

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **09 August 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*

CONFIDENTIAL

**Request for clarification of the eligibility criteria for individual reparations awards
related to economic harm**

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

1. Pursuant to regulation 57 of the Regulations of the Trust Fund for Victims (“TFV Regulations”), the Trust Fund for Victims (“Trust Fund”) respectfully requests the Trial Chamber’s clarification of the meaning of the term “exclusive” in the context of the eligibility criteria for persons entitled to individual reparations for economic harm in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*.

I. CLASSIFICATION OF THE PRESENT SUBMISSION

2. The Trust Fund has classified the present filing as confidential pursuant to regulation 23 bis (1) of the Regulations of the Court based on the fact that the filing addresses the individual reparations award eligibility criteria that could, in its view, lead to the identification of beneficiaries, thus potentially putting their safety and security at risk. The Trust Fund will file a public redacted version of this submission as soon as possible.

II. BACKGROUND

3. On 27 September 2016, following an admission of guilt, Trial Chamber VIII (“Trial Chamber”) convicted Mr Ahmad Al Faqi Al Mahdi (“Mr Al Mahdi”) of the war crime of attacking protected buildings (“Protected Buildings”) under articles 8(2)(e)(iv) and 25(3)(a) of the Rome Statute (“Statute”).¹

4. On 17 August 2017, the Trial Chamber issued its “Reparations Order”² against Mr Al Mahdi pursuant to article 75 of the Statute, wherein it, *inter alia*, awarded individual reparations for consequential economic loss “only to those whose livelihoods *exclusively* depended upon the Protected Buildings.”³ The Trial Chamber indicated that this would include those whose livelihood was to maintain and protect the Protected Buildings, identifying individuals such as *maçons*, guardians, as well as owners of businesses whose activity relied solely on such Buildings.⁴

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

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

³ [Reparations Order](#), para. 81 (emphasis in the original).

⁴ [Reparations Order](#), paras 73, 81.

5. On 17 October 2017, the legal representative for victims (“LRV”), partially appealed the Reparations Order in relation to, *inter alia*, the exclusive link requirement.⁵

6. On 8 March 2018, in its judgment on the LRV’s appeal, the Appeals Chamber rejected the ground of appeal related to the exclusive link requirement, holding that the Trial Chamber had not erred in exercising its discretion.⁶

7. On 20 April 2018, the Trust Fund submitted its draft implementation plan (“Draft Implementation Plan”), followed by a corrigendum on 30 April 2018.⁷ Therein, the Trust Fund submitted that, aside from guardians and *maçons*, persons whose livelihood was to maintain and protect the Protected Buildings may also extend to imams, marabouts, caretakers, or other prominent but unspecified categories of persons associated with maintaining or protecting the cultural, religious, or spiritual heritage of such buildings, a category that it identified as “other vocations”.⁸ In addition, the Trust Fund requested clarification from the Trial Chamber as to whether assistants, helpers, or apprentices would also qualify for the individual economic reparations award.⁹

8. As to the exclusive link requirement, the Trust Fund noted that the Reparations Order does not require a *maçon* or guardian to assert and prove that he/she only exercises this vocation as a source of livelihood and does nothing else as a means of earning income or otherwise.¹⁰ It then inferred “that the focus of the inquiry under Sub-group A [persons whose livelihood was to maintain and protect the Protected Buildings] is *the exclusivity of one’s role and commitment* in terms of working to uphold one or more of the Protected Buildings and its heritage.”¹¹

9. On 12 July 2018, the Trial Chamber issued its decision on the Draft Implementation Plan, wherein it reiterated that “individual reparations in the form of compensation for the

⁵ Brief in support of the Appeal (in part and limited) ICC-01/12-01/15-242-Conf-Exp-Corr filed against the Reparations Order of 17 August 2017 (ICC-01/12-01/15-236) issued by Trial Chamber VIII, [ICC-01/12-01/15-244-tENG](#), paras 19-29.

⁶ Judgment on the appeal of the victims against the “Reparations Order”, [ICC-01/12-01/15-259-Red2](#), para. 43.

⁷ Public Redacted version of the *corrigendum* of Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#).

⁸ [Draft Implementation Plan](#), para. 94.

⁹ [Draft Implementation Plan](#), para. 98.

¹⁰ [Draft Implementation Plan](#), para. 113.

¹¹ [Draft Implementation Plan](#), para. 114 (emphasis in the original).

economic harm suffered by those whose livelihoods exclusively depended upon the Protected Buildings.”¹²

10. In said decision, the Trial Chamber confirmed that “imams, marabouts, caretakers and other prominent but unspecified categories of persons associated with maintaining or protecting the cultural religious or spiritual heritage of the Protected Buildings, along with assistants, helpers, apprentices [...] may be eligible for individual reparations provided that they can demonstrate this [exclusive] link.”¹³

III. REQUEST FOR CLARIFICATION

11. The Trust Fund respectfully requests that the Trial Chamber clarify the scope of the “exclusive link” required to receive individual awards for economic harm insofar as persons tasked with responsibilities in maintaining the Protected Buildings are concerned.

12. The Trust Fund considers that there are two possible interpretations of the “exclusive link” requirement. First, persons working in some capacity for the Protected Buildings (such as marabouts, caretakers, apprentices of *maçons*, etc.) would need to show that their entire earnings depended on such work (“First Interpretation”). Alternatively, persons working in some capacity for the Protected Buildings would need to show that the earnings lost depended exclusively on the work they performed for such buildings, but not that they had no other separate source of income or earnings (“Second Interpretation”). In other words, according to the First Interpretation, a potential beneficiary would be one whose entire livelihood relied exclusively on income generated through the Protected Buildings; whereas, under the Second Interpretation, the potential beneficiary would be one who has lost one source of livelihood exclusively linked to the Protected Buildings, even if such loss did not constitute the whole of his or her earnings overall.

¹² Public Redacted version of ‘Decision on Trust Fund for Victims’ Draft Implementation Plan for Reparations, [ICC-01/12-01/15-273-Red](#) (“Decision on Draft Implementation Plan”), paras 23, 62.

¹³ [Decision on Draft Implementation Plan](#), para. 64.

13. The Trust Fund recalls that its role is to faithfully apply the eligibility criteria established by the Trial Chamber in its Reparations Order.¹⁴ The Trust Fund notes that the LRV has already made submissions in relation to the potential difficulties in proving eligibility under the first interpretation.¹⁵ Without wishing to overstep its role, the Trust Fund nonetheless respectfully communicates to the Trial Chamber that information gathered during various missions undertaken in Mali has confirmed the factual veracity of these concerns. Furthermore, it appears that some, and potentially a significant portion, of the persons who work for the Protected Buildings do so in combination with other occupations, and not on an exclusive basis as understood under the First Interpretation.

14. The Trust Fund respectfully submits that the clarification sought is of primary relevance for the proper and efficient functioning of the screening process, as well as the communication of accurate information to potential beneficiaries in the upcoming outreach campaign as to the information they need to provide to qualify for individual awards for economic harm. In addition, having clarification on this point would ensure focused and relevant submissions on the side of all the stakeholders involved in the screening process, namely, VPRS, the LRV, the Defence and, ultimately, the Trust Fund.

15. Most importantly, having clarity on this aspect of the eligibility criteria would reduce the risk of creating false expectations among those persons who have combined their work for the Protected Buildings with other occupations, in case the First Interpretation is applicable, and reduce the risk of causing frustration among victims.

FOR THE FOREGOING REASONS

The Trust Fund for Victims respectfully submits this request for clarification.

¹⁴ See *The Prosecutor v. Thomas Lubanga Dyilo*, 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](#), paras 32, 205.

¹⁵ The Trust Fund understands that the Appeals Chamber did not specifically address the merits of the LRV’s interpretation of the exclusive link requirement. Rather, it focused on “whether, in reaching the decision it did, the Trial Chamber erred in the exercise of its discretion”. [ICC-01/12-01/15-259-Red2](#), para. 33. The Trust Fund thus understands that it falls within the Trial Chamber’s discretion to clarify the eligibility criteria that it established.



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 9 August 2018

At The Hague, The Netherlands