

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 August 2018

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Bertram Schmitt

SITUATION IN THE REPUBLIC OF MALI

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

Public

**Decision on TFV Request for Clarification Regarding Individual Reparations
for Economic Harm**

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

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Legal Representatives of Victims

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TRIAL CHAMBER VIII ('Chamber') of the International Criminal Court issues the following 'Decision on TFF Request for Clarification Regarding Individual Reparations for Economic Harm' in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 75 and 79 of the Rome Statute and Regulations 33 and 34(b) of the Regulations of the Court ('Regulations').

I. Procedural background

1. On 17 August 2017, the Chamber issued its reparations order ('Reparations Order') following Mr Al Mahdi's conviction for the war crime of attacking ten protected objects in Timbuktu, Mali ('Protected Buildings').¹ The Chamber primarily awarded collective reparations, but individual reparations were awarded to certain victims who suffered a more acute and exceptional harm relative to the rest of the Timbuktu community.² Eligibility for individual reparations was to be determined by a screening through the Trust Fund for Victims ('TFV'), and the limited number of individual reparations ordered should be prioritised in implementing the award.³ As regards the economic harm caused by Mr Al Mahdi, the Chamber awarded individual reparations for those whose livelihoods exclusively depended upon the Protected Buildings ('Exclusive Link Requirement').⁴
2. On 13 July 2018, the Chamber approved the TFV's draft implementation plan subject to amendments and further directions ('DIP Decision').⁵ As regards the individual reparations screening, the Chamber approved a procedure whereby:
 - (i) the Victims Participation and Reparations Section ('VPRS') conducts a

¹ Reparations Order, 17 August 2017, ICC-01/12-01/15-236.

² Reparations Order, ICC-01/12-01/15-236, paras 67, 76-83, 90.

³ Reparations Order, ICC-01/12-01/15-236, paras 140-46.

⁴ Reparations Order, ICC-01/12-01/15-236, para. 104(ii).

⁵ Public redacted version of 'Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations', 12 July 2018, 12 July 2018, ICC-01/12-01/15-273-Red.

preliminary assessment of each application, culminating in a final recommendation to the TFV; (ii) the TFV then issues a decision and, in the event of a negative finding, (iii) the applicant is entitled to a review of this decision by the Chamber.⁶

3. On 10 August 2018, the Trust Fund for Victims ('TFV') requested clarification on the Exclusive Link Requirement ('Request').⁷
4. That same day, the VPRS set out its criteria for legal assessment, including its interpretation of the Exclusive Link Requirement.⁸
5. On 23 August 2018, despite the Legal Representative of Victims ('LRV') being informed that it did not require leave to respond to the Request,⁹ the deadline for responses specified in Regulations 33 and 34(b) of the Regulations expired.

II. Analysis and conclusions

6. The Chamber emphasises at the outset that it has already given a lot of detail on why the Exclusive Link Requirement was imposed and who qualifies under it. In particular, the Chamber has indicated that:
 - (i) Persons whose livelihood was to maintain and protect the Protected Buildings meet the requirement.¹⁰
 - (ii) 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.¹¹

⁶ DIP Decision, ICC-01/12-01/15-273-Red, paras 35-49.

⁷ Public redacted version of "Request for clarification of the eligibility criteria for individual reparations awards related to economic harm", ICC-01/12-01/15-274-Red (public redacted version notified 15 August 2018).

⁸ Annex I to the First Registry Report on Applications for Individual Reparations, ICC-01/12-01/15-275-Conf-AnxI.

⁹ Decision on LRV Request to Reply to TFV Clarification Request, 16 August 2018, ICC-01/12-01/15-278.

¹⁰ Reparations Order, ICC-01/12-01/15-236, para. 81; DIP Decision, ICC-01/12-01/15-273-Conf, para. 63.

¹¹ Reparations Order, ICC-01/12-01/15-236, para. 81.

- (iii) The specific categories of persons identified in paragraph 64 of the DIP Decision may be eligible if they can demonstrate the requisite link.¹²
 - (iv) Family members of persons are not eligible for individual reparations solely because they belong to a family in which one individual is eligible for individual reparations.¹³
7. The Chamber does not consider any further clarification to be necessary in interpreting the Exclusive Link Requirement at this stage. The Chamber notes in this regard that, pursuant to the process the Chamber has laid down, the VPRS has already developed legal criteria for its assessments. The TFV is now tasked to manage an administrative eligibility screening, and it is primarily for the TFV itself to decide on the most reasonable way to conduct its assessment in the context of concrete cases. It is inconsistent with the notion of ordering an administrative screening for the Chamber to micro-manage the screening process.
8. The Chamber also considers clarification on this point to be particularly unnecessary given the Appeals Chamber judgment following the Reparations Order. The Appeals Chamber rejected an LRV ground of appeal which asserted that the Exclusive Link Requirement was too restrictive and required revision or further definition.¹⁴ The TFV also argues that certain interpretations of the Exclusive Link Requirement are too restrictive.¹⁵ The Chamber considers it self-evident – without any clarification – that: (i) victims who do not meet the requisite threshold are still expected to have their harms fully addressed by the collective part of the award and (ii) it never intended for the Exclusive Link

¹² DIP Decision, ICC-01/12-01/15-273-Conf, para. 63.

¹³ DIP Decision, ICC-01/12-01/15-273-Red, para. 65.

¹⁴ Public redacted Judgment on the appeal of the victims against the “Reparations Order”, 8 March 2018, ICC-01/12-01/15-259-Red2, A (*Al Mahdi* AJ), paras 26-43.

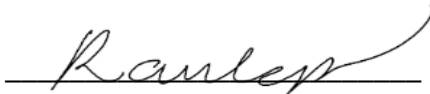
¹⁵ Request, para. 13 (‘The Trust Fund notes that the LRV has already made submissions in relation to the potential difficulties in proving eligibility under the first [more restrictive] interpretation. Without wishing to overstep its role, the Trust Fund nonetheless respectfully communicates to the Trial Chamber that information gathered [...] has confirmed the factual veracity of these concerns’).

Requirement to be so limiting as to foreclose any meaningful individual reparations. But it is for the TFV to decide how to best apply the criteria specified in the Chamber's previous decisions. Should any unduly restrictive determinations be made in the course of the screening, then the Chamber can correct them in the course of its judicial review.¹⁶

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the relief sought in the Request.

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 31 August 2018

At The Hague, The Netherlands

¹⁶ As required by *Al Mahdi* AJ, ICC-01/12-01/15-259-Red2, para. 98.