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Date: **14 July 2017**

TRIAL CHAMBER VIII

Before: Judge Raul Cano Pangalangan
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 "Corrigendum with one explanatory annex:
Final submissions of the Legal Representative
on the implementation of a right to reparations
for 139 victims under article 75 of the Rome Statute"**

Source: Legal Representative of Victims, Mr Mayombo Kassongo

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. Procedural history

1. On 27 September 2016, Mr Ahmad Al Faqi Al Mahdi (“Mr Al Mahdi”) was convicted by Trial Chamber VIII (“Chamber”) of the International Criminal Court (“Court”) of the war crime of attacking protected objects. This case was tried under article 8(2)(e)(iv) of the Rome Statute (“Statute”).¹
2. Mr Al Mahdi had admitted guilt to the charge against him. On 27 September 2016, the Chamber convicted him as a co-perpetrator of the war crime charged, and sentenced him to nine years’ imprisonment.²
3. The Legal Representative would like the Chamber to observe that neither Mr Al Mahdi nor the Office of the Prosecutor (“Prosecution”) has appealed the Judgment; it is *res judicata*.
4. On 29 September 2016, the Chamber set the Reparations Phase Calendar (“Initial Calendar”) inviting the parties,⁴ Prosecution, Registry, Trust Fund for Victims (“TFV” or “Trust Fund”) and Malian authorities to make submissions on the reparations proceedings by 2 December 2016.
5. This calendar was strictly set for the parties and participants, but was later applied only to the Legal Representative of Victims, in regard to collecting additional information germane to the applications for reparations submitted to the Chamber. This strict approach to scheduling was not applied to requests regarding expert reports filed late, outside the Initial Calendar – which was recently amended again, for the same reason, at the request of and in favour of the TFV, for the purpose of filing submissions late.⁵

¹ This single charge was submitted by the Office of the Prosecutor (ICC-01/12-01/15-62) and confirmed by the Pre-Trial Chamber after the confirmation hearing (ICC-01/12-01/15-84-Red).

² ICC-01/12-01/15-171.

⁴ At this stage of the proceedings, “the parties” is understood as referring to the Legal Representative of Victims and the Defence.

⁵ ICC-01/12-01/15-222.

6. As participants in the reparations stage of this case, certain organizations – [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] – were enabled to file amicus briefs under the auspices of the Chamber and its Single Judge.
7. On 2 December 2016, in accordance with the Initial Calendar, the Legal Representative of Victims (“Legal Representative”) filed his preliminary submissions;⁹ likewise, the Defence,¹⁰ Prosecution,¹¹ TFV,¹² Registry¹³ and Amici Curiae¹⁴ filed their submissions on the reparations proceedings. The Registry also filed a “Security Assessment” on the situation in Mali.¹⁵
8. The Legal Representative prays the Chamber to award all of the measures suggested in his initial submissions of 2 December 2016,¹⁶ and in the present submissions, which are the continuation of those filed in December 2016.
9. On [REDACTED], the Registry submitted the unredacted versions of 135 applications for reparations to the Chamber, the Legal Representative and the Registry.¹⁷ Redacted versions of those applications for reparations were disclosed to the Defence on [REDACTED].¹⁸
10. The Legal Representative notes, with regret, that to date no reparations have been granted for the [REDACTED], whom he met in [REDACTED]. The

⁹ ICC-01/12-01/15-190-Conf-tENG.

¹⁰ ICC-01/12-01/15-191-tENG.

¹¹ ICC-01/12-01/15-192-Conf.

¹² ICC-01/12-01/15-187.

¹³ ICC-01/12-01/15-193 and ICC-01/12-01/15-193-AnxI-Red.

¹⁴ ICC-01/12-01/15-188; ICC-01/12-01/15-189-tENG; ICC-01/12-01/15-194.

¹⁵ ICC-01/12-01/15-193-Conf-AnxII.

¹⁶ ICC-01/12-01/15-190-Conf-tENG.

¹⁷ ICC-01/12-01/15-200 and annexes.

¹⁸ ICC-01/12-01/15-202 and annexes.

competent authorities of [REDACTED] have not filed submissions on the reparations proceedings.¹⁹

11. During his visits, the Legal Representative reached out to [REDACTED] for further observations. The latter expressed a wish to obtain symbolic reparation of one CFA franc. [REDACTED] alluded neither to the victims in [REDACTED] nor to the [REDACTED] victims stranded in [REDACTED].
12. During his visit in [REDACTED], the Legal Representative met a [REDACTED] journalist who said: “[TRANSLATION] I have an idea for the public square where Al Mahdi was challenged, before he committed the crime. The people of Timbuktu publicly expressed their disagreement with Ansar Dine’s and Al Mahdi’s philosophy and discourse.” According to this journalist, a reparations measure could be taken to transform that symbolic location into a commemorative reference point. However, this view, though commendable, is not shared by all of the victims, the vast majority of whom insist: “[TRANSLATION] Forgiveness, yes, but we need effective reparations even more.”²⁰
13. For the victims of [REDACTED], forsaken by Mali, their own State, any reparation solely in the form of a place of commemoration would be a reminder of the State’s failure to meet their expectations, an initiative coming from a State that has awarded them nothing in the way of reparations.²¹
14. The Legal Representative has been keen to inform the Chamber of the difficulties he encountered in the field during his visits to Mali (and more specifically to [REDACTED]) because these difficulties explain why evidence has been adduced, in the annexes to the applications for reparations, by way

¹⁹ This is all the more regrettable in that the African Charter on Human and Peoples’ Rights imposes on States Parties an obligation of reparation in the event of war crimes perpetrated during an internal armed conflict.

²⁰ See the accounts given in the 137 applications for reparations from natural persons.

²¹ See the accounts given in the 137 applications for reparations from natural persons, evincing mistrust of the State and its territorial entities.

of a body of supplementary material, where primary evidence could not be obtained.

15. These visits were made difficult by the security situation in [REDACTED], where the titulars of [REDACTED] ([REDACTED]) [REDACTED].
16. On the basis of his various visits to the field, in [REDACTED] and [REDACTED], the Legal Representative has prepared a profile of the victims who suffered mental and material harm as a direct result of the crime acknowledged by Mr Al Faqi Al Mahdi and to which he admitted guilt.
17. This profile is a personal depiction of the victims, which the Legal Representative respectfully submits to the Chamber to help inform its decision on the appropriate modalities for reparations.

II. Profile of victims seeking reparations

18. This profile of the victims is submitted as an aid to a proper understanding of the applications for reparation of the harms specific to these new and special proceedings. The specificity of this case, a historical first, cannot but entail harm that is specific and unique.
19. The Legal Representative respectfully submits to the Chamber a certain number of elements of the case as experienced and expressed by the victims. This non-exhaustive list, illustrative of all of the alleged harms, is provided up front as a guide to the presentation of the applications for reparations and the appended tables.
20. It follows from this presentation that victims came forward in a variety of ways to file their applications for reparations. The Legal Representative has taken this diversity of victims into account, presenting them in groups according to location: (1) victims living in Mali and, more precisely, near the [REDACTED], who are direct victims representing [REDACTED] they used to

manage; and (2) victims from [REDACTED] with a spiritual bond to the mausoleums, who believed in their sanctity and prayed there, but who have now been [REDACTED]. These victims' lives revolve around the Saints. Their bond is based on historical, ancestral and spiritual practice that has been disrupted since the monuments were destroyed. The spiritual disruption experienced by these victims is a direct consequence of the destruction of the Timbuktu mausoleums, a disruption that is deeply felt by all of them wherever they are. They felt fear as they left behind not only their homes but also their material possessions. These unique ancestral practices cannot be replaced by simply attending another place of prayer, faith or worship. Consequently, the mental harm inflicted is real and irreversible.²³

21. Throughout their statements, the [REDACTED] victims describe the pain of [REDACTED]. Most of them no longer have any livestock or their usual handicraft activities. The other victims, left to fend for themselves, have seen their fate sealed by the Saints' failure to return to the mausoleums despite their reconstruction. Their current misery wholly stems from this disruption of their faith, blessings and hopes.

a. Explanation of the terms used in applications for reparations

22. In their applications for reparations, the victims use certain terms to express and demonstrate the mental harm that arose from the shattering of their faith. For example:

) **Forgiveness** "[TRANSLATION] comes out of my mouth, but not from my heart".

Not all of the victims forgive the crime confessed (all of them, from [REDACTED] to [REDACTED], say the same thing).

²³ As told by a group of displaced victims in northern Mali to their lawyer.

-) **The Saints** no longer work their miracle because “[TRANSLATION] in the past, blessings flowed from this faith; and now, nothing.” This is an additional reason for seeking reparations that provide relief.
-) **Return to the shattered faith:** This means piecing back together, as it were, the ancestral and traditional beliefs and restoring the self-confidence of the victims. Such a return to the faith is possible if, and only if, the person is near the mausoleum to invoke the Saint in whom he or she has always believed.
-) **Offerings:** These are voluntary, but necessary, donations to the mausoleums; usually a contribution of one to ten per cent of a person’s assets, in kind or in local currency, for the running of the mausoleums.
-) **The Attack:** The originating act of the offence that caused the harm. All of the accounts and allegations in the applications for reparations take as their starting point the attack on the mausoleums in 2012. As a result of the destruction of the mausoleums and mosques, people living in the city fled and lost control over their real and personal property.
-) **Shock:** All of the natural persons involved as victims in these reparations proceedings have expressed shock. This shock is emotional. It is a feeling of deep pain and intimate violation of their affection for, and faith in, the Saints. It is a breaking of the bond between the victim and the Saint he or she worships and prays to.²⁴

23. It is noteworthy that the Amicus Curiae and the experts designated by the Chamber, despite not having coordinated with the Legal Representative,

²⁴ ICC-01/12-01/15-194: “This heritage reflects the life and history of local communities, and represents a link between the past, present and future. [...] Local communities have seen their beliefs shaken and their dignity flouted.”

ICC-01/12-01/15-189-tENG: “[This crime] had an effect not only on individuals but on a community as a whole.”

nonetheless employ the same words and expressions found in the applications for reparations received from the 137 victims who are natural persons.

24. The victims whose applications for reparations are before the Chamber satisfy the definition under rule 85(a) of the Rules of Procedure and Evidence and article 27 of the Headquarters Agreement of 2007, which establishes a specific framework for victim status during participation in the proceedings.²⁵

b. Statistics by category of victim represented in the reparations proceedings

25. The percentages below are provided solely for guidance and are respectfully submitted to the Chamber for an assessment *in concreto*. While all of the natural persons applying for reparations use nearly the same terms to describe the mental and material harm inflicted on them, not all of them worship and pray to the same Saints.

Table of Victims

Applications for reparations (“applications”): This information was compiled from the 137 applications received from natural persons and the 2 applications received from legal entities.

The total amount claimed in the 137 applications received from natural persons is CFAF 280,220,000 (EUR 427,816.79).

The total amounts claimed in the 2 applications from legal entities are CFAF 7,000,000 for [REDACTED] and the symbolic sum of CFAF 1 for [REDACTED].

Breakdown of victims by mausoleum

1) **Sidi Yahia** accounts for [REDACTED]. The victims are natural persons for whom the Saint is both a common ancestor and the “spiritual bridge” connecting their lives to God, a Saint to whom

²⁵ “Headquarters Agreement between the International Criminal Court and the Host State”, The Hague, 7 June 2007.

they owe reverence and worship. They offer various gifts – money, animal sacrifices – in gratitude for the blessings the Saint bestows.

2) **Sidi El Mokhtar** accounts for [REDACTED]. The victims cite their link to a common ancestor who is worshipped both as a Saint and as the “bridge” connecting their lives to God – the sole intercessor before God on their behalf. He is venerated as such and all owe him gratitude and worship. The victims experienced his destruction as a humiliation. His resting place was sacred, inviolable ground; its desecralization has engendered frustration and despair.

3) **Ahmed Fulane** accounts for [REDACTED].

4) **Bahaber Babadié** accounts for [REDACTED].

5) **Sidi Mahmoud** accounts for [REDACTED].

6) **Alpha Moya** accounts for [REDACTED].

7) **Sheikh Abdoul Kassim** accounts for [REDACTED].

8) **Sheikh Ben A. Arragadi** accounts for [REDACTED].

9) **Sheikh Mouhamed El Mikki** accounts for [REDACTED].

10) **Sheikh Mahmoud El Arawani** accounts for [REDACTED].

It should be stressed that these application figures are not exhaustive. The Legal Representative received most of the applications after the reparations calendar deadline. It is imperative that the TFV be exhorted to come to the aid of these victims pursuant to rules 95(2)(a), 97(1) and 98(5) of the Rules of Procedure and Evidence and article 75(2) and (3) of the Rome Statute.

26. The outcome of these applications will be left to the discretion of the TFV, which may or may not be able to provide assistance in response to them.²⁶ The Legal Representative also takes this opportunity to inform the Chamber of the arrival of new late applications for reparations that he was unable to transmit to the Chamber.

²⁶ The Legal Representative now has [REDACTED] applications for reparations, which he will forward directly to the TFV under its assistance mandate.

III. Harm suffered by victims

27. The 139 victims (137 natural persons and two legal entities) who have submitted applications for reparations to the Chamber have suffered material and mental harm as a direct result of the crime recognized by Mr Al Faqi Al Mahdi and the Court. The Legal Representative underscores the reality of this harm, which does exist and is uncontested. The 137 victims who are natural persons suffered the loss of the property itemized in the confidential annex submitted as additional information in support of their initial applications.²⁹

A. *Specific nature of mental harm suffered by victims who are natural persons*

28. The Legal Representative respectfully points out to the Chamber that the concept of mental harm as discerned in the doctrines and case law of national jurisdictions is not wholly inapposite to the situation of victims in Mr Al Mahdi's case.³¹ The question in the instant case will be how to repair the irreparable for these victims. The answer, in the Legal Representative's view, will require consideration of the details provided in the additional confidential annexes to the victims' 137 applications for reparations.³² These annexes describe two categories of damage: (1) the destruction of souls, conscience and faith; and (2) the resulting loss of confidence and its obvious impact on the worship of the victims' ancestors.

1. *Mental harm ensuing from the destruction of souls*

29. All of the victims who are natural persons suffered an intrusive violation of their deeply-held beliefs. The crime perpetrated by Mr Al Mahdi and his group against the victims in [REDACTED] had the effect of a mental "shock" on the inhabitants. When the Legal Representative interviewed victims in the field, they all spoke of feeling an emotional and spiritual "[TRANSLATION]

²⁹ ICC-01/12-01/15-210.

³¹ Vilmer, Jean-Baptiste J. *Réparer l'irréparable: Les réparations aux victimes devant la CPI*.

³² ICC-01/12-01/15-210, annex 125.

shock” akin to “[TRANSLATION] bereavement” or “[TRANSLATION] profound distress” beyond words.³³ To capture accurately each victim’s sentiment regarding the mental harm suffered, the Legal Representative was compelled to direct victims to a [REDACTED] professional – a [REDACTED] who provided ad hoc certificates, given the means available to displaced victims.³⁴

30. The destruction of the souls and spirits of the Saints completely wiped out any form of protection that individuals or the community enjoyed from external threats.³⁵

2. Mental harm ensuing from loss of the mausoleums’ intrinsic spiritual value

31. With the destruction of the Saints’ spirits, all hopes for donations to the mausoleums were dashed – obliterated. The inhabitants of Timbuktu had always been the foremost donors of monetary offerings to the 10 victimized mausoleums – every day of the week for some, on Mondays for others and on Fridays for most of them. These days were selected personally, voluntarily and out of conviction. During their visits, the people of Timbuktu would offer money or sacrifice animals (mostly in the case of women, who could not enter the mausoleums). Yet these women knew that their prayers would be heard and their wishes granted, even from a distance. The unfolding of this religious rite, which was said to be “[TRANSLATION] perfect” before the attack and the departure of the “displaced”, has since become “[TRANSLATION] imperfect” (as the mystery has remained inoperative despite reconstruction). That departure, triggered by the destruction, accounts for the loss of livelihood suffered by the victims who run the mausoleums. The mental and material harm in the case at bar are inextricably linked. The spirits never returned to the mausoleums after

³³ Interviews by the Legal Representative of Victims during visits to Mali.

³⁴ ICC-01/12-01/15-210, additional annex – [REDACTED].

³⁵ Interviews by the Legal Representative of Victims during visits to Mali: “[TRANSLATION] I have lost hope”; “[TRANSLATION] I pray, but the blessing is no longer given”.

they were destroyed, and since then the miracles have ceased. As a result, visitors have become rare. Many victims used to frequent the mausoleums in the hope of achieving some purpose, but now that hope is lost.³⁸

3. *Certainty by assessment in abstracto of the mental harm*

32. The mental harm at issue in the reparations proceedings before the Chamber covers not only mental suffering arising from the destruction, but also the loss of an opportunity for blessings and a better life according to their traditions. Accordingly, doubt has invaded the mind of every victim; the harm is inherently mental and irreparable because no equivalent solution exists.

B. Material harm to individual victims in connection with the destruction of the holy sites

33. The Legal Representative will submit before this Chamber that the Timbuktu victims suffered actual and certain economic harm concomitant with the attack on the monuments in June and July 2012. He intends to build on his previous submissions made in open session.

34. For greater detail, the Legal Representative will rely on the versions of the expert reports submitted to the Chamber. One point worth addressing up front, however, is the presentation of the harm as assessed by the victims themselves.

35. It should be acknowledged that many of the victims who were interviewed on the details of their economic losses, including those formerly engaged in major artisanal or commercial undertakings, lack basic bookkeeping and accounting skills.⁴⁰

³⁸ Interviews by the Legal Representative of Victims during visits to Mali.

⁴⁰ Interviews by the Legal Representative of Victims during visits to Mali; ICC-01/12-01/15-210.

36. A review of the occupations practised by the [REDACTED] victims [REDACTED] met in [REDACTED] yields the following delineation of the material harm inflicted on them:

1. Material harm suffered by [REDACTED] the destroyed mausoleums

37. [REDACTED] victims were driven out by the destruction of the mausoleums and mosques in their city. The intended impact of the crime was not only to destroy the spirits and souls of the Saints, but also to wreck the social cohesion of the local community.⁴¹ As noted in the Court's Judgment of 27 September 2016, "Mr Al Mahdi oversaw the entire attack against all 10 buildings" and "co-perpetration encapsulates not only his physical participation but also his position of authority in relation to the crimes committed".⁴² Mr Al Mahdi and his group, Ansar Dine, reigned over the city of Timbuktu arbitrarily and by force of arms. They controlled all of the property as well as the people. It is in relation to this period of armed conflict and mayhem, as well as the events of June and July 2012, that the 137 individual victims and [REDACTED] have filed their applications for reparations. The victims fled out of "[TRANSLATION] fear", having experienced, directly or indirectly, the attack and the destruction of the monuments. In fleeing, they were forced to abandon not only their property, livestock and money, but their occupations and businesses as well. To paint a clearer picture, the Legal Representative commissioned [REDACTED] to quantify the material harm suffered by the victims and described in their applications for reparations.

38. The victims are:

) [REDACTED]: Their material losses are documented in the annexed income statements. These are income presumptions made by the

⁴¹ ICC-01/12-01/15-171.

⁴² *Idem.*

victims on their honour. The lack of accounting records stems from the level of local development. Unlike regulated western economies, the local economy is more informal. Nonetheless, the victims' material losses are no less real or certain in view of the annexed statements.⁴⁶

J) [REDACTED]: [REDACTED] is distinct from animal husbandry in the western sense of the term. The Legal Representative refers the Chamber to the words of a journalist interviewed on the nature of this occupation.⁴⁷ When asked why victims who were members of the [REDACTED] tribe were referring to the loss of herds, this journalist explained that there existed a “[TRANSLATION] traditional arrangement, a sort of custom, separating the herding communities. The [REDACTED] along the watercourses, rear, live off and derive benefit from livestock belonging to the [REDACTED], who live in the city. The [REDACTED] have a right of disposal over the livestock, which the herders do not have.”

Accordingly, to rip apart the local social fabric, it was opportune to attack the [REDACTED] as a step towards demolishing the buildings and occupying the city. In the wake of the terror that ensued from the destruction of the monuments and the impact this had on the victims and the rest of the civilian population, the city dwellers, having fled, could not come to the aid of the [REDACTED] attacked near the [REDACTED].⁴⁸

J) Persons engaged in trade and handicraft activities: These are the shopkeepers and peddlers, the lifeblood of social intercourse in [REDACTED], who suffered economic losses from the destruction of the mausoleums. It is important to recognize that some [REDACTED]

⁴⁶ ICC-01/12-01/15-210.

⁴⁷ Interview with [REDACTED] by the Legal Representative during his visit in [REDACTED].

⁴⁸ The [REDACTED] traditionally settle along the riverbanks.

victims did not keep any business or accounting records before the attack. Hence, after the monuments were destroyed and they had fled, the displaced victims were not in a position to quantify their operations or to produce supporting documents.⁵⁰

39. Other victims are:

J) Indirect victims by way of lost opportunity: These are the [REDACTED] who lost the opportunity to obtain an education because their [REDACTED] perished while opposing the destruction; these are all collateral victims of the destruction. [REDACTED] who were collateral victims while under the guardianship and tutelage of their [REDACTED] also became direct victims of the destruction of the mausoleums. According to interviews with victims [REDACTED] at the time of the attack on the mausoleums, [REDACTED] risked their lives on the day of the destruction in a failed bid to halt Al Mahdi and his group. “[TRANSLATION] The attackers tried to dissuade the protesting crowd by opening fire on demonstrators, killing some of them.” This was told to the Legal Representative and is expressed by some victims in the additional supporting material appended to the applications for reparations filed by the Registry in [REDACTED] and disclosed to the Chamber.⁵²

2. Use of expert opinions and reports under the Chamber’s auspices

40. In referring to the expert reports – insofar as they demonstrate the harm and further subdivide it into 10 subtypes of harm – the Legal Representative seeks

⁵⁰ In a formal economy, proof of traders’ business transactions is usually obtained from a trade register or their business records. As far as trade was concerned, the informal nature of Timbuktu’s economy during peacetime was compounded by the shift to a climate of terror after the mausoleums were attacked, thus precluding the production of any evidence.

⁵² ICC-01/12-01/15-210-Conf and annexes; ICC-01/12-01/15-213 and annexes.

to draw the Chamber's attention to the specific nature of the harm caused, which the experts assessed in monetary terms as follows:

Type of harm	Assessment by [REDACTED]	Assessment by [REDACTED]	Assessment by [REDACTED]
Psychological harm			
Loss of human and cultural rights	Not provided	USD 20,000	No less than CFAF 23,162,452,000 in total
Mental suffering and anguish	Not provided	USD 437,000	
Loss of childhood and loss of opportunity	Not provided	Not provided	
Harm arising from the death of a relative	Not provided	USD 6,000-30,000 depending on the kinship ties and proximity of direct victims to the deceased	
Loss of relationship	Not provided	Not provided	
Economic harm			
Destruction of burial sites	Not provided	Not provided	Not provided
Loss of income locally	Not provided	USD 24,930	CFAF 23,162,452,000
Loss of income nationally	Not provided	Not provided	CFAF 5,971,852,800
Economic harm suffered by the international community	Not provided	Not provided	USD 3,000,000
Economic harm caused by exile	Not provided	Not provided	Not provided

41. The Legal Representative wishes to note his agreement with the expert reports and to present additional categories of harm specific to the community of victims met in [REDACTED] and [REDACTED].

IV. Legal Representative's submissions on harm assessment and reparation modalities

42. Rule 97 of the Rules of Procedure and Evidence lays down the principle applicable to the assessment of reparations and provides that “[t]aking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both”.
43. The Legal Representative respectfully submits both of these options to the Chamber as modes of reparation in the case at bar. The Chamber must proceed with collective as well as individual reparations to endorse the will of the victims and give them the sense of justice and peace they need.
1. Approximative case-by-case approach to assessing individual reparations
44. The Legal Representative respectfully moves the Chamber to apply a method for assessing the damage and the harm caused based on the amounts indicated in the applications for reparations submitted by the victims. This approach is not at odds with rule 97 of the Rules of Procedure and Evidence, cited above.
45. Under that rule, the 139 applicants for reparations in the instant case can hope for individual reparations equal to the amount of the losses indicated in their applications and the additional documents provided to the Chamber.⁵³ Those documents supplement the (initial) applications submitted earlier.
46. The Legal Representative respectfully moves the Chamber to assess, *in concreto*, all of the requests annexed to the initial applications for reparations. Together, those documents contain the victims’ requests in respect of their individual losses. All of the requests for reparations must be considered – case by case, victim by victim.

⁵³ ICC-01/12-01/15-210 and annexes.

47. The Legal Representative also moves the Chamber to conduct an assessment *in abstracto*, given the nature of the impact of the admitted crime on the civilian population of Timbuktu and the international community.⁵⁵
48. Hence, the award of specific reparations to victims by the Chamber would redress the specific consequences ensuing from the particular nature of the material harm suffered as a result of the crime Mr Al Mahdi committed and its impact on the civilian population (and especially on the 137 victims).
49. The Legal Representative informs the Chamber that it is difficult for victims to precisely quantify the harm that the crime caused to their spirituality and working lives. He therefore respectfully requests, pursuant to rule 97(1) and (3) of the Rules of Procedure and Evidence, that the Chamber adopt an assessment *in concreto* with respect to the material harm in question and an assessment *in abstracto* for the granting of an aggregate collective award.

2. Aggregative approach to collective harm based on victims' mental suffering

50. Almost all of the victims experienced deep pain and shock, of a spiritual and cultural nature, as their medical certificates attest. This harm is collective, unique and linked to a singular crime, and requires the award of collective reparations to ensure relief.
51. The Legal Representative respectfully moves the Chamber to adopt a collective approach involving the award of an aggregate amount as collective reparations for relief, broken down as follows:⁵⁸

<u>Loss of spirituality: loss of the intrinsic value of the mausoleums</u>

⁵⁵ ICC-01/12-01/15-171.

⁵⁸ The sentiment “[TRANSLATION] We want at least some amount for relief” appears in the applications for reparations – both in the initial applications [REDACTED] and in the applications from [REDACTED].

1) **Sidi Yahia:** lump-sum award of CFAF 1,000,000 (approximately EUR 1,524.50). The Great Mosque includes the mausoleum which is attached to it as a structure that holds spiritual relevance for the faithful. The mausoleum was an attraction that lost its spiritual and historical value despite reconstruction.

2) **Sidi El Mokhtar:** lump-sum award as relief for loss of spiritual and ancestral value: CFAF 1,000,000 (approximately EUR 1,524.50).

3) **Ahmed Fulane:** lump-sum award as relief for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

4) **Bahaber Babadié:** lump-sum award as relief for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

5) **Sidi Mahmoud:** lump-sum award for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

6) **Alpha Moya:** lump-sum award for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

7) **Sheikh Abdoul Kassim:** lump-sum award for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

8) **Sheikh Ben A. Arragadi:** lump-sum award for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

9) **Sheikh Mouhamed El Mikki:** lump-sum award for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

10) **Sheikh Mahmoud El Arawani:** lump-sum award for loss of spiritual value: CFAF 1,000,000 (approximately EUR 1,524.50).

Total lump-sum awards as reparations: CFAF 10,000,000

Euro value of total awards: EUR 15,244.90

52. The Legal Representative recalls that the objective of the destruction, as admitted by Mr Al Mahdi and his Ansar Dine accomplices, was to debunk the mystery of the spirits and that this objective was achieved, despite the reconstruction of the mausoleums. The nine mausoleums and the Sidi Yahia mosque have lost their spiritual value, and this harm is irreparable. Only a lump-sum award can diffuse the tensions that may arise between different communities over the mausoleums.
53. This award of compensation as reparations for lost spiritual value is reasonable and consonant with the moral harm suffered by the victims, in accordance with article 75(4) of the Statute and contrary to the Defence's submission in its observations of 2 December 2016.⁵⁹
54. The Legal Representative respectfully submits the amounts of this reasonable award to the Chamber for consideration, pursuant to article 75(4) of the Statute.
55. In keeping with the Court's precedent in *Katanga*, the Legal Representative respectfully requests that this amount be awarded indiscriminately to each of the victims in respect of their collective suffering.
56. The experts recommend that the reparations awarded to victims be individual as well as collective, since the attack harmed them both individually and as a community.⁶⁰

3. Allocation of individual reparations of EUR 100 or CFAF 65,595.70 for loss of opportunity arising from the harm suffered by individual victims: assistance to repair broken social, cultural and traditional ties

⁵⁹ ICC-01/12-01/15-191-tENG.

⁶⁰ See in particular ICC-01/12-01/15-214-Conf-AnxI-Red, p. 42; ICC-01/12-01/15-214-Conf-AnxII-Red, para. 125; ICC-01/12-01/15-214-Conf-AnxIII-Red, pp. 120-122, 148-149.

57. The Legal Representative refers the Chamber to its submissions of 2 December 2016 regarding the principles applicable to reparations, and adds the following points. All of the victims who have submitted applications for reparations have requested reparations for the loss of their faith. The loss of confidence and of visitors to the mausoleums attests to the mental harm suffered in terms of the lost opportunity to receive blessings.

137 individual victims ([REDACTED] and [REDACTED]): 137 x €100 = €13,700

Total individual reparations per person: €100 = CFAF 65,595

Total reparations for the 137 applicants: €13,700 = CFAF 8,986,610

58. The Legal Representative submits this request for an award of reparations to [REDACTED], and to [REDACTED] who have been deprived of their spiritual practice. All these victims remain exposed to the insecurity that makes the holy sites a potential target in the event of attack.⁶¹
59. This award can serve as collective reparation for harm that was both collective and individual. [REDACTED] may at last find the means to [REDACTED], the [REDACTED] suited to the ancestral practice of their faith and worship.

4. Loss of opportunity suffered by [REDACTED] as collateral victims of the destruction

60. This final category encompasses applications for reparations from indirect victims who suffered direct harm caused by the loss of a loved one killed during the destruction.

⁶¹ Timbuktu's threat level according to MINUSMA is 5/5. The rebels are enforcing Sharia there, as described in the article "Au Mali, un couple vivant en concubinage lapidé par des 'Islamistes' [Unmarried couple stoned to death by 'Islamists' in Mali]". See also "Au Mali, l'impossible paix ? [Peace unachievable in Mali?]".

The latter article alludes to members of the group Ansar Dine during their reign in the north-east, in Timbuktu, having destroyed the mausoleums of Muslim saints worshipped by the population there in 2012.

61. The Legal Representative would like to draw the Chamber's attention to the fact that the concept of "collective reparations" is open to interpretation, and to the possibility – nay, the probability – that victims in this case have interpreted it differently. Indeed, the victims' applications for reparations show that some interpreted the concept of "collective reparations" to mean measures awarded to the community as such, while others understood it as referring to individual measures awarded to all. To avoid any confusion, the Legal Representative proposes that the concept be clarified once more.
62. The Court has held, in *Katanga* and *Lubanga*, that "[w]hen collective reparations are awarded, these should address the harm the victims suffered on an individual and collective basis".⁶²
63. However, Trial Chamber II in *Katanga* held that to receive collective reparations "[TRANSLATION] a group or category of persons may be bound by a shared identity or experience, but also by the fact that they have been victims of the same violation or the same crime within the jurisdiction of the Court".⁶³
64. Accordingly, the [REDACTED] (the majority in this case), the [REDACTED] and [REDACTED] are communities of ethnic groups within the meaning of the above-mentioned case law and therefore the following rule applies to them: "[TRANSLATION] Collective reparations may benefit a group, including an ethnic, racial, social, political or religious group which predated the crime, but also any other group bound by collective harm and suffering arising from the crimes of the convicted person."⁶⁴ Trial Chamber II also left open the possibility that certain modalities of collective reparations might be beneficial individually. "[TRANSLATION] Such collective reparations, termed

⁶² *Lubanga*, Appeals Chamber, "Order for Reparations", ICC-01/04-01/06-3129-AnxA, para. 33.

⁶³ ICC-01/04-01/07-3728.

⁶⁴ *Ibid.*, para. 274.

'individualized', are awarded to a group of victims, but allow for the benefit to be adjusted to the particular need of each victim."⁶⁵

65. As will be explained below, the Legal Representative submits that appropriate collective reparations should be awarded to repair the shared mental harm not only to all of the victims, but also to the entire population of Timbuktu.

5. Legal Representative's submissions for the implementation of reparative justice based on the principles of fairness and equality

66. Any system of justice that aspires to redress abuses committed during or in the aftermath of armed conflict must uphold the principles of equality and fairness among victims. As held by the Appeals Chamber, in keeping with article 21(3) of the Statute, "[r]eparations shall be granted to victims without adverse distinction on the grounds of gender, age, race, colour, language, religion or belief, political or other opinion, sexual orientation, national, ethnic or social origin, wealth, birth or other status."⁶⁶

67. Accordingly, the award of reparations as proposed above by the Legal Representative would contribute to administering justice that is reparative of the collective, "spiritual", mental harm suffered. The 139 victims currently represented in these reparations proceedings suffered different forms and degrees of shame. [REDACTED]'s humiliation was compounded by its powerlessness to act. [REDACTED] and other legal entities participating in these proceedings were likewise harmed by the obliteration of thousands of years of cultural history and of a protected site in Timbuktu, centuries old; not to mention the inhabitants of the region of Timbuktu, whose religious history and ancestral roots have been subverted.

⁶⁵ *Ibid.*, para. 280.

⁶⁶ ICC-01/04-01/06-3129-AnxA, para. 16.

68. The granting of such reparation measures must therefore benefit the population as a whole, including those who have not filed applications for reparations before the Court.
69. It goes without saying that this award of collective reparations must not preclude the granting of individual reparations to remedy the specific harms – and in particular the material or economic harms – suffered by the victims.
70. This approach is founded on the above-cited case law of the Trial Chamber in *Katanga*: “[TRANSLATION] Individual reparation confers on a victim a benefit to which the person is exclusively entitled; put differently, the benefit received is particular to the victim.”⁶⁷ The Legal Representative submits that the granting of such reparation is consistent with the rights and requests of the victims in the instant case.

6. *The right to reparation consistent with the case law in Katanga*

71. The Legal Representative respectfully moves the Chamber to apply the case law in *Lubanga* insofar as it precisely defines the concept of victim and lays down the overarching principles applicable to reparations. Nevertheless, the specific nature of the instant case must also be borne in mind.
- a. Admissibility and admission of applications for reparations in respect of irreparable harm*
72. Article 21(2) of the Rome Statute provides that “[t]he Court may apply principles and rules of law as interpreted in its previous decisions”. The Legal Representative therefore moves the Chamber to implement the principles laid down by the Court in *Lubanga* and *Katanga* with regard to the admissibility of all applications for reparations submitted, and to apply them to the case at bar

⁶⁷ ICC-01/04-01/07-3728, para. 271.

– without prejudice to the principle of admission at the reparations stage as derived from the Judgment of 27 September 2016.⁶⁸

73. Accordingly, the Legal Representative recommends that, in addition to the collective reparations awarded to all, each victim who suffered specific harm should receive the same individual reparation as victims who suffered a similar or equivalent harm. In other words, equal circumstances should entail equal treatment.

b. Meaning of the requested rule of equality: participation of all in reparative justice

74. The Legal Representative submits to the Chamber that an expectation of participation in justice exists even where the crime to be redressed does not lead to the establishment of harm. The victims have obtained the satisfaction of being seen at a suitable stage of the proceedings. However, as indicated above, the Legal Representative wishes to emphasize that the selection and implementation of appropriate reparations measures must not contribute to the creation or perpetuation of any form of discrimination. On the contrary, such actions must be consistent with the local culture and the traditions that underpin societal organization in Timbuktu and the surrounding area.

c. Fairness at the reparations stage

75. To victims, reparative justice implies fairness in the award of reparations for alleged harms. All of the victims in Timbuktu, elsewhere in Mali and within the international community experienced the same mental suffering indiscriminately. They therefore hope that reparative justice will treat them equally.

d. Law applicable to adduced evidence of legally relevant facts: request for a broad interpretation of the comprehensive range of material tendered in evidence: shattered faith

⁶⁸ ICC-01/12-01/15-171.

76. The issue here is how to prove the injury to faith ensuing from the crime against the property designated as “[TRANSLATION] mausoleums, one of which is incorporated into the mosque”.
77. On this point, article 21 of the Rome Statute provides a hierarchy of evidentiary rules rather than a hierarchy of evidence. Paragraph 1(c) stipulates:
- Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.
78. The Legal Representative respectfully submits that a broad interpretation be applied to all of the documents introduced as evidence.
79. The idea is to prove a legally relevant fact by demonstrating the suffering experienced as mental harm by the victim on account of the crime. According to the law applicable to evidence of legally relevant facts in the Romano-Germanic tradition, such facts may be proved by any means.
80. Accordingly, while in [REDACTED] and when they returned to [REDACTED], victims sought to provide a certain number of documents of varying probative value.⁷¹
81. The certificates of residence introduced into evidence by [REDACTED] and signed by the local administrative authority in his capacity as civil status registrar, have full probative force and are therefore tendered for an assessment *in concreto*.
82. The other signed statements submitted as evidence are simply rebuttable presumptions. They are complementary and necessary to a proper assessment of the material harm alleged by the 139 victims before the Chamber. The Legal

⁷¹ ICC-01/12-01/15-210-Conf and annexes; ICC-01/12-01/15-213 and annexes.

Representative, aware of their relative probative value, requests the Chamber to apply a broad interpretation of the burden of proof.

83. The evidence in question concerns the demonstration of suffering, profound distress, shattered beliefs, mental and psychological affliction – in short, an *injury to faith* – experienced over time and portrayed through the victims' accounts as mental harm. Under Article 21(2) and (3) of the Rome Statute, reparations judges have a great deal of latitude to interpret broadly the principles of law that apply, in particular, to evidence. This is necessary in the present case.

e. Mr Al Mahdi's liability

84. Although the Defence may argue that Mr Al Mahdi was not convicted of destroying or pillaging physical property, destroying burial sites adjacent to the targeted mausoleums or forcing numerous victims into exile, the fact remains that these harms, which the victims suffered and which continue to have harmful consequences on their daily lives, are among the direct consequences of the attack that Mr Al Mahdi planned and supervised.
85. According to the Chamber, "Mr Al Mahdi's contributions collectively qualify as an essential contribution with the resulting power to frustrate the commission of the crime".⁷² Moreover, "Mr Al Mahdi satisfies all the elements for both direct perpetration and co-perpetration"⁷³ and "[o]n this finding, Mr Al Mahdi's direct participation in relation to five of the attacks supports the Chamber's conclusions that he made an essential contribution to the crimes charged pursuant to a joint criminal plan".⁷⁴ Therefore, although other individuals were involved in the commission of the crime, Mr Al Mahdi's responsibility and his liability for reparations must not be understated. On the

⁷² ICC-01/12-01/15-171, para. 53.

⁷³ *Ibid.*, para. 59.

⁷⁴ *Ibid.*, para. 61.

contrary, the amount of Mr Al Mahdi's liability for reparations must reflect the "essential" nature of his contribution to the crimes committed and their attendant consequences.

86. Moreover, as previously indicated, the Legal Representative also submits that Mr Al Mahdi's indigence must not affect the monetary amount of his liability for reparations.

V. Legal Representative's submissions on measures for the execution of reparations

A. Request for measures that guarantee an effective right to reparation in terms of reparative justice

87. The Legal Representative wishes to acquaint the Chamber with the general feeling among [REDACTED] victims who did not participate in the reparations proceedings. There is a great risk of frustration, given [REDACTED].⁷⁵ That said, extending TFV assistance or the various reparations plans to non-participating victims would satisfy their desire for equal treatment and reparative justice. Otherwise, the feeling of injustice would grow and trigger tensions between the [REDACTED] community – which [REDACTED] accounts for the majority of pending applications – and the other [REDACTED] communities [REDACTED]. Several minority victims [REDACTED] have come forward seeking reparative justice. They are, indeed, open to collective reparations as an alternative if individual reparations are not forthcoming. A decision from the Chamber that includes such victims could serve as the basis for the TFV's quest for funding to meet its objectives of assisting victims (mostly [REDACTED]) in the instant case.

1. *Participation in the assistance stage as a reparations measure for time-barred victims*

⁷⁵ The Legal Representative is currently in possession of [REDACTED] not transmitted to the Chamber.

88. Other victims find themselves on the fringes of the reparations proceedings, excluded by the Chamber's decision rejecting the clarification request submitted by the Legal Representative.⁷⁷ These victims will be frustrated to see their peers authorized to receive reparations when they themselves could not be admitted by the Chamber. The Legal Representative respectfully urges the Chamber to take this situation into account and to remedy it by means of a measure that provides collective reparations and relief.⁷⁸
89. The applications for reparations submitted to the Chamber are compatible with both forms of reparation – individual and collective – recognized by the Court in *Lubanga* and *Katanga*. The Legal Representative again submits that both forms of reparation are appropriate in the instant case and prays the Chamber to order the joint implementation of individual and collective reparations.
2. Specific measures ensuring effective reparative justice for victims
[REDACTED]: support and communication
90. Implementing the order for reparations will be a challenge. Rather than being an end in itself, the order must mark the beginning of a process to ensure that victims ultimately and effectively enjoy their recognized rights. A mere declaratory order for reparations would transform the reparations proceedings into an exercise in futility and, by the same token, negate the ultimate aim of the Rome Statute. The status of victims would be completely devoid of relevance.
91. The Legal Representative respectfully raises before this Chamber the possibility of frustrations among the victims who were admitted to participate in the reparations proceedings, as well as those who were barred from

⁷⁷ ICC-01/12-01/15-222.

⁷⁸ Order rejecting the request for clarification of procedure.

participating after the Single Judge's order closed the door on reparations for new victims.⁷⁹

3. Request to work with the TFV to manage local conditions

92. The Legal Representative's submissions are based on an acknowledgement of the victims' hopes for reparations and the prospect of tensions arising within the various communities in the wake of the forthcoming decision.
93. The Legal Representative respectfully seeks the Chamber's leave to work together with the TFV towards a proper understanding of certain aspects of individual and collective reparations. It should be noted that the growing insecurity in Mali, and more specifically in Timbuktu, is a cause of social instability for all [REDACTED] victims and for those [REDACTED].⁸⁰ [REDACTED]. Accordingly, the situation should be reassessed at every stage of the process of awarding individual or collective reparations.
94. Such collaboration would make it possible to notify victims individually when decisions are reached and thus head off any misunderstandings and mistrust that may arise within this fractured community.

4. Support and notification of reparations decisions

95. This measure is aimed at mending the fabric of society in Timbuktu. The Legal Representative requests the Chamber to provide a non-exhaustive list of reparations support measures. He contends that the right to reparation will not be effective unless it accomplishes the goals set in the Chamber's forthcoming decision on reparations to recognized victims. These measures

⁷⁹ ICC-01/12-01/15-222.

⁸⁰ In principle, the victims live in a constant state of insecurity, which is a violation of their natural right to dwell in their place of origin. With its recent judgment against the State of Kenya for violating the rights of indigenous peoples under the African Charter of 2017, the African Court on Human and People's Rights, which applies the Charter, handed down a ruling in favour of peoples' rights that resonates loud and clear in States that fail to protect their nationals victimized by large-scale human rights violations.

are necessary to bolster the reparations scheme decided on by the Court, and in consideration of conditions in the field.

96. The effective award of reparations is a momentous issue within the Malian community, where a number of victims of other abuses live in despair, with no hope for other forms of justice.
97. In the Legal Representative's view, equal treatment of victims regardless of gender is indispensable. The implementation of reparations must not result in any discrimination – including gender-based discrimination – among victims. The Legal Representative advocates strict equality among victims who have been thrust into the same situation. Female victims must therefore be able to receive directly, and under the same conditions as male victims, any reparations awarded to them.

5. *Involvement of the population and traditional chiefs in developing the reparations plan via the TFV*

98. In his initial submissions of 2 December 2016, the Legal Representative raised the need to involve the population of Timbuktu, as well as the local and traditional authorities, in the preparation and implementation of the reparations plan.⁸¹ The Legal Representative reiterates the importance of involving local authorities, and in particular [REDACTED] and [REDACTED]. As indicated above, the experts concur with this suggestion.

B. Steps to implement tangible reparations modalities, followed by a final report to the Chamber

99. The Legal Representative requests leave to prepare a report for the Chamber and the TFV, according to the types of harm detailed above and focusing on the identification and valuation of the types of harm suffered by the victims. The Legal Representative submits that the following types of harm entitle

⁸¹ ICC-01/12-01/15-190-Conf-tENG, paras. 130-134.

victims to collective and/or individual reparations: mental harm, including loss of human and cultural rights, mental suffering and anguish, loss of childhood and loss of opportunity, and, where applicable, death of a relative and loss of a relationship; and material harm, including destruction of burial sites, loss of income and, where applicable, exile. In addition to these harms suffered directly by the victims from Timbuktu, there was loss of revenue by the State and economic harm to the international community.

100. The Legal Representative submits that the award of individual reparations must be accompanied by the implementation of one or more collective reparations modalities. More precisely, the Legal Representative distinguishes between two groups of victims, each entitled to appropriate collective reparations: victims still living in [REDACTED] and [REDACTED].
101. The Legal Representative would like to underscore the point that neither the Victims Participation and Reparations Section nor the TFV has a presence in Mali. The situation in Mali is very different, for instance, from that of the Democratic Republic of the Congo. The Legal Representative must participate in developing the reparations programme alongside the TFV so that the TFV does not have to design a programme that serves the interests of victims it knows nothing about (including their identities, needs, harms suffered, circumstances and local particularities). Having the TFV design the reparations programme alone could result in reparations proposals that are unsuited to the needs of the victims, thereby undermining their society's fragile hold on peace. An award of reparations inconsistent with the victims' needs and the harms suffered would be a futile exercise.
102. The Legal Representative would like to note that the TFV has already indicated, in its submissions in December 2016, its "willingness to consult with the Legal Representative" on a reparations programme.⁸² The Legal

⁸² ICC-01/12-01/15-187, para. 23.

Representative met with representatives of the TFV on 10 May 2017. At that meeting the TFV responded enthusiastically to the Legal Representative's proposal to work with the TFV throughout the proceedings and to take part in designing and implementing the reparations plan.

103. The Legal Representative's participation is also essential to ward off any incidents or conflicts among victims, and to avoid misunderstandings between those who obtain satisfaction and those whose claims are rejected or who are too far away to come forward for reparations.

1. Collective reparations programmes

104. During his visits in [REDACTED], the Legal Representative met [REDACTED] and [REDACTED]. These victims had designed and costed an education project, which they presented to the Legal Representative.
105. The project involves the acquisition of a plot of land and some furniture, and the training of teaching staff for children 2-7 years old, to be followed by intermediate education between the primary level and admission to the University of Sankoré.
106. This reparations project will help to mend the broken social ties between the various communities and to promote their peaceful coexistence. It will include a psychological unit for managing crises and resolving conflicts of a customary and religious nature. The Legal Representative estimates its cost at CFAF 10,000,000.
107. When interviewed, [REDACTED] victims [REDACTED] presented their own costed project for the establishment of a centre to provide craftsmanship training to victims who no longer have the means to [REDACTED]. This would require the procurement of training materials, the payment of rental costs for the training staff, and microcredits, for a cost of CFAF 10,000,000.

108. [REDACTED], [REDACTED] and [REDACTED] mostly expressed a desire to see the Court participate, financially or via the procurement of materials, in the day-to-day upkeep and yearly refurbishment of the mausoleums. Some of these victims also indicated that they would like to have the mausoleums better protected in case of future attacks. The Legal Representative supports this project, although it will need to be fleshed out and costed in collaboration with [REDACTED] and local authorities.

2. Consideration of [REDACTED]s' lack of trust in the Malian authorities

109. Most of these victims are living in highly precarious circumstances and remain wary of Malian institutions, let alone foreign ones. It is therefore imperative that the Legal Representative be available to them when the Chamber announces its reparations order and throughout the reparations programme design and implementation phase. Victims may not properly understand the Chamber's and the TFV's approach unless the only person they know and trust is there to explain it to them.

110. For all of these reasons, the Legal Representative respectfully seeks the Chamber's leave to participate in the design and execution of the reparations programme, and to continue doing so until reparations have effectively been implemented. The Legal Representative has already studied the appropriate reparations and practical modalities with the victims; this will ease the burden on the TFV.

C. *"Maximum" time to execute the plan*

111. Victims must be the focus of the reparations process. To quote [REDACTED]'s report:

It is also critical to involve and empower victims at every stage of the process. As stressed to the Special Rapporteur by experts in the reparations area, inclusive

participation in the process, including by women victims, can itself be a significant form of reparation insofar as it restores agency to victims.⁸³

112. The duration of the plan will depend on the activities carried out in the field. Consequently, there is need for some collaboration between the Legal Representative and the TFV, which is in charge of reparations.

D. Implementation monitored by the Chamber

113. The Legal Representative respectfully submits that the Chamber should pay particular attention to how effectively the order for reparations is executed. Accordingly, the parties must be allowed to defer to the Chamber on any difficulties arising from the execution of the order, or from the design or implementation of the reparations programme, with the result that monitoring the execution of its decision becomes part and parcel of the Chamber's judicial functions.

VI. Confidentiality

114. In accordance with regulation 23 *bis* of the Regulations of the Court, the Legal Representative files these submissions as confidential, since they contain information that could be used to identify the victims represented and the Legal Representative's contacts. A public redacted version of these submissions will be filed shortly.

FOR THESE REASONS, *without prejudice*

The Legal Representative of Victims respectfully prays the Chamber to consider his submissions on reparations and agree to the plans proposed; and to:

-) permit these submissions to be classified as confidential under regulation 23 *bis* of the Regulations of the Court on account of the victims' ongoing situation of insecurity and vulnerability to threats;

⁸³ ICC-01/12-01/15-214-Conf-AnxI-Red, p. 48.

- J award the reparations sought individually in the 137 applications from natural persons submitted as of this stage of the proceedings;
- J award individual reparations for each of the destroyed holy sites for the redress of spiritual harm and facilitation of the sites' day-to-day upkeep;
- J award [REDACTED] lump-sum collective reparations of €250 per individual application;
- J award to [REDACTED] the symbolic amount of one euro (€1) as reparation for material and mental harm;
- J find admissible and meritorious the application for reparations submitted by [REDACTED] and to grant the amount it requests;
- J order measures for collaboration between the Legal Representative and the TFV during the execution of reparations to victims, such as presence at, and subsequent reporting on, the execution of individual and collective reparations; and
- J grant the Legal Representative leave to: design collective reparation plans in keeping with the forthcoming decision; monitor their implementation according to the timing of payments to victims; and report on this to the TFV, and possibly to the Chamber, in the interests of making the reparations a success.

Respectfully submitted,

[signed]

Legal Representative of Victims,
Mr Mayombo Kassongo

Dated this 14 July 2017

At The Hague, Netherlands