

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

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

**Date: 12 July 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 'Decision on Trust Fund for Victims' Draft  
Implementation Plan for Reparations', 12 July 2018**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

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Trust Fund for Victims

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**TRIAL CHAMBER VIII** ('Chamber' or 'Trial Chamber') of the International Criminal Court ('Court' or 'ICC') issues the following 'Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations' in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 75 and 79 of the Rome Statute ('Statute').

### **I. Background and procedural history**

1. On 27 September 2016, following an admission of guilt, the Chamber convicted Mr Al Mahdi of the war crime of attacking protected objects as a co-perpetrator under Articles 8(2)(e)(iv) and 25(3)(a) of the Statute. Ten protected objects were attacked in Timbuktu, Mali, between around 30 June 2012 and 11 July 2012 ('Protected Buildings'): (i) the Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum; (ii) the Sheikh Mohamed Mahmoud Al Arawani Mausoleum; (iii) the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum; (iv) the Alpha Moya Mausoleum; (v) the Sheikh Mouhammad El Mikki Mausoleum; (vi) the Sheikh Abdoul Kassim Attouaty Mausoleum; (vii) the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum; (viii) the Sidi Yahia Mosque door; and the two mausoleums adjoining the Djingareyber Mosque, namely the (ix) Ahmed Fulane Mausoleum and (x) Bahaber Babadié Mausoleum. The Chamber sentenced Mr Al Mahdi to nine years' imprisonment.<sup>1</sup>
2. On 17 August 2017, the Chamber issued its Reparations Order,<sup>2</sup> in which it determined that the crime committed by Mr Al Mahdi had caused physical

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

<sup>2</sup> [ICC-01/12-01/15-236](#).

damage to the Protected Buildings, as well as economic harm and moral harm, for a total liability of 2.7 million euros.<sup>3</sup> In particular, the Chamber:

- Found that the crime committed by Mr Al Mahdi had caused physical damage to the Protected Buildings and considered that the harm caused would be satisfactorily repaired by collective measures for their protection and maintenance. Noting that renovations had already been carried out by UNESCO, the Chamber considered that the appropriate modalities of reparations should be measures aimed at rehabilitating the Protected Sites along with effective measures to guarantee non-repetition of the attacks directed against them.<sup>4</sup> The Chamber set Mr Al Mahdi's liability for this harm at 97,000 euros;<sup>5</sup>
- Found that, while the apology already given by Mr Al Mahdi for the purpose of reparations was sufficient, the Trust Fund for Victims ('TFV') might advance further ways of using it;<sup>6</sup>
- Found that the crime committed by Mr Al Mahdi had caused economic harm which is adequately repaired by: (i) *individual compensation* for those whose livelihoods exclusively depended upon the Protected Buildings; and (ii) *collective reparations* for the community of Timbuktu as a whole, which 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

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<sup>3</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 134.

<sup>4</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 67.

<sup>5</sup> Reparations Order, [ICC-01/12-01/15-236](#), paras 116-118, in particular para. 118.

<sup>6</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 71.

economic activity.<sup>7</sup> The Chamber set Mr Al Mahdi's liability for this harm at 2.12 million euros;<sup>8</sup>

- Found that the crime committed by Mr Al Mahdi had caused moral harm which is adequately repaired by (i) *individual compensation* for the mental pain and anguish of those whose ancestors' burial sites were damaged in the attack and (ii) *collective reparations* for the mental pain/anguish and disruption of culture of the Timbuktu community as a whole, in the form of rehabilitation programmes to address the emotional distress suffered as a result of the attack on the Protected Buildings. These collective reparations could also include *symbolic measures* – such as a memorial, commemoration or forgiveness ceremony – in public recognition of the moral harm suffered by the Timbuktu community and those within it.<sup>9</sup> The Chamber set Mr Al Mahdi's liability for this harm at 483,000 euros;<sup>10</sup> and
  - Found that the Malian State and the international community, via UNESCO, should be awarded one symbolic euro.<sup>11</sup>
3. In the Reparations Order, the Chamber also instructed the TFV to submit a draft implementation plan by 16 February 2018, reflecting 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.<sup>12</sup> The Chamber provided the TFV with the following guidelines, in particular: (i) noting Mr Al Mahdi's indigence, it encouraged the TFV to complement the individual and collective awards;<sup>13</sup> (ii)

<sup>7</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 83.

<sup>8</sup> Reparations Order, [ICC-01/12-01/15-236](#), paras 119-128, in particular para. 128.

<sup>9</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 90.

<sup>10</sup> Reparations Order, [ICC-01/12-01/15-236](#), paras 129-133, in particular para. 133.

<sup>11</sup> Reparations Order, [ICC-01/12-01/15-236](#), paras 106-107.

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

<sup>13</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 138.

it indicated that the TFV was not limited to the Chamber's intermediate liability calculations, only to its final determination of 2.7 million euros;<sup>14</sup> (iii) it emphasised its view that individual reparations should be prioritised;<sup>15</sup> and (iv) it directed the TFV to develop an eligibility screening mechanism<sup>16</sup> and gave guidelines as to its design.<sup>17</sup>

4. On 8 March 2018, the Appeals Chamber issued its judgment on the appeal submitted by the Legal Representative of Victims ('LRV') against the Reparations Order.<sup>18</sup> The Appeals Chamber found that the Chamber had not erred in determining the category of victims who should be entitled to individual reparations for economic loss, *i.e.* those whose livelihood depended exclusively on the Protected Buildings.<sup>19</sup> The Appeals Chamber also found that the Trial Chamber had not erred in delegating the administrative screening of applications for individual reparations to the TFV but that victim applicants found ineligible for individual reparations by the Trust Fund were entitled to a review of that decision by the Trial Chamber (which can also do so *proprio motu*).<sup>20</sup> Lastly, the Appeals Chamber found that the Trial Chamber had erred in ordering victims to reveal their identity to the defence team for Mr Al Mahdi ('Defence') as a pre-condition for having their claims for individual reparations assessed by the TFV.<sup>21</sup>

<sup>14</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 139.

<sup>15</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 140.

<sup>16</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 144 (*see also* paras 141-143, justifying the need to develop such a mechanism).

<sup>17</sup> Reparations Order, [ICC-01/12-01/15-236](#), paras 145-146.

<sup>18</sup> *Appeals Chamber*, Judgment on the appeal of the victims against the "Reparations Order", ICC-01/12-01/15-259-Conf-Exp. A confidential version and a public redacted version (ICC-01/12-01/15-259-Conf-Red and [ICC-01/12-01/15-259-Red2](#), respectively) were filed on the same day ('*Al Mahdi* AJ').

<sup>19</sup> *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 33-43.

<sup>20</sup> *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 54-72.

<sup>21</sup> *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 87-96.

5. On 20 April 2018, after the Chamber had granted the TFV two extensions of time at its request,<sup>22</sup> the TFV submitted its draft implementation plan for reparations ('DIP' or 'TFV Submissions').<sup>23</sup>
6. On 18 May 2018, having been instructed to do so by the Chamber,<sup>24</sup> the Victims Participation and Reparations Section ('VPRS') of the Registry submitted observations on the screening process for individual reparations and the organisation of legal representation ('VPRS Observations').<sup>25</sup>
7. On 23 May 2018, the Defence submitted its observations ('Defence Observations'), requesting that the Chamber approve the DIP in principle.<sup>26</sup> For that reason, the Chamber has explicitly addressed the Defence Observations only where they contain specific requests.
8. On 30 May 2018, having been granted a small extension of time by the Chamber to complete the consultation process on the DIP with the victims,<sup>27</sup> the LRV submitted his observations ('LRV Observations'), requesting the

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<sup>22</sup> Decision on Trust Fund for Victims' Request for Extension of Time, 14 February 2018, ICC-01/12-01/15-257-Red; Decision on Second Trust Fund for Victims' Request for Extension of Time, 5 April 2018, ICC-01/12-01/15-261-Red.

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

<sup>24</sup> Email sent on 4 May 2018 at 13:52 from Trial Chamber VIII to VPRS, copying parties, participants and the TFV.

<sup>25</sup> Registry Observations on the Trust Fund for Victims' Draft Implementation Plan for Reparations, ICC-01/12-01/15-267-Conf with one confidential annex.

<sup>26</sup> *Observations de la Défense sur le projet de plan de mise en œuvre des réparations ICC-01/12-01/15-265-Conf + Conf-Anxl soumis par le Fonds au profit des victimes*, ICC-01/12-01/15-268-Conf. English translation available : ICC-01/12-01/15-268-Conf-tENG.

<sup>27</sup> Decision on Legal Representative of Victims' Request for Extension of Time to Respond to Draft Implementation Plan, 24 May 2018, ICC-01/12-01/15-269. The ruling had been communicated to the parties and participants by way of email on 16 May 2018 at 16:30. The extension was granted to both parties but the Defence elected to submit its observations by the original deadline of 23 May 2018.



Chamber to invite the TFV to revise its DIP to reflect the victims' views and concerns.<sup>28</sup>

## II. Preliminary remarks on the draft implementation plan

9. As a preliminary matter, the Chamber emphasises that it is crucial for the TFV to act with due diligence in making judicial filings. This is especially so during the implementation of reparations, where the progress of the proceedings depends on satisfactory proposals from the TFV. The TFV owes it to the victims whose interests it serves to treat its legal submissions with the utmost care and consideration.
10. In this light, the Chamber expresses its grave concerns regarding the form and content of the DIP. In spite of this, in the interest of victims, the Chamber has attempted to adopt, when possible, those TFV's proposals that were sufficiently substantiated, with appropriate amendments. In other cases, the Chamber has provided detailed instructions to the TFV as to what is expected from it in its next submissions.
11. The Chamber deems it necessary to recall that, as already underlined in the Chamber's Decision on Second Trust Fund for Victims' Request for Extension of Time,<sup>29</sup> the TFV was established for the benefit of victims of crimes within the jurisdiction of the Court, and of families of such victims. Yet, the TFV itself has been the very reason for important delays arising in the award of reparations to victims.

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<sup>28</sup> *Observations du Représentant légal des victimes relatives au projet de plan de réparation déposé par le Fonds au profit des victimes en exécution de l'Ordonnance de réparation en vertu de l'article 75 du Statut (ICC-01/12-01/15-236) avec 13 annexes confidentielles ex parte réservées au Fonds au profit des victimes*, ICC-01/12-01/15-271-Conf. English translation available : ICC-01/12-01/15-271-Conf-tENG.

<sup>29</sup> Decision on Second Trust Fund for Victims' Request for Extension of Time, 5 April 2018, ICC-01/12-01/15-261-Red, paras 8-9 and footnotes 10 to 13.

12. In the present case, the TFV was initially granted six months to ‘propose a draft implementation plan reflecting 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’.<sup>30</sup> Yet, in spite of this deadline, the TFV required more than two additional months to submit its plan. In these circumstances, the Chamber would have expected the plan to be complete and fully responsive to the Reparations Order. Unfortunately, it is far from being the case.
13. In retrospect, the Chamber questions the reasons advanced by the TFV to justify its requests for additional time.<sup>31</sup> Furthermore, in spite of the extensions of time granted, the TFV still filed the DIP out of time<sup>32</sup> and had to file a corrigendum containing an extraordinarily high number of corrections.<sup>33</sup>
14. The Chamber considers that these repeated failures to comply with the most basic requirements of a Chamber’s order suggest that the TFV has not yet gained command of its own mandate when operating within the judicial process. This aspect of the TFV’s mandate calls for proper pleading and practice before the courts.<sup>34</sup>

<sup>30</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 136 (emphasis added).

<sup>31</sup> For instance, while the first extension of time was granted on the basis of [REDACTED] (Decision on Trust Fund for Victims’ Request for Extension of Time, 14 February 2018, ICC-01/12-01/15-257-Red), there is no specific information in the DIP that may have arisen from [REDACTED]. Similarly, the second extension was granted on the basis of the arrest of Mr Al Hassan (Decision on Second Trust Fund for Victims’ Request for Extension of Time, 5 April 2018, ICC-01/12-01/15-261-Red, para. 5), yet no specific information of the impact of his arrest is included in the DIP (Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 49-50).

<sup>32</sup> The DIP was filed after the filing deadline (at 16:00). It was therefore notified to the parties and participants on Monday 23 April 2018 instead of Friday 20 April 2018.

<sup>33</sup> The corrigendum announces 90 corrections – however, many of those are ‘compound corrections’: one correction in fact contains many sub-corrections: Corrected version of Draft Implementation Plan for Reparations, with confidential Annex I, 20 April 2018, ICC-01/12-01/15-265-Conf, 30 April 2018, ICC-01/12-01/15-265-Conf-Corr. A public redacted version was filed on 18 May 2018: [ICC-01/12-01/15-265-Corr-Red](#).

<sup>34</sup> See, Decision on Second Trust Fund for Victims’ Request for Extension of Time, 5 April 2018, ICC-01/12-01/15-261-Red, para. 9.

15. The Chamber has elected not to address all the shortcomings of the DIP one by one. It stresses, however, that a document of the quality of the DIP, filed out of time with such a high number of mistakes and, most importantly, containing vague and entirely unsubstantiated 'proposals' or 'ideas' could have warranted its plain rejection.
16. However, in the interest of the victims – and greatly assisted by the LRV and VPRS Observations – the Chamber has engaged in an in-depth analysis of the DIP.
17. In cases where proposals were sufficiently substantiated, the Chamber has adopted, with appropriate amendments, the TFV's proposal. In other cases, when the Chamber had no way of discerning what considerations underlie the proposals made, the Chamber has instructed the TFV to propose further specific measures. Detailed directions are provided as to these measures.
18. These directions are the Chamber's orders and accordingly they must guide the work of the TFV in the preparation of an updated Implementation Plan ('Updated IP'). Given the extent of the work that remains to be done, the Chamber has set a deadline of 2 November 2018 for its submission. It is expected that the Updated IP will be such that the Chamber will be able to approve not only broad 'ideas' but also concrete, thought-through, budgeted and staffed specific projects, as initially planned in the third decision on implementation foreshadowed in the Reparations Order.<sup>35</sup> The Updated IP will be notified to both parties, who will have 30 days to respond.<sup>36</sup>

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<sup>35</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 136.

<sup>36</sup> This addresses the Defence's request to be able to make submissions (Defence Observations, ICC-01/12-01/15-268-Conf-tENG, para. 48.)

19. Only once it is in receipt of the Updated IP will the Chamber be in a position to make a final decision on the appropriateness of the selected implementing projects and timelines proposed. In particular, in respect of the overall timeline of implementation (three to five years) proposed by the TFV, the Chamber cannot take any position at this stage owing to the lack of precision of the programmes proposed and of how they can be most efficiently realised. The Chamber can take a position on a time estimate for the deployment of all reparations measures only once it is in possession of the Updated IP, which it expects to take into account the LRV Observations on the necessary expeditiousness of the reparations.<sup>37</sup>
20. Further, the Chamber deplores that, contrary to what it asserts,<sup>38</sup> the TFV did not consult sufficiently with the LRV, in spite of his repeated efforts to that effect.<sup>39</sup> Not only does this constitute a breach of the Reparations Order, in which the Chamber explicitly ordered the TFV to do so,<sup>40</sup> but it is also causing further delays to the extent that, as pointed out by the LRV,<sup>41</sup> many reparations measures are inappropriate and do not reflect the expectations of the victims in any way.
21. In this respect, the Chamber has duly noted the LRV's request to be involved at all times during the implementation of the reparations.<sup>42</sup> In the present circumstances,<sup>43</sup> the Chamber considers this necessary to ensure the expeditious and appropriate implementation of the reparations.

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<sup>37</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 38-39 and 196-199.

<sup>38</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 21.

<sup>39</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, for instance, paras 10, 15, 28, 32, 60-61 and 65.

<sup>40</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 148.

<sup>41</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, *inter alia*, paras 32-37, 50, 125, 147-150 and 158-160.

<sup>42</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 56-59 and 203.

<sup>43</sup> Noting, in particular, the shortcoming of the submitted DIP and the fact that the LRV appears to be in a position to have more regular contacts with the victims (*see* LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 8-10, 14-15, 24, 60-65 and 67-72 and annexes). In this respect, the Chamber assures the LRV that

22. Lastly, the Chamber has noted that the TFV proposes to report to the Chamber on the implementation of the reparations every six months, and on an incidental basis with regard to significant developments.<sup>44</sup> While the Chamber found this reporting period to be initially suitable, it is of the view that the victims' interests warrant far closer scrutiny from the Chamber. Accordingly, the Chamber directs the TFV to report to the Chamber every 30 days by way of a progress report ('Monthly Report'). The content of the Monthly Report is partly left to the discretion of the TFV. However, the Chamber deems it necessary to specify that it expects to be provided with concrete information on the actions taken in respect of each of the reparations modalities with timelines, objectives and staffing. The Monthly Report must be notified to the parties, in redacted form if necessary.<sup>45</sup>

### III. Individual reparations

23. The Chamber recalls that it ordered individual reparations in the form of **compensation** for the economic harm suffered by those whose livelihoods exclusively depended upon the Protected Buildings<sup>46</sup> and for the moral harm suffered by those whose ancestors' burial sites were damaged in the attack.<sup>47</sup> The Chamber ordered the TFV to develop an eligibility screening mechanism<sup>48</sup> and set out guidelines as to its design.<sup>49</sup> In particular, the Chamber: (i) directed the TFV to make reasonable efforts to identify individuals who may be eligible within a time frame to be proposed by the TFV; (ii) directed that individuals

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the annexes remain confidential *ex parte* (see LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 62 and 204).

<sup>44</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 38.

<sup>45</sup> This addresses the Defence's request for notification: Defence Observations, ICC-01/12-01/15-268-Conf-tENG, Disposition.

<sup>46</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 83.

<sup>47</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 90.

<sup>48</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 144 (see also, paras 141-143, justifying the need to develop such a mechanism).

<sup>49</sup> Reparations Order, [ICC-01/12-01/15-236](#), paras 145-146.

who wish to be considered for the screening process are to provide a reparations application and any supporting documents and make their identity known to both the TFV and the Defence; and (iii) decided that the Defence must be given an opportunity to make representations before the TFV assesses any applicant's eligibility.<sup>50</sup>

24. On 8 March 2018, the Appeals Chamber adjusted the screening process by deciding that applicants were not required to disclose their identity to the Defence<sup>51</sup> and that any applicant whose application was rejected was entitled to request that the Trial Chamber review that assessment.<sup>52</sup>

## **A. Procedural considerations related to the implementation of individual reparations**

### **1. Legal representation**

#### *Submissions*

25. In respect of the legal representation of individual applicants, the TFV requests clarification on the modalities and scope of legal representation, including the timing and manner of appointment.<sup>53</sup> The TFV also suggests appointing an alternative legal representative in cases of conflict of interest.<sup>54</sup>
26. The LRV submits that a situation of conflict of interest is hypothetical and unsubstantiated and requests that victims should be represented by a single legal representative to foster uniformity in the representation.<sup>55</sup>

<sup>50</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 146.

<sup>51</sup> *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 1(i) and 87-96.

<sup>52</sup> *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 1(ii) and 54-72.

<sup>53</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 156-157.

<sup>54</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 158.

<sup>55</sup> LRV Observations, [ICC-01/12-01/15-271-Conf-tENG](#), paras 174-176.

27. The VPRS underlines the nature of the crime, the homogenous nature of the victims group so far, the fact that Mr Kassongo has been able to make regular contacts with his clients despite the security challenges in Mali, the increased risks of litigation and complexity in the event of representation by several teams and the unforeseeable nature of a potential conflict of interest. In these circumstances, the VPRS considers that representation through a single legal representative is reasonable.<sup>56</sup> In case a conflict of interest would arise, it recommends the pre-emptive appointment of an alternative legal counsel.<sup>57</sup>

### *Ruling*

28. For the reasons set out by the VPRS,<sup>58</sup> the Chamber sees no reason to organise a new system of representation. Mr Kassongo is and shall remain the representative of current and new applicants. The latter would be informed that they will be represented by Mr Kassongo at the latest when submitting their application, and before to the extent possible. Alternative representation will be organised only if the need arises. As suggested by the VPRS,<sup>59</sup> the Chamber must be informed by the VPRS and LRV when such a need arises.

## **2. Organisation of the screening process**

29. The Chamber notes that the TFV, VPRS, LRV and Defence are in agreement on the most important aspects of the design of the screening process. The Chamber is making some amendments as set out below. Specific issues and clarifications raised by the parties and participants are addressed when necessary.

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<sup>56</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, paras 25-31.

<sup>57</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, para. 32.

<sup>58</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, paras 25-31.

<sup>59</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, footnote 24.

*New application form*

30. A new **application form** will be created.<sup>60</sup> In this respect, the Chamber fails to understand why no draft form was attached to the DIP although the TFV had more than eight months to prepare one. The TFV is therefore ordered to produce a draft form, in consultation with all relevant stakeholders, and to submit it to the Chamber as soon as possible and, in any case, no later than at the time of the submission of the Updated IP.
31. Those applicants whose applications are already in the case record are not required to fill in a new application. They shall merely provide any missing information, as requested by the VPRS and with the assistance of the LRV. Any application received before the approval of the new form by the Chamber will be processed as such, as it would otherwise cause unnecessary delays in the award of individual reparations.<sup>61</sup> The VPRS shall begin the review forthwith in accordance with the procedures set out in paragraphs 36-49 below.

[REDACTED]

32. [REDACTED]<sup>62</sup> [REDACTED],<sup>63</sup> [REDACTED]. [REDACTED]. [REDACTED].<sup>64</sup>  
[REDACTED].

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<sup>60</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 167.

<sup>61</sup> This addresses in part the VPRS's request for clarifications as to the scope of disclosure to the Defence in the event of the submission of multiple applications (VPRS Observations, ICC-01/12-01/15-267-Conf, para. 18) and in respect of the deadline for the screening process after the creation of the new application form (VPRS Observations, ICC-01/12-01/15-267-Conf, paras 10-11); LRV Observations, ICC-01/12-01/15-271-Conf-tiENG, para. 200.

<sup>62</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 162-166. ([REDACTED]).

<sup>63</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tiENG, paras 47, 168-169.

<sup>64</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 162-166.



*Timeline for submission of new applications*

33. The TFV proposes that no deadline be set for the submission of applications and that applicants be allowed to submit throughout the implementation period of approximately three years.<sup>65</sup> The VPRS agrees.<sup>66</sup>
34. Noting these submissions and the aforementioned lack of information needed to evaluate the overall timeline proposed,<sup>67</sup> the Chamber is not addressing the setting of any application deadline at this time.

*Treatment of an application from submission to final decision*

35. The TFV states that it will rely on VPRS for data input, processing and preliminary analysis of applications and relevant supporting documents.<sup>68</sup> The LRV supports this approach<sup>69</sup> and the VPRS expresses its readiness to assist.<sup>70</sup> The Chamber is satisfied with this course of action. It directs that the screening process should unfold as follows:
36. The VPRS receives reparations applications. It analyses them, in accordance with its internal methods (preliminary legal analysis, cross-check and quality check) to reach a preliminary assessment on the eligibility of the applicant ('VPRS Preliminary Assessment').
37. Upon completion of this VPRS Preliminary Assessment, the VPRS prepares the applications for transmission to the Defence and the LRV. Transmissions will

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<sup>65</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 161.

<sup>66</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, para. 11.

<sup>67</sup> Para. 19 above.

<sup>68</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 173-175.

<sup>69</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 177.

<sup>70</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, paras 8 and 14.

be made in batches submitted every 30 days and will also be notified to the TFV.<sup>71</sup> To the extent possible, applications are grouped by Protected Building.

38. The transmission shall contain the VPRS Preliminary Assessment as well as summaries of the applications or full applications (in redacted form when the applicant has not consented to his or her identity being communicated to the Defence).<sup>72</sup> The Chamber notes that the Defence does not oppose the disclosure of summaries in circumstances where applications are ‘straightforward’.<sup>73</sup> Thus, the VPRS will disclose the full applications only when manifest inconsistencies exist. In such cases, all supporting documents must be disclosed (also with redactions, as necessary).<sup>74</sup>
39. The subsequent procedure then varies in accordance with the result of the VPRS Preliminary Assessment. The parties will have an opportunity to make submissions within the framework set out below. The parties and VPRS shall have the opportunity to request the TFV to extend any deadlines on the grounds specified in Regulation 35 of the Regulations of the Court.<sup>75</sup> The TFV’s decision on any such extension request shall be notified to the parties and VPRS. Once the opportunity to file submissions has passed, the VPRS shall transmit its final recommendation on the eligibility of the applicant (‘VPRS Final Recommendation’) to the TFV.
40. When the VPRS Preliminary Assessment is positive, the Defence shall submit its observations on the eligibility, if any, within 15 days of receipt of the VPRS

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<sup>71</sup> Alternatively, the TFV can be given access to the VPRS internal database. The Chamber has noted the VPRS’s clarification (VPRS Observations, ICC-01/12-01/15-267-Conf, para. 12) on the feasibility of the TFV’s proposal in the event of undue delays owing to the processing of incomplete or complex applications (Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 177 and footnote).

<sup>72</sup> *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 87-96.

<sup>73</sup> Defence Observations, ICC-01/12-01/15-268-Conf-tENG, para. 27.

<sup>74</sup> See VPRS Observations, ICC-01/12-01/15-267-Conf, para. 18.

<sup>75</sup> See Defence Observations, ICC-01/12-01/15-268-Conf-tENG, para. 28, on the Defence’s concern that the deadline may be too short in the event of a high number of applications being disclosed.

transmission. Within 15 days of the expiry of the deadline for the Defence's response, the VPRS shall transmit the VPRS Final Recommendation to the TFV, with the Defence's response when applicable.

41. When the VPRS Preliminary Assessment is negative, the LRV shall submit its observations on the eligibility, if any, within 15 days of receipt of the VPRS transmission. Within 15 days of the expiry of the deadline for the response, the VPRS shall transmit its VPRS Final Recommendation to the TFV, with the LRV's observations when applicable.
42. When the VPRS Preliminary Assessment is unclear,<sup>76</sup> the Defence shall submit its observations on the eligibility, if any, within 15 days of receipt of the VPRS transmission. The LRV shall then be given 15 days to respond.<sup>77</sup> Within 15 days of the expiry of the deadline for the LRV response, the VPRS shall transmit its VPRS Final Recommendation to the TFV, with the parties' responses when applicable.
43. The Chamber approves the proposed content of the VPRS Final Recommendation<sup>78</sup> and notes that the VPRS is not in a position to provide an assessment of the authenticity of the supporting documents.<sup>79</sup>
44. At the end of the overall implementation period, the VPRS will provide a final consolidated table grouping information for all applications screened by Protected Building.

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<sup>76</sup> See VPRS Observations, ICC-01/12-01/15-267-Conf, para. 20, on the wording. The Chamber approves VPRS's proposal to first liaise with the LRV in an attempt to clarify before proceeding to make a Preliminary Assessment that the application is unclear (VPRS Observations, ICC-01/12-01/15-267-Conf, para. 23).

<sup>77</sup> The Chamber favours the streamlined approach proposed by the VPRS whereas the TFV proposed already intervening at this stage by itemising any elements that may give rise to a negative recommendation (Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 188). The Chamber believes that the transmission of the VPRS Preliminary Assessment will be sufficient.

<sup>78</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 191-193.

<sup>79</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, paras 15-16.

45. Within 15 days of receipt of the VPRS Final Recommendation, the TFV shall issue its decision. Reasons for decisions must be sufficiently clear and detailed. The decision must be notified to the Defence, the LRV and the VPRS.
46. In the event of a negative finding, the decision must also inform the applicant of his rights and be notified to the Chamber. This notification must include all relevant materials leading to the negative finding. The negative decision and these materials are to be notified as annexes to the Monthly Report. The Chamber is kept informed of positive findings solely by the inclusion of a list of eligible beneficiaries in the Monthly Report.
47. In the event of a negative finding, an applicant has a right of review by the Trial Chamber. An applicant, through the LRV, must file a request for review of the TFV's decision by the Trial Chamber within 15 days of the negative finding's notification to the Chamber (by way of the Monthly Report). The request shall set out the reasons why the TFV erred in determining why the applicant is not eligible for individual reparations. In cases where several applicants are rejected for the same reason, the LRV is encouraged, when possible, to file a consolidated request. The TFV and the Defence must file their response, if any, within 15 days of notification of the request for review.
48. The Chamber concurs with the LRV's submissions<sup>80</sup> that an Independent Review Panel is unnecessary and will cause delays. First, the Appeals Chamber has decided that victims are entitled to a judicial review for adverse individual reparations findings,<sup>81</sup> rendering an administrative review unnecessary. Second, while the TFV has made extensive submissions on the appropriateness of said mechanism in the abstract,<sup>82</sup> it does not substantiate its submission that

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<sup>80</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 179 and 181.

<sup>81</sup> *Al Mahdi* AJ, [ICC-01/12-01/15-259-Red2](#), paras 54-72.

<sup>82</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 209-221.

the Appeals Chamber judgment does not affect this position.<sup>83</sup> Third, the TFV does not provide specific information on the expected functioning of said mechanism.<sup>84</sup> Accordingly, the Chamber fully agrees with the LRV that said mechanism would create undue delays and decides that it should not be created for the present proceedings.

49. Lastly, in respect of the deadlines advanced by the TFV to process the applications,<sup>85</sup> the Chamber agrees with the LRV's submissions that they need to be considerably shortened.<sup>86</sup> The Chamber believes that the amendments made to the screening process (in particular, the fact that applications are to be transmitted on a rolling basis every 30 days, the imposition of intermediate deadlines and the suppression of the administrative review) will suffice to considerably reduce any burden on the TFV. Nevertheless, the TFV must take all necessary measures to ensure that reparations can be awarded within a reasonable deadline.

## **B. Substantive considerations related to the implementation of individual reparations**

### **1. Nature of the VPRS's and TFV's review, standard of proof and beneficiaries**

#### *Submissions*

50. **TFV Submissions** – The TFV states that, to be considered eligible for reparations for the economic or moral harm suffered, an applicant will have to establish, on a balance of probability standard:<sup>87</sup> (i) his or her identity;<sup>88</sup>

<sup>83</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 220.

<sup>84</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 222-235.

<sup>85</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 159-160.

<sup>86</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 177-181.

<sup>87</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 103 and 139.

<sup>88</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 104-105 and 141.

(ii) a sufficient connection to Timbuktu;<sup>89</sup> and (iii-a) (for reparations for economic harm) the fact that they belong to the category of individuals whose livelihood depended exclusively on the Protected Buildings;<sup>90</sup> or (iii-b) (for reparations for moral harm) the fact that they belong to the category of individuals who are in [REDACTED].<sup>91</sup> Membership of this category will be assessed without making any distinction as to status ([REDACTED]).<sup>92</sup>

51. The TFV considers that the economic or moral harm and the causal link between the crime and the harm can be presumed on the basis of the individual's belonging to the category of beneficiaries of reparations for economic harm ([REDACTED])<sup>93</sup> or to the category of beneficiaries of reparations for moral harm ([REDACTED]).<sup>94</sup>
52. In respect of the beneficiaries of reparations for economic harm, the TFV identifies two groups of individuals falling within the Chamber's parameters; [REDACTED].<sup>95</sup> The TFV seeks confirmation from the Chamber that [REDACTED].<sup>96</sup> The TFV also seeks confirmation that [REDACTED].<sup>97</sup>
53. In respect of the beneficiaries of reparations for moral harm, the TFV considers that they should include [REDACTED].<sup>98</sup>
54. Lastly, in respect of the content of the applications and supporting documents, in order to overcome the problem of a lack of official documentation, the TFV

<sup>89</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 106 and 142.

<sup>90</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 107-120

<sup>91</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 143.

<sup>92</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 144-145.

<sup>93</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 121-124 and 125-128.

<sup>94</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 146-151 and 152-155.

<sup>95</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 90-94.

<sup>96</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 95-98.

<sup>97</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 99-101.

<sup>98</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 134-138.

proposes a system of attestations by persons with authority in the community to support the applications.<sup>99</sup>

55. **LRV Submissions** – The LRV submits that, in respect of the beneficiaries of reparations for economic harm, the TFV’s interpretation of the Reparations Order is too narrow and that [REDACTED].<sup>100</sup>
56. Further, the LRV considers that the TFV’s interpretation of the exclusive link requirement is too strict [REDACTED].<sup>101</sup> It further submits that [REDACTED].<sup>102</sup> Similarly, it considers that [REDACTED],<sup>103</sup> as well [REDACTED],<sup>104</sup> should be eligible as well.
57. In respect of the beneficiaries of reparations for moral harm, the LRV submits that the TFV’s interpretation that the Chamber intended this reparation to be awarded only to those in [REDACTED].<sup>105</sup>
58. Lastly, the LRV submits that the standard of proof should take into account the difficulty of obtaining reliable documents. He is not in a position to pronounce on [REDACTED].<sup>106</sup>
59. **VPRS Submissions** – The VPRS also requests clarification regarding the beneficiaries of individual reparations.<sup>107</sup>

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<sup>99</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 168 and annex.

<sup>100</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 83, citing Reparations Order, [ICC-01/12-01/15-236](#), para. 73.

<sup>101</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 84-85.

<sup>102</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 86.

<sup>103</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 90-92.

<sup>104</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 87-89.

<sup>105</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 93-98.

<sup>106</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 52-54, and more generally on the operational difficulties, paras 67-72 and 170-172.

<sup>107</sup> VPRS Observations, ICC-01/12-01/15-267-Conf, para. 9.

## *Ruling*

60. Subject to the clarifications made below in respect of the scope of the categories of beneficiaries, the Chamber approves the criteria of assessment proposed by the TFV, including the standard of proof (balance of probability) and the non-discrimination criterion proposed.<sup>108</sup>
61. With regard to the TFV's and LRV's concerns in relation to the supporting documents, the Chamber is mindful of the reality of the situation in Timbuktu and is satisfied with the system of attestations proposed. [REDACTED].
62. Turning to the clarifications sought with regard to the beneficiaries of reparations for economic harm suffered, the Chamber recalls that in the Reparations Order it ordered that individual reparations be awarded to 'those whose livelihoods **exclusively depended upon** the Protected Buildings' ('exclusive link requirement') and held that: '[s]uch persons **include** those whose livelihood was to maintain and protect the Protected Buildings. Certain business owners may also qualify – such as a business whose only purpose is to sell sand perceived as holy from the sites of the Protected Buildings – but not owners of businesses with broader purposes who have been harmed by the loss of the Protected Buildings'.<sup>109</sup> The Chamber further clarified this ruling by indicating that guardians of the mausoleums and *maçons* tasked with prominent responsibilities in maintaining the Protected Buildings meet the exclusive link requirement.<sup>110</sup>
63. Accordingly, the Chamber agrees with the LRV that it is possible that other individuals not identified specifically in the Reparations Order had livelihoods

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<sup>108</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 103-106, 121-128, 139 and 141-155.

<sup>109</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 81.

<sup>110</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 73.



exclusively dependent on the Protected Buildings. However, the Reparations Order makes it clear that, to be eligible for individual reparations, the applicant must demonstrate the exclusive link requirement as defined and interpreted in the Reparations Order (for instance, [REDACTED]).

64. Accordingly, [REDACTED], may be eligible for individual reparations provided that they can demonstrate this link.
65. This said, the Chamber clarifies that family members of these persons are not eligible for individual reparations solely because they belong to a family in which one individual is eligible for individual reparations. [REDACTED].<sup>111</sup> The Chamber directs that, [REDACTED].<sup>112</sup> The Chamber considers that this measure, [REDACTED],<sup>113</sup> will ensure that [REDACTED].
66. As to the clarifications sought regarding the beneficiaries of reparations for moral harm suffered, the Chamber recalls that, in the Reparations Order, it found that ‘those whose ancestors’ burial sites were damaged in the attack (such as the ‘descendants of the saints’) have a different kind of emotional connection to the destroyed sites than the rest of the Timbuktu population. The Chamber therefore considers that individual reparations through compensation are necessary to address the exceptional mental pain and anguish they suffered. But the remainder of the reparations awarded to the entire community of Timbuktu must be collective in character.’<sup>114</sup>

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<sup>111</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 87-89.

<sup>112</sup> Para. 72.

<sup>113</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 245.

<sup>114</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 89 citing in particular First Expert Report, ICC-01/12-01/15-214-Conf-AnxI-Red, page 21.

67. Accordingly, the Chamber confirms the TFV's interpretation that [REDACTED]<sup>115</sup> are eligible for individual moral reparations.

## 2. Modality of individual reparations: [REDACTED]

### *Submissions*

68. **TFV Submissions** – The TFV states that it sees no reason to depart from the Chamber's intermediate liability calculations. It adds that, relying on various sources (in particular, expert reports submitted to the Chamber), it has [REDACTED].<sup>116</sup> [REDACTED].<sup>117</sup>

69. The TFV stated that, while the prospects were promising, it would be in a position to firmly confirm to the Chamber that the Board could complement the individual reparations award only after its Board meeting at the end of May 2018.<sup>118</sup>

70. **LRV Submissions** – [REDACTED].<sup>119</sup> [REDACTED].<sup>120</sup> [REDACTED].<sup>121</sup> [REDACTED].<sup>122</sup>

### *Ruling*

71. [REDACTED]<sup>123</sup> [REDACTED],<sup>124</sup> [REDACTED].

72. Accordingly, the Chamber directs the TFV to revisit its proposal and include a justified proposal in the Updated IP. [REDACTED].

<sup>115</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 134-138. [REDACTED].

<sup>116</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 82-87.

<sup>117</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 110 and 120.

<sup>118</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 34-37.

<sup>119</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 111-115 and 119-121.

<sup>120</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 116-117.

<sup>121</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 119.

<sup>122</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 191-195.

<sup>123</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 81- 88.

<sup>124</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 116-117.

73. [REDACTED].
74. This clarification, together with that on the beneficiaries of individual reparations provided at paragraphs 62-67 above, may lead the TFV to reassess the allocation of resources between individual and collective reparations, an option perfectly in line with the Reparations Order.<sup>125</sup>
75. In respect of the ability of the TFV to complement the individual awards, the Chamber notes that the Board meeting has now taken place and directs the TFV to include updated information in this respect in the first Monthly Report.

### **3. Modality of individual reparations: [REDACTED]**

#### *Submissions*

76. **TFV Submissions** – [REDACTED].<sup>126</sup> [REDACTED].<sup>127</sup> [REDACTED].<sup>128</sup>
77. **LRV Submissions** – [REDACTED].<sup>129</sup> [REDACTED].<sup>130</sup> [REDACTED].<sup>131</sup>

#### *Ruling*

78. [REDACTED].
79. [REDACTED].
80. [REDACTED].<sup>132</sup>
81. [REDACTED].

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<sup>125</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 139.

<sup>126</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 57-60.

<sup>127</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 84.

<sup>128</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 53-56.

<sup>129</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 43-45, 182-184.

<sup>130</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 185-186.

<sup>131</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 51.

<sup>132</sup> [REDACTED].

#### IV. Collective reparations

82. The Chamber recalls that it ordered collective reparations for the economic and moral harm suffered by the community of Timbuktu<sup>133</sup> as well as in the form of rehabilitation of the sites of the Protected Buildings for the damage caused.<sup>134</sup>
83. The Chamber considered that '[t]he modalities for collective reparations [of the economic harm] 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'.<sup>135</sup>
84. The Chamber considered that collective reparations of the moral harm were to be implemented 'through rehabilitation 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'.<sup>136</sup>

##### A. Submissions

85. **TFV Submissions** – The TFV submits that the 'main objective of the collective awards in the *Al Mahdi* case is to redress the economic and moral harm of the community of Timbuktu resulting from the assault on their cultural heritage,

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<sup>133</sup> Reparations Order, [ICC-01/12-01/15-236](#), paras 83 and 90.

<sup>134</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 67.

<sup>135</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 83.

<sup>136</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 90.

by means of reparative measures that integrate both economic recovery and moral redress'.<sup>137</sup>

86. It identifies 'improved economic resilience' (specifically 'improved revenue of victims from economic activities, including agriculture, trade services, small and light industry and handicrafts') and 'improved moral resilience', (specifically 'improved community dialogue, enabled through cultural and religious ceremonies that acknowledge the importance and restoration of Timbuktu's material and immaterial cultural heritage') as the expected outcomes/results of the implementation of collective reparations.<sup>138</sup>
87. The Chamber has attempted to summarise concisely and intelligibly the TFV's specific proposals for collective reparations for the economic and moral harm suffered.
88. For economic harm, it appears that the TFV seems to suggest implementing these activities through the concept of '*renforcement de la vie associative*' by delivering two types of training: (i) basic accounting and administration skills; and (ii) trauma-based healing and conflict mediation and community dialogue.<sup>139</sup> These types of training would somehow relate to four main sectors of activities: (i) agriculture (including vegetable and rice farming and collective purchase of animals);<sup>140</sup> (ii) trade ([REDACTED], although the TFV is self-contradictory on this point);<sup>141</sup> (iii) small and light industry; and (iv) handicrafts (including [REDACTED]).<sup>142</sup> One separate training aimed at repairing the

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<sup>137</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 238.

<sup>138</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 239-240.

<sup>139</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 247.

<sup>140</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 249 and 250-251.

<sup>141</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 249 and 252, setting out [REDACTED]. *See however*, para. 62 of the very same DIP setting out why [REDACTED] are in fact impossible.

<sup>142</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 249 and 254.

economic harm would focus on peaceful co-existence and social cohesion.<sup>143</sup>

These collective awards programmes will aim to recognise that women and elderly merit priority targeting.<sup>144</sup>

89. For moral harm, it appears that the TFV proposes (i) community trauma healing initiatives and group viewings of a video containing Mr Al Mahdi's excuse;<sup>145</sup> (ii) capacity-building activities for [REDACTED] in the fields of community dialogue, conflict mediation and prevention, [REDACTED];<sup>146</sup> (iii) [REDACTED], the promotion of peace [REDACTED];<sup>147</sup> (iv) a two-day course on dialogue for [REDACTED], to be identified;<sup>148</sup> (v) ceremonies for the sanctification (*resacralisation*) of the Protected Buildings;<sup>149</sup> and (vi) a cultural festival.<sup>150</sup>
90. In respect of collective reparations for the damage to protected buildings, the TFV proposes participating in [REDACTED] protection and maintenance programme,<sup>151</sup> [REDACTED],<sup>152</sup> organising capacity-building programmes [REDACTED],<sup>153</sup> and linking all these actions to the collective moral harm initiatives.<sup>154</sup>
91. The TFV states that, to mitigate the security risks, any collective reparations programmes [REDACTED]<sup>155</sup> Finally, the TFV lists the measures taken

<sup>143</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 253.

<sup>144</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 245.

<sup>145</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 259-260.

<sup>146</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 261-262.

<sup>147</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 263.

<sup>148</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 264-265.

<sup>149</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 266-267.

<sup>150</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 268-269.

<sup>151</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 270-271.

<sup>152</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 272.

<sup>153</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 273.

<sup>154</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 274-275.

<sup>155</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 63-66.

[REDACTED] and to be taken [REDACTED] for the monitoring of collective reparations.<sup>156</sup>

92. **LRV Submissions** – The LRV considers that many of the proposed programmes fall within the assistance mandate of the TFV and do not respond to the Reparations Order.<sup>157</sup> He deplores the vagueness of the TFV’s proposals.<sup>158</sup>
93. In respect of the collective reparations for the economic harm, the LRV agrees only – and with reservations – to the proposal to focus on agricultural activities and adds that he has made many specific projects known to the TFV, such as projects entailing collective farming and [REDACTED].<sup>159</sup> He makes substantiated submissions as to why all the other TFV’s proposals appear to be inappropriate or incomplete.<sup>160</sup>
94. In respect of the collective reparations for the moral harm, the LRV agrees only – and with reservations – to the proposal for trauma healing initiatives and makes proposals on its designs such [REDACTED].<sup>161</sup> While not opposing the idea, the LRV questions the TFV’s ability to organise a festival and, should that prove feasible, makes a proposal as to its organisation.<sup>162</sup> He makes

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<sup>156</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 67-68.

<sup>157</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 122.

<sup>158</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 124.

<sup>159</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 126-127.

<sup>160</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 125 on the inappropriateness of the accounting and administration skills training proposal, paras 128-133 on the inappropriateness of [REDACTED], paras 134-135 on the fact that the contemplated peaceful co-existence and social cohesion training falls within the TFV’s assistance mandate and paras 136-137 on the incompleteness and only partial responsiveness of the promotion of small and light industry and handicrafts programmes.

<sup>161</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 143-146.

<sup>162</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 155-160.

substantiated submissions as to why all the other TFV's proposals appear to be inappropriate, useless, moot or even harmful.<sup>163</sup>

95. In respect of collective reparations for the damage to Protected Buildings, the LRV agrees with the TFV's proposal but insists on the need to involve the victims.<sup>164</sup>
96. The LRV submits that, in an effort to involve them in the design of the reparations programmes, the TFV should [REDACTED].<sup>165</sup> In this respect, the LRV submits that a very important category of victims, namely the displaced victims, are omitted from the DIP. This applies to both individual and collective reparations. [REDACTED].<sup>166</sup> The DIP also omits [REDACTED] a/35140/16.<sup>167</sup>
97. Lastly, [REDACTED].<sup>168</sup>

## **B. Ruling**

### **1. Collective reparations for economic and moral harm**

98. As a general comment, in respect of the collective reparations for the economic and moral harm, the Chamber notes the lack of precision of the TFV proposals. At no point does the TFV justify exactly why the proposed measures are responsive to the Reparations Order or if they correspond to the victims'

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<sup>163</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 139-142, on the possible harmfulness of organising a viewing of Mr Al Mahdi's apology, paras 147-150 on the fact that the capacity-building activities [REDACTED] fall within the TFV's assistance mandate and appear to be useless in any case, paras 151-154 on the fact that a course on dialogue [REDACTED] falls within the assistance mandate of the TFV and appears to be useless in any case and paras 158-160 on the fact that the sanctification of the Buildings has already taken place and that the victims did not express any desire to have a further ceremony.

<sup>164</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 101-109.

<sup>165</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 110.

<sup>166</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 75-77.

<sup>167</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 78-81 and 110, and Annex H to ICC-01/12-01/15-271-Conf-tENG. The application form of a/35140/16 is to be found under ICC/01/12-01/15-200-Conf-Exp-Anx132.

<sup>168</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 123 and 164.



expectations. In fact, it seems that some of the proposals do not correspond to any apparent need.<sup>169</sup> In addition to the lack of substantiation and vagueness of the TFV proposals, the Chamber's assessment is further complicated by the fact that some of the measures proposed appear not to correspond in any way to the reality of the situation: for instance, the Chamber fails to understand why the TFV proposes the sanctification (*resacralisation*) of the Protected Buildings when their sanctification has already taken place.

99. Nevertheless, the Chamber finds that the objective and outcome identified by the TFV, namely 'improved economic resilience' (specifically 'improved revenue of victims from economic activities, including agriculture, trade services, small and light industry, and handicrafts') and 'improved moral resilience', (specifically 'improved community dialogue, enabled through cultural and religious ceremonies that acknowledge the importance and restoration of Timbuktu's material and immaterial cultural heritage') respond adequately to the Reparations Order.<sup>170</sup>

100. The TFV is therefore directed to pursue its efforts to identifying specific projects responding to these implementation parameters and to submit them in the Updated IP, with all requisite details, such as identification of the implementing partner if necessary, timeline, budget and staffing, if applicable.<sup>171</sup> Proposed projects must address the harm suffered as a result of the crime of which Mr Al Mahdi was convicted by the Court.<sup>172</sup>

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<sup>169</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, *inter alia*, paras 32-37, 50, 125, 147-150 and 158-160.

<sup>170</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 238-240.

<sup>171</sup> In respect of the impossibility of implementing cash assistance programmes (Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 62), the Chamber is satisfied with this explanation (which makes it rather strange that it is one of the TFV's proposed measures).

<sup>172</sup> See also, LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 30-32. They must also be clearly responsive to the Reparations Order and go beyond projects that could be deployed within the assistance mandate.

101. Concerning the measures needed to mitigate the security risks, while the Chamber fully approves the need for discretion it considers that one important aspect of a reparative measure is the fact that the victim knows that it is aimed at repairing the harm suffered. Hence, the Chamber will reject any project framed in a way that does not make it clear to the victims that the activity they are participating in is a reparative measure for the harm suffered as a result of the crime of which Mr Al Mahdi was convicted by the Court. The Chamber considers that the LRV's proposal that the victims be involved in the design of the collective reparations programmes should be explored by the TFV.
102. Further, noting the LRV's submission that the DIP omits victims displaced [REDACTED] and victim a/35140/16, the Chamber recalls that it has found that the community of Timbuktu as a whole was eligible for collective reparations and that it has defined the community of Timbuktu as 'organisations or persons ordinarily residing in Timbuktu at the time of the commission of the crimes or otherwise so closely related to the city that they can be considered to be part of this community at the time of the attack'.<sup>173</sup> In defining the community of Timbuktu, the Chamber explicitly notes that 'many inhabitants of Timbuktu fled Timbuktu due to the occupation' and notably relied on TFV's submissions to do so.<sup>174</sup> [REDACTED].
103. Accordingly, the TFV must take this reality into account when preparing the Updated IP. The Chamber expects specific measures directed at the displaced population belonging to the community of Timbuktu. [REDACTED].

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<sup>173</sup> Reparations Order, [ICC-01/12-01/15-236](#), para. 56 and footnote 86.

<sup>174</sup> Reparations Order, [ICC-01/12-01/15-236](#), footnote 86, citing Second TFV Submissions, [ICC-01/12-01/15-225](#), para. 15, citing First LRV Submissions, [ICC-01/12-01/15-190-Red-tENG](#), paras 15-16. *See also* FIDH/AMDH Submissions, [ICC-01/12-01/15-189-tENG](#), paras 36-37

104. Similarly, the TFV must demonstrate it has taken into account the LRV Observations in respect of victim a/35140/16 when submitting the Updated IP. The Chamber recalls that it has held in the Reparations Order that ‘it is a matter for the implementation phase to decide whether and to what extent this specific organisation will be involved in the implementation of the award’.<sup>175</sup> The Chamber also notes that a/35140/16 has requested collective reparation [REDACTED],<sup>176</sup> which appears to reflect the expectations of many of the victims. Further, as pointed out by the LRV,<sup>177</sup> this entity appears to [REDACTED].

105. Lastly, the Chamber understands the TFV’s submission that women and elderly should be prioritised for collective economic reparations<sup>178</sup> as a consequence of the approach taken [REDACTED]<sup>179</sup> and approves this measure.

## **2. Collective reparations for damage caused to the Protected Buildings**

106. In respect of the collective reparations for the damage caused to the Protected Buildings, the Chamber recalls that they have already been restored, [REDACTED], and approves the proposed measure, with the caveat that victims’ involvement is secured as requested by the LRV. Specific implementation projects must be submitted in the Updated IP, with all required details.

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<sup>175</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 80-81.

<sup>176</sup> ICC-01/12-01/15-200-Conf-Exp-Anx132, page 2.

<sup>177</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, para. 80.

<sup>178</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), para. 245.

<sup>179</sup> Para. 65. Children of these families must also be prioritised.

107. Lastly, in respect of all types of collective reparations, the Chamber is satisfied with the measures taken for the monitoring of collective reparations and expects to remain apprised by way of the Monthly Reports.<sup>180</sup>

## V. Symbolic reparations

108. The TFV indicates that the symbolic award to the Government of Mali and [REDACTED] will be awarded after approval of the Plan on a mutually agreeable date to the respective parties in accordance with an agreed ceremonial programme.<sup>181</sup>

109. The LRV does not oppose but suggests that said ceremony should not be held until the first victims receive reparations, to avoid frustrating them.<sup>182</sup>

110. The Chamber approves the proposed way forward and directs the TFV to include in the Updated IP a specific project taking into account the LRV's submission for the implementation of this symbolic reparation award.

## VI. Disposition

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

**APPROVES** the DIP, despite the serious reservations stated above, subject to the amendments and further directions to the TFV specified in the present decision;

**ORDERS** the TFV to provide, by 16:00 on 2 November 2018, an Updated IP with all selected projects and other information required by virtue of the directions specified in the present decision;

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<sup>180</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 67-68. [REDACTED]

<sup>181</sup> Draft Implementation Plan for Reparations, [ICC-01/12-01/15-265-Corr-Red](#), paras 31 and 286.

<sup>182</sup> LRV Observations, ICC-01/12-01/15-271-Conf-tENG, paras 201-202.

**APPROVES, WITH AMENDMENTS** the screening process developed for the implementation of individual reparations, in accordance with paragraphs 32-49 and 60-67;

**DIRECTS** the TFV to submit a draft application form, in accordance with paragraphs 21 and 30-31, as soon as practicable and, in any case, no later than the date of submission of the Updated IP;

**DIRECTS** the TFV to propose specific measures for the implementation of individual reparations awards by way of the Updated IP in accordance with paragraphs 21, 71-75 and 78-81;

**DIRECTS** the TFV to propose specific measures for the implementation of the collective reparations by way of the Updated IP, in accordance with paragraphs 21 and 99-105;

**DIRECTS** the TFV to propose specific measures for the implementation of the symbolic reparations by way of the Updated IP, in accordance with paragraphs 21 and 110;

**DIRECTS** the parties to respond to the Updated IP within 30 days of its notification;

**DIRECTS** the TFV to submit Monthly Reports, in accordance with paragraph 22, starting with the first Monthly Report to be submitted on 15 August 2018;

**REJECTS** as unfounded<sup>183</sup> the Defence's request for access to ICC-01/12-01/15-256-Conf-Redand to any future periodic reports on the security situation in Mali;<sup>184</sup> and

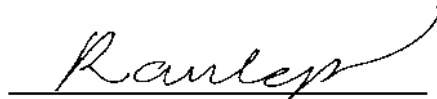
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<sup>183</sup> The Defence already has access to this confidential redacted document; the LRV has access only to the same version. No other reports of this kind – *ex parte* or otherwise – are expected to be filed in the foreseeable future.

<sup>184</sup> Defence Observations, ICC-01/12-01/15-268-Conf-tENG, disposition.

**DIRECTS** the VPRS, the Defence and the LRV to file public redacted versions of their observations within 30 days of notification of the present decision, in accordance with the redactions guidelines<sup>165</sup> applicable to this case.

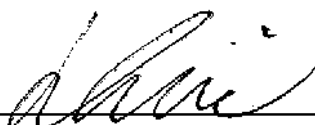
Done in both English and French, the English version being authoritative.



**Judge Raul C. Pangalangan, Presiding Judge**



**Judge Antoine Kesia-Mbe Mindua**



**Judge Bertram Schmitt**

Dated 12 July 2018

At The Hague, The Netherlands

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<sup>165</sup> See Chamber's instruction on the establishment of a consistent approach in respect of redactions (Email on 5 March 2018 at 10:33).