148 (a) (“The Appeals Chamber has recognized that the Regulations of the Trust Fund are an instrument to the Rome Statute for purposes of interpreting provisions related to reparations awarded through the Trust Fund”). See also: the Appeals Chamber’s key finding in *Lubanga* : “For purposes of awards for reparations made through the Trust Fund, resolutions of the Assembly of States Parties in this respect should be given due regard by Trial Chambers. To the extent that a Trial Chamber issues an order for reparations that impinges on the management of the Trust Fund’s finances, resolutions of the Assembly of States Parties in this regard must be taken into account and are to be considered an authoritative source for purposes of interpreting the Regulations of the Trust Fund.”: [2012 Lubanga Appeals Chamber Judgment](#), para. 2.

¹¹⁴ Under “Section III Verification” of the [TFV Regulations](#), it states at regulation 62 that: “The Secretariat shall verify that any persons who identify themselves to the Trust Fund are in fact members of the beneficiary group, in accordance with any principles set out in the order of the Court”.

stipulates that “[t]he Secretariat shall verify that any persons who identify themselves to the Trust Fund are in fact members of the beneficiary group in accordance with any principles the out in the order of the Court”.¹¹⁵ To identify oneself to the Trust Fund as a member of the beneficiary group of victims is considered to be an action that is much more limited in scope than the full procedure of making a request for reparations under rule 94 of the Rules of Procedure and Evidence, yet requiring an adequate administrative response from the Trust Fund so as to ensure procedural integrity as well as safeguard the rights and interests of those who wish to identify themselves as members of the beneficiary group.

212. Further, Regulation 64 stipulates that “[a] *final* list of beneficiaries shall be approved by the Board of Directors” (emphasis added). This confirms the intention of the States Parties that the procedure for victim identification and verification under the TFV Regulations be conducted as an administrative procedure under the comprehensive and final responsibility of the TFV Board.

213. The TFV Regulations thus confer upon the TFV Board a duty to ensure that the victim identification and verification procedure is comprehensive, efficient, operationally and financially feasible, and victim-centered.¹¹⁶ A consequential duty of the TFV Board is to ensure that the victim and identification procedure is designed and implemented as to be mindful of the rights of victims. Such rights indeed include the right to an administrative review of a negative verification decision in regard of a person’s eligibility to benefit from reparations awards.

214. The succinct language of Regulation 64 of the TFV Regulations, while of singular clarity, does not preclude the TFV Board from adopting “necessary” additional procedures under Regulation 15, including one, as described in more detail below, allowing for the necessary administrative review of a negative verification. Similarly, the resulting comprehensive victim identification and verification procedure of the Trust Fund may well co-exist with the ultimate option of the Court’s judicial review.

215. In view of these considerations, the Trust Fund notes that the right to administrative review of administrative decisions is a regular feature of domestic and international administrative procedures, including at the Court.

216. In the screening process for individual reparations, the Trust Fund is tasked with implementing the Trial Chamber’s eligibility criteria, in what can be a wide variety of factual

¹¹⁵ Regulation 62, [TFV Regulations](#).

¹¹⁶ See for example, in *Bemba*, the Trust Fund’s “Observations relevant to reparations” made in the pre-order context: [ICC-01/05-01/08-3457 31-10-2016](#), para. 14.

contexts. It holds this important responsibility knowing that the legitimate victims of the Crime as defined by the Trial Chamber in its reparations award have a *right* to reparations.

217. As such, if in the course of its verification process, the Trust Fund errs in determining that an applicant does not meet the Trial Chamber's eligibility criteria, such decision would have the unintended effect of negating a legitimate victim's *right* to reparations.

218. With a view to guarding against such outcome, and reflecting the Trust Fund's belief that victims should have the opportunity to participate fully and effectively in the administrative identification and verification processes it establishes, the Trust Fund reiterates its long-held conviction that an applicant in its screening procedures should be able to seek administrative review of a negative verification decision made by the Trust Fund Secretariat, and further, that such recourse can be properly achieved within the framework of procedures foreseen by Regulation 15 of the TFV Regulations.

219. Indeed, the Trust Fund has consistently iterated this position in various proceedings¹¹⁷ at the reparations stage, such as in *Lubanga*,¹¹⁸ *Bemba*,¹¹⁹ and in *Al Mahdi*.¹²⁰

¹¹⁷ While some such assertions were made in the context of collective reparations awards, their underlying principles apply with no less vigour in the context of individual reparations awards, such as at bar.

¹¹⁸ Most recently, in the context of the screening process foreseen in the *Lubanga* case for service-based collective awards, the Trust Fund submitted on 21 March 2018 that: "In short, the Trust Fund does envision that redress should be available for any individuals who are determined to be ineligible. *In this regard, the Trust Fund recalls that it has already proposed in these proceedings to establish an independent administrative review board that, with the assistance of legal counsel, would provide an opportunity to screened out victims to challenge a negative determination made by the TFV Board. The Trust Fund notes that the inclusion of a right to an administrative review is a regular part of many domestic administrative proceedings and, for that matter, is also used at the Court in relation to certain administrative decisions that impact on the rights of various individuals*" (emphasis added); Observations in relation to the victim identification and screening process pursuant to the Trial Chamber's order of 25 January 2018, [ICC-01/04-01/06-3398 21-03-2018](#), para. 20.

The Trust Fund's earlier submissions on this point in *Lubanga* date back to 3 October 2016, wherein it acknowledged "[...] that regulation 69 of the Regulations of the Trust Fund, under the Chapter 'Collective awards to victims pursuant to rule 98 (3)', also provides that determinations related to the method of implementation of the awards are to be approved by the Court and that the Trial Chamber has a monitoring and oversight role in order to ensure that the awards are implemented in line with the applicable legal criteria set out in the order for reparations. In this regard, the Trust Fund notes that the Appeals Chamber's judgment contains legal criteria for the eligibility of beneficiaries in service-based collective awards. *Thus, the Trust Fund considers that the Trial Chamber's role necessarily includes monitoring that the Trust Fund is properly applying the legal criteria of victim eligibility set out in the amended order*" (emphasis added); Observations on the "Requête afin de solliciter des lignes directrices de la Chambre suite à l'Ordonnance émise le 15 juillet 2016" [ICC-01/04-01/06-3237 03-10-2016](#), para. 26. As such, it continued by setting out its vision of "[...] an administrative screening process for collective reparations awards that is modeled, with certain modifications, on the procedure laid out in regulations 60-65 of the Regulations of the Trust Fund pertaining to individual awards" (*id.*, para. 32), and *which would include a "[...] robust administrative appeals process [...]"* (emphasis added) (*id.*) *to be established by the TFV Board.*

¹¹⁹ On 31 October 2016, the Trust Fund made observations at the pre-order stage in *Bemba*. Similarly speaking to collective reparations that could be ordered pursuant to rule 98 (3) of the Rules, the Trust Fund stated: "In brief, the Trust Fund envisions an administrative screening process for collective reparations awards that is modeled, with certain modifications, on the procedure laid out in regulations 60-65 of the Regulations of the Trust Fund pertaining to individual awards. In this regard, the Trust Fund submits that a verification process of each individual beneficiary by its Board of Directors (as provided for under regulations 63 and 64 for individual

220. The Trust Fund reasserts this view in the present context, understanding that the Appeal Chamber's ruling on 8 March 2018 to the effect that a rejected applicant may seek judicial review of a negative eligibility determination made by the TFV Board¹²¹ seeks above all to ensure that the Trial Chamber's individual reparations award reaches its intended beneficiaries and that the latter's rights are upheld.

221. In view of all of the above, and in seeking to play a complementary role to the (i) ultimate recourse that a rejected applicant has by way of judicial review before the Trial Chamber; and (ii) the Trial Chamber's exercise of its *proprio motu* powers, the Trust Fund will also establish an Independent Review Panel (hereinafter: "Panel") an overview of which follows.

2. Independent Review Panel

222. The TFV Regulations set out distinctly that it is the Trust Fund *Secretariat* tasked to verify applications in the context of claims to eligibility for individual reparations awards¹²² and the TFV Board that retains the authority to determine who is confirmed on the "final list of beneficiaries".¹²³

223. In approving this final list, the TFV Board confirms the positive verification decisions of the Trust Fund Secretariat and approves the distribution of Trust Fund resources to said approved list of beneficiaries.

224. However, as stated above (*infra*, paras 213 - 219), where the Trust Fund Secretariat verifies an application and determines that eligibility has not been established, the TFV Board

reparations awards) is not appropriate or operationally feasible for collective reparations awards. Furthermore, the Trust Fund notes that the administrative procedure adopted by the States Parties does not include the involvement of legal support to potential beneficiaries at the implementation stage of reparations. While noting this absence, the Trust Fund nevertheless considers that there may be a need for legal advice and support to any potential beneficiaries, concerning their general right to reparations *and in particular to those who do not pass the Trust Fund's administrative screening. The Trust Fund proposes that this could be achieved through a robust administrative appeals process whereby the Trust Fund Board of Directors shall establish and be advised by an independent review panel regarding these cases.* The Trust Fund would keep the Trial Chamber fully apprised of this review process and its outcomes as part of the regular implementation reports it will submit" (emphasis added): Observations relevant to reparations, [ICC-01/05-01/08-3457 31-10-2016](#), para. 45.
¹²⁰ See [ICC-01/12-01/15-187 02-12-2016](#), para. 60. The latter makes a similar submission to [Observations relevant to reparations](#), para. 45, but also references regulation 57 of the [TFV Regulations](#) in regards of the regular implementation reports.

¹²¹ The Appeals Chamber in its 8 March 2018 decision held that persons that the Trust Fund finds ineligible for individual reparations in its administrative screening are not only "[...] entitled to request that the Trial Chamber review the assessment by the Trust Fund for Victims. [...]" ([Appeals Chamber Judgment](#), para. 98: See also: *id.*, para. 1(ii), 69), but also that the "Trial Chamber may also review the assessment by the Trust Fund for Victims *proprio motu*" (*id.*).

¹²² Regulation 62 of the [TFV Regulations](#).

¹²³ Regulation 64 of the [TFV Regulations](#).

considers it important to make available to the Rejected Applicant a Panel before which it can seek administrative review of the Trust Fund Secretariat's verification decision.

225. Hence, the TFV Board has decided to establish said Panel that will be given the authority:

- a) to render a decision that overturns the Trust Fund Secretariat's negative verification decision; and
- b) to emit policy recommendations to the TFV Board for approval.

226. Such policy recommendations, if adopted by the TFV Board as directives, will have an avenue through which they will be made public to the parties, thereby providing otherwise Rejected Applicants and their legal representatives more assurance that the Secretariat is undertaking decision-making in a consistent and transparent manner. Furthermore, this will allow legal representatives requisite information to prepare their files on a prospective basis as well as to challenge past decisions not upholding same.

227. Pursuant to *supra*, para. 225a), when the Panel overturns the Trust Fund Secretariat's negative verification decision, its *de novo* decision will be binding on the TFV Board. This means that following such a case-by-case decision, the TFV Board will add the concerned formerly Rejected Applicant to the "final list of beneficiaries".

228. Pursuant to *supra*, para. 225b), when the TFV Board adopts the policy recommendations of the Panel, the Trust Fund Secretariat is bound to apply them to all verifications that it undertakes thereafter. Likewise, the Panel must apply them to all requests that subsequently come in front of it.¹²⁴

229. The aforesaid measures ensure that – as a matter of process – the TFV Board retains oversight over the quality of Trust Fund Secretariat verifications, as the TFV Board:

- emits policy decisions binding on the Secretariat, and
- puts in place an administrative review panel that can overturn erroneous verification decisions of the Trust Fund Secretariat.

230. Lastly, in addition to the authority provided to the Panel in *infra*, para. 225, the TFV Board will give the Panel authority to:

- a) consider and decide upon the admissibility and merits of a request by a Rejected Applicant who asserts he/she has become aware of new evidence that – had it been

¹²⁴ The Panel may vary an adopted policy directive in a singular case. Otherwise any variation thereof of a broader nature could only occur by making policy recommendations to the TFV Board which the TFV Board thereafter approves.

available at the time of the Trust Fund Secretariat's verification decision – would likely have had a material affect on the outcome of such decision.

231. When the Panel overturns the Trust Fund Secretariat's negative verification decision by determining that a reconsideration request as set out in *supra*, para. 230 is meritorious, then this *de novo* decision will also be binding on the TFV Board. This means that following such a decision on a case-by-case basis, the TFV Board will add the concerned formerly Rejected Applicant to the "final list of beneficiaries".

232. In the instance that a Rejected Applicant's request to the Panel under either *supra*, para. 224 or *supra*, para. 230 is denied, he/she may seek judicial recourse before the Trial Chamber.¹²⁵

233. However, the Trust Fund would respectfully suggest to the Trial Chamber that it consider adopting an exhaustion requirement, i.e., a Rejected Applicant must exhaust the administrative review remedies available to it the Panel before seeking judicial review before the Trial Chamber.

234. The Trust Fund takes no position in regards the scope of judicial review following exhaustion of the administrative review process, as this is a matter for the Trial Chamber to decide.

235. The aforesaid matters in relation to the creation and detailed operation of the Panel will be taken up and decided by the TFV Board in its upcoming Board meeting in May 2018, by way of a TFV Regulation 15 decision. They may then be subject to further interaction with the Trial Chamber.

VII. COLLECTIVE AWARDS

236. In the Reparations Order the Trial Chamber considered that responding to the harm endured by the Timbuktu community "will also effectively address the broader harm suffered

¹²⁵ In the Trust Fund's understanding, in its 8 March 2018, the Appeals Chamber ruled that – whether as a result of a *proprio motu* review undertaken by the Trial Chamber after a Trust Fund determination has issued, or whether as a result of a Rejected Applicant individually seeking judicial review of a negative verification decision made within the context of the Trust Fund's identification and verification procedures – the Trial Chamber may overturn same and issue a *de novo* decision on the merits.

On these matters, the Appeals Chamber stated specifically: "The Appeals Chamber finds that the oversight of the Trial Chamber exercising judicial control over the screening process shall include that the Trial Chamber finally endorse the results of the screening, with the possibility of amending the conclusions of the TFV on the eligibility of applicants for individual reparations, upon request of those applicants, or *proprio motu* by the Trial Chamber. The Appeals Chamber is of the view that this will ensure that a contested determination of who should be eligible for individual reparations remains within the scope of judicial control": [Appeals Chamber Judgment](#), para. 69.

by Malians”¹²⁶. The Trial Chamber in this vein on several occasions endorsed the experts’ assertion that directing reparative measures to “the local population of Timbuktu” will ripple out to benefit Malians¹²⁷. Directing reparation initiative at the local population of Timbuktu is the best way in which “to preserve the heritage in question” and therefore projects should be directed at “strengthening their capacity to do so”.¹²⁸ For the purpose of describing the delivery of collective awards in this draft implementation plan, the Trust Fund understands the community (or local population) of Timbuktu to comprise – to the extent feasible – those community members residing in Timbuktu at the time of the Crime, therefore including those such members currently residing in the Timbuktu diaspora in Mali and elsewhere.

237. In regard of potential activities relating to the collective awards, the Trust Fund recalls that the Reparations Order states, “The modalities for collective reparations should be aimed at rehabilitating the community of Timbuktu in order to address the economic harm caused. Collective measures in this regard may include community-based educational and awareness raising programmes to promote Timbuktu’s important and unique cultural heritage, return/resettlement programmes, a ‘microcredit system’ that would assist the population to generate income, or other cash assistance programmes to restore some of Timbuktu’s lost economic activity.”¹²⁹

A. Main Objective and Expected Outcomes of the Collective Awards

238. The main objective of the collective awards in the Al Mahdi case is to redress the economic and moral harm to the community of Timbuktu resulting from the assault on their cultural heritage, by means of reparative measures that integrate both economic recovery and moral redress.

239. The expected outcomes of the collective awards leading to the main objective are:

- a) Victims achieve *improved economic resilience* in respect of their daily lives;
- b) Victims achieve *improved moral resilience* by experiencing cultural recovery and peaceful co-existence, including through the (re)sanctification of the affected Protected Buildings in Timbuktu.

¹²⁶ [Reparations Order](#), para. 54

¹²⁷ [Reparations Order](#), paras 54, 83, 91.

¹²⁸ [Reparations Order](#), para. 55

¹²⁹ [Reparations Order](#), para. 83.

1. Project Results, leading to the Expected Outcomes of the Collective Awards

240. The project activities proposed in the draft implementation plan are designed to lead to the following activity-specific results:

- a) Improved revenue of victims from economic activities, including agriculture, trade services, small and light industry, and handicrafts.
- b) Improved community dialogue, enabled through cultural and religious ceremonies that acknowledge the importance and restoration of Timbuktu's material and immaterial cultural heritage.

241. The collective reparations awards will be implemented through an integrated approach to rehabilitate and redress the two-fold nature of harms identified by the Trial Chamber. The Trust Fund's consultations have confirmed that the victimization of the community of Timbuktu has induced persisting psychological, moral and economic harms which to date have significantly impeded recovery and resilience. The depth of trauma is exacerbated by the circumstance that throughout the ages, the destroyed Protected Buildings have come to be experienced in the community of Timbuktu as a tremendously important means of meditation and solace, as well as symbols of social cohesion and historical continuity.

242. The proposed collective reparation initiatives have been developed and designed in response to statements received from victims, as well as inputs received from stakeholders from within the community of Timbuktu. They have also been informed by ten years of Trust Fund programmatic experience in a manner consistent with best practices and norms.

243. A fundamental factor to the success of all forms of collective reparations is respect for the emotional and interpersonal functioning of individual victims and the community as a whole. This respect is required throughout the implementation process, including monitoring, training and capacity building activities. Community engagement will assist victims to come to understand that the cultural and religious functions of the Protected Buildings can only be restored with their full participation and empowerment.

B. Economic rehabilitation for the community of Timbuktu

244. The majority of victims and stakeholders consulted by the Trust Fund confirmed that the material loss and economic harm they suffered is a consequence of the loss of a long-standing source of income from tourism and pilgrimage.

245. Some victims live with relatives in precarious economic circumstances. Food security and hunger among the elderly and children were often mentioned as a consequence of the Crime. Many of the elderly find themselves without any savings or resources to cope with, as well as an inability to generate income from work. Thus, the Trust Fund's collective awards programme aims to recognise that women and the elderly merit priority targeting, as they are found to be in dire financial circumstances as a result of the loss of livelihoods and tools of the trade. Trust Fund respondents confirmed the loss of their principle source income and the loss of their vocation as a consequence of the events of 2012 and the continuing insecurity of Timbuktu.

246. The activities proposed below are the result of a participatory and inclusive consultation process that reflects the views and wishes of victims and are complementary to the Government's actions for victims of the Timbuktu community residing in Timbuktu and Bamako. The implementation of these activities will require [REDACTED] f operation.

1. Objective: Victims overcome economic harm through economic skills development, financial empowerment through access to (micro-)finance and improved revenue through access to local markets

247. Funding for economic rehabilitation activities will support group initiatives, within the framework of the concept of *renforcement de la vie associative*. Two types of training will be offered to the group members as an integrated package enabling a renewed focus on appropriate economic activities:

- a) Basic accounting and administration skills
- b) Trauma-based healing and conflict mediation and community dialogue

248. Income-generating activities will promote livelihood growth and job creation, including for victims displaced to Bamako and elsewhere and who live in very different conditions than their city of origin. The regeneration of household income may contribute to the voluntary return of internally displaced persons living outside of Timbuktu, security conditions permitting.

249. Based on the Trust Fund's understanding from victims and stakeholders consultations, as well as the expert reports, four main sectors have been selected for economic rehabilitation of the victim community of Timbuktu: agriculture, trade, small and light industry, and handicrafts.

a) *Expected result 1: Quality of life improves through increased agricultural output at household level.*

250. [REDACTED] vegetable and rice [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

251. Activities will also include [REDACTED] initiatives, such as the collective purchase of sheep, chickens, dairy cows and goats. The resulting meat production will not only generate revenue but carry the added benefit of increasing supply and availability of [REDACTED] in the local markets.

b) *Expected result 2: Increased access to (micro-)credit, enabling economic rehabilitation.*

252. Trainings will be offered to groups of [REDACTED]
[REDACTED]
[REDACTED] Community savings and loans mechanisms have been proved to be an effective vector of economic improvement, in different forms, including in the experience of the Trust Fund's assistance programmes in northern Uganda and eastern Democratic Republic of the Congo (DRC). Through capacity building, beneficiary groups will gain an understanding of how to use and benefit from a simplified and small-scale savings and loans routine, which will help to increase household income and to continue livelihood activities long after the reparations programme expires.

c) *Expected result 3: Peaceful co-existence and social cohesion within the community of Timbuktu*

253. Beneficiaries will receive training in community dialogue, conflict prevention, and mediation, within the framework of existing and trusted systems of customary community leadership. This will help promote and maintain peaceful co-existence and social cohesion within the community of Timbuktu.

d) *Expected result 4: Revived handicrafts and small and light industry within the community of Timbuktu.*

254. Targeted small and light industry activities include: [REDACTED]
[REDACTED] Targeted handicraft activities include: [REDACTED]
[REDACTED]

255. Beneficiary induction will be based on prior experience and ability to conduct these economic activities, as indicators of the likelihood of economic empowerment and sustainable social reintegration to be achieved.

C. Redress of moral harm suffered by the community of Timbuktu

256. Activities to redress moral harm may include the following: community dialogue, cultural and religious ceremonies, events to promote to importance and restoration of cultural heritage and to foster the message of reconciliation and non-repetition. In this respect, [REDACTED]

257. Victims consulted by the Trust Fund in Bamako and Timbuktu indicated that they did not receive adequate psychological support. During interviews in Bamako, victims exhibited symptoms (crying, nervousness, and agitation) of mental trauma.

258. Regarding potential activities for collective awards to redress moral harm, the Reparations Order states:

“The Chamber therefore orders [...] (ii) collective reparations for the mental pain/anguish and disruption of culture of the Timbuktu community as a whole. As for the modalities, the Chamber considers collective reparations through rehabilitation [to be appropriate] to address the emotional distress suffered as a result of the attack on the Protected Buildings. These collective reparations can also include symbolic measures – such as a memorial, commemoration or forgiveness ceremony – to give public recognition of the moral harm suffered by the Timbuktu community and those within it.”¹³⁰

1. Objective: Victims overcome moral harm and play a significant role in achieving social cohesion and peaceful coexistence in Timbuktu

a) *Expected result 1: Victims in the community of Timbuktu achieve moral ‘soulagement’ and are able to live in dignity.*

259. Community trauma healing initiatives will aim to contribute to de-traumatization of affected victims in the community of Timbuktu. Sessions will be organized according to gender and age groups: women, men, youth girls, and youth boys. This approach promotes

¹³⁰ [Reparations Order](#), para. 90.

free expression and sharing of experiences as well as respects the cultural practices of the community of Timbuktu. Group viewings of a video containing Mr Al Mahdi's apology and request for forgiveness, facilitated by a counsellor through preparation and follow-up discussions, is expected to contribute to the moral recovery of victims.

260. Community trauma healing initiatives will include a procedure to identify victims in need of specialised trauma counselling. [REDACTED]

[REDACTED]

*ed result 2: [REDACTED]
[REDACTED] of peaceful co-existence and reconciliation.*

261. This activity concerns capacity building for [REDACTED] in the fields of community dialogue, conflict mediation and prevention. This activity will have three phases:

- a) The TFV partner will first identify [REDACTED] [REDACTED] who are trusted within the community and who have a respected [REDACTED] [REDACTED] conflict prevention and resolution initiatives within the community of Timbuktu.
- b) The selected [REDACTED] will be trained in community dialogue, conflict prevention, and mediation skills to strengthen their capacity to address matters of potential and existing conflict within and between parts of the community.
- c) The [REDACTED] [REDACTED] with a Protected Building in Timbuktu. [REDACTED] will work to identify and resolve potential conflicts with in [REDACTED]

262. To the extent possible, these activities will seek to establish a link with activities contributing to the delivery of the collective economic awards.

263. In collaboration with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] to promote a culture of peace [REDACTED]

[REDACTED] will receive training and facilitated discussions on topics such as: social cohesion, intercultural dialogue, interfaith dialogue, and community dialogue.

c) *Expected result 3: [REDACTED] are aware of religious conflicts and promote peaceful coexistence for cultural heritage.*

264. Training in cultural dialogue will foster religious tolerance and cohabitation. A two day course on dialogue will be offered [REDACTED]

[REDACTED] which is estimated to increase the probable involvement of a diverse cross section of the community.

265. The training will focus on tolerance to mitigate the possible resurgence of violent or destructive action.

d) *Expected result 4: Restoring the sacredness of the Protected Buildings increases the trust of the Timbukians in the return of the saints.*

266. Sanctification (*résacralisation*) ceremonies for the mausoleums will take place in [REDACTED] to the Protected Buildings, as well as related [REDACTED]. Following consultation with [REDACTED] Protected Buildings a *résacralisation* ceremony will be organized in memory of the saints. These ceremonies will include readings and remarks invoking the protection of the saints in addition to ceremonial actions. The *résacralisation* ceremonies are expected to have a wider impact to the community of Timbuktu's efforts at peaceful co-existence and reconciliation, including through [REDACTED]

267. An important aspect of the ceremony would be the incorporation of an offering wherein up to ten bulls will be sacrificed (representing one per quartier) and the meat will be distributed amongst the poor and needy of Timbuktu. This ceremony may be repeated annually as a means of commemorating the Protected Buildings.

e) *Expected result 5: The divide within the community of Timbuktu will be bridged through increased interactions and events between the peoples of Timbuktu.*

268. A cultural festival is envisioned to allow people to meet, greet, share, and bridge divides in a festive environment that will include local dances and traditional music. These cultural practices and public festivals have been prevented from occurring due to the events of 2012 and the destruction of the Protected Buildings. The resumption of annual cultural

events and festivals in Timbuktu, in as far as permitted by the security situation and deemed to avoid any additional harm to members of the community of Timbuktu, will be supported for the duration of the implementation of the collective reparations awards.

269. The cultural festival may be organised to [REDACTED] [REDACTED] Before the 2012 it was typical for the inhabitants of Timbuktu [REDACTED] to the saints and to perform maintenance and renovation of the Protected Buildings.

D. Damage to Protected Buildings

270. Once the Draft Implementation Plan is approved by the Trial Chamber, the Trust Fund [REDACTED] support further restoration initiatives and rehabilitation activities of the Protected Buildings. The Government of Mali [REDACTED] have developed a protection and maintenance programme to ensure the long term preservation of the Protected Buildings. The Trust Fund will participate in and contribute to this jointly developed restoration programme.

271. The programme shall seek to promote the following activities intended to improve the security infrastructure of the mausoleums through: 1) rehabilitation of doors, windows, and enclosures (where appropriate), 2) installation and improved lighting, and 3) surveillance devices and practices. [REDACTED] will benefit from a risk management and contingency planning training.

272. Promotion of protection and maintenance for the Protected Buildings will include improved [REDACTED] to ensure maintenance and sustainable conservation practices for the Protected Buildings.

273. Capacity building pertains to [REDACTED] through the supply of building materials and equipment, traditional techniques and skills [REDACTED] and preventive maintenance and conservation techniques in earthen architecture.

274. The collaborative programme [REDACTED] will be linked to the collective moral harm initiatives that also seek to revitalize the cultural resonance of the Protected Building through festivals, seasonal events, community maintenance works on the buildings,

intercommunal meetings (improving the local economy), social cohesion, and consolidation of peace and reconciliation initiatives.

275. The Trust Fund in collaboration [REDACTED] will serve to promote a culture of peace among [REDACTED] will receive peace building training and participate in discussions on important topics such as: social cohesion, conflict mediation, intercultural dialogue, interfaith dialogue, and community dialogue.

276. Once the Draft Implementation Plan is approved, the Trust Fund [REDACTED] also further explore joint fundraising options to garner financial support for the reparations plan, including cultural restoration initiatives in Timbuktu. This may include a joint fundraising appeal targeting the donor networks of both organizations as they pursue the common objectives contained in the reparations awards.

VIII. PROSPECTS FOR TRUST FUND ASSISTANCE MANDATE ACTIVITIES

277. As for any situation country before the Court, the Trust Fund’s development of an assistance programme for Mali is contingent on the prevailing security environment and the availability of resources. The Trust Fund recalls that its procedure to contemplate and decide on the implementation of an assistance programme, further to Regulations 49-53 of the TFV Regulations, varies significantly from procedures and processes related to its mandate to implement Court-ordered reparations. The two procedures share a harm-based approach and the ultimate strategic goal of the Trust Fund to ensure that “victims and their families overcome harm, lead a dignified life and contribute towards reconciliation and peace-building within their communities.”¹³¹ Yet they are markedly different in that the assistance mandate is not predicated on or guided by the existence of trial or reparations proceedings and rather allows the Trust Fund to respond to harm suffered by victims throughout the entire geographical, temporal and material scope of the Court’s jurisdiction, thereby providing the Trust Fund with a capability to deliver on the Rome Statute’s reparative function within the scope of a much wider harm paradigm than may be achievable through the Court’s

¹³¹ [Trust Fund for Victims Strategic Plan \(2014-2017\)](#), adopted by the Board of Directors in August 2014 and extended in May 2017 to comprise 2018. The Trust Fund’s Strategic Goals are listed on page 15.

proceedings *per se*. The Trust Fund conceives its operation of the assistance mandate as not meant to be functional to the design and delivery of reparations awards.

278. The Trust Fund does not yet operate an assistance programme in Mali. The presence of favorable security conditions and the ability of the Trust Fund to move freely within the situation are required to conduct a thorough, harm-based programme assessment, resulting in a programmatic framework for review, approval and resource allocation by the TFV Board, as well as a subsequent legal review, in accordance with Regulation 50 (a)(ii) and (iii) of the TFV Regulations, by the relevant Pre-Trial Chamber to establish that “[...] that a specific activity or project, pursuant to rule 98, sub-rule 5 of the Rules of Procedure and Evidence, would pre-determine any issue to be determined by the Court, including the determination of jurisdiction pursuant to article 19, admissibility pursuant to articles 17 and 18, or violate the presumption of innocence pursuant to articles 66, or be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

279. The Trust Fund informs the Chamber of its intent to develop an assistance programme in Mali, as in other situation countries, resources and security permitting, yet that at present the Trust Fund is not yet in a position to contemplate direct action. The Trust Fund wishes to convey to the Trial Chamber when circumstances permit concrete action in this regard, it will inform the Chamber of its plans and subsequent developments through its periodic reporting on the implementation of the reparations awards.

280. Trust Fund’s development of an assistance programme for Mali is largely contingent on the prevailing security environment. The presence of favorable security conditions and the ability of the Trust Fund to move freely within the situation are required to conduct a needs assessment.

IX. CONCLUSION

281. The Trust Fund submits to the Trial Chamber the Draft Implementation Plan for individual, collective, and symbolic reparations awards, as ordered by the Trial Chamber against Mr Al Mahdi in order to repair the harm suffered by the victims of his Crime.

282. The Plan sets out the proposed scope, measures and procedures for the implementation of the awards, in such a way as they are deemed to be feasible given the scope of liability, the substantive modalities of the awards and the likely operational circumstances in Timbuktu and in Mali. The Trust Fund has sought to analyse and represent

the security risks foreseeably inherent to the implementation of the awards in Mali, and in particular in the city of Timbuktu, in such way as for the Chamber to be able to appreciate these risks as well as the proposed mitigation measures.

283. In drafting the Plan, the Trust Fund has adopted a consultative approach, with priority attention to participating victims and ensuring that other voices of the affected community of Timbuktu were heard, as well. The Trust Fund wishes to express its gratitude to the multitude of consulted stakeholders, including the Government of Mali and colleagues at the Court's Registry, for their unwavering interest and support in assisting the Trust Fund.

284. [REDACTED] the Trust Fund proposes a victim identification and verification system that is robust and responsive to the rights of victims and the convicted person, while allowing for an independent administrative review procedure to be conducted under the auspices of the TFV Board. In view of the priority attached by the Trial Chamber to the implementation of [REDACTED] the Draft Implementation Plan endeavours to provide a road map allowing for immediate implementation upon approval.

285. For the collective awards, the Trust Fund is proposing a set of reparative measures responsive to the multi-faceted quality of harms suffered by the community of Timbuktu. Given the constraints experienced by the Trust Fund [REDACTED] the drafting period, necessarily the proposed collective awards lack the level of detail that could have been achieved through a more thorough [REDACTED] Yet the Trust Fund is confident that these measures provide for a solid foundation for fine-tuning and implementation.

286. For the symbolic awards, the Trust Fund has obtained positive feedback, informally to date, from the Government of Mali and [REDACTED] [REDACTED] which should then also serve as an opportunity to highlight the importance and relevance of the Rome Statute's reparations function, [REDACTED] elsewhere.

287. With [REDACTED] Trust Fund has agreed to pursue a formal partnership upon the Trial Chamber's approval of the Plan, allowing for joint implementation of the relevant elements of the awards, as well as to jointly pursue advocacy and fundraising enabling the implementation of the awards as well as wide appreciation and acceptance of their reparative value to the victims in the community of Timbuktu.

288. In response to the request of the Trial Chamber to the TFV Board to complement the payment of the reparations awards, in consideration of the indigence of Mr Al Mahdi being the liable party, the Trust Fund confirms its intent to pursue the mobilisation of resources towards this end, further to pledges and contributions earmarked for the award already received.

FOR THE FOREGOING REASONS

The Trust Fund for Victims respectfully submits this draft implementation plan for reparations in the Al Mahdi case.



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 this 18 May 2018

At The Hague, The Netherlands