

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/15
Date: 21 November 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 Submission of Draft Application Form

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

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Legal Representatives of Victims

Mr Mayombo Kassongo

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**Office of Public Counsel for
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States' Representatives

Others

Trust Fund for Victims

REGISTRY

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Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Others

TRIAL CHAMBER VIII ('Chamber') of the International Criminal Court issues the following 'Decision on TFV Submission of Draft Application Form' in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 75 and 79 of the Rome Statute.

I. Procedural background

1. On 17 August 2017, the Chamber issued its reparations order following Mr Al Mahdi's conviction for the war crime of attacking ten protected objects in Timbuktu, Mali.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').
2. On 13 July 2018, the Chamber approved the TFV's draft implementation plan, subject to amendments and further directions.³ As regards the individual reparations screening, the Chamber ordered the TFV to produce a new draft application form, in consultation with all relevant stakeholders, and to submit it for approval.⁴
3. On 26 October 2018, the TFV submitted the new draft application form, explained the methodology behind its creation and requested that the Chamber adopt it ('Request').⁵ The draft form is annexed to the Request⁶ – along with

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

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

³ Public redacted version of 'Decision on Trust Fund for Victims' Draft Implementation Plan for Reparations', 12 July 2018, ICC-01/12-01/15-273-Red (notified 13 July 2018).

⁴ ICC-01/12-01/15-273-Red, paras 30-31.

⁵ Trust Fund for Victims' submission of draft application form, ICC-01/12-01/15-289-Red (with four annexes; redacted version notified 30 October 2018).

⁶ ICC-01/12-01/15-289-Conf-Anx1.

three further attestation forms – and was prepared following consultation with the parties and others.⁷

4. On 8 November 2018, the legal representative of victims ('LRV') responded to the Request ('LRV Response'), seeking that the Chamber: (i) adopt the New Application Form, subject to certain remarks from the LRV as to its contents, and (ii) consider the LRV's submissions on the applicable legal criteria as developed by the TFV.⁸
5. The defence for Mr Al Mahdi did not file any response.
6. On 14 November 2018, the TFV filed a monthly report⁹ which contained, *inter alia*, an updated version of the draft application form reflecting certain changes prompted by the LRV Response ('New Application Form').¹⁰ Given that the TFV changed the content of the document under consideration by the Chamber, the TFV should have formally amended its relief sought when filing the updated application form. Nevertheless, the Chamber will proceed on the understanding that it is this updated version of the form for which a ruling is sought.¹¹

⁷ See Monthly update report on the implementation plan with two confidential annexes, 14 September 2018, ICC-01/12-01/15-283-Conf (with two annexes); *Observations du Représentant légal sur le Second rapport mensuel d'activité du Fonds au profit des victimes et sur le processus de sélection des victimes aux réparations*, ICC-01/12-01/15-284-Conf, 24 September 2018, paras 47-51, 61-70; *Observations de la Défense sur le deuxième rapport mensuel ICC-01/12-01/15-283-Conf du Fonds au profit des victimes et réponse aux observations ICC-01/12-01/15-284-Conf du représentant légal des victimes*, 5 October 2018, ICC-01/12-01/15-285-Conf, paras 24, 27; Third monthly update report on the updated implementation plan, 15 October 2018, ICC-01/12-01/15-288-Conf, paras 19-22, 27-28.

⁸ *Observations du Représentant légal sur la soumission du projet de formulaire de demande de réparation et de ses annexes par le Fonds au profit des victimes*, ICC-01/12-01/15-294-Conf.

⁹ Trust Fund's fourth monthly update report on the updated implementation plan, ICC-01/12-01/15-299-Conf (with four annexes).

¹⁰ ICC-01/12-01/15-299-Conf-Anx1.

¹¹ *In this regard, see Observations du Représentant légal sur le quatrième rapport mensuel d'activité du Fonds au profit des victimes*, 20 November 2018, ICC-01/12-01/15-300-Conf, para. 14 (raising no new observations on the updated form).

II. Analysis and conclusions

7. The Chamber recalls its previous findings that: (i) it is primarily for the TFV to decide on the most reasonable way to conduct the administrative eligibility screening and (ii) the Chamber will not micro-manage the screening process, though it can correct any unduly restrictive determinations made in the course of the screening through a judicial review.¹²
8. In this spirit, the Chamber will only consider the contents of the New Application Form at this time. The Chamber will not make any broader pronouncements on the legal justifications underlying these forms or how applications should be assessed in the course of the screening process.¹³
9. Having reviewed the New Application Form, the Chamber is generally satisfied with its contents. The Chamber will limit its reasoning only to areas where the LRV took issue with the form's contents.¹⁴
10. As regards questions 4.2 and 4.3 of the New Application Form, the TFV's updated application form accepts the proposals made by the LRV in relation to these questions.¹⁵ The Chamber considers any dispute as to the content of these questions is now moot.
11. As regards question 6 of the New Application Form ('Does the applicant consent to his/her identity being disclosed to the defence? If no, please specify

¹² Decision on TFV Request for Clarification Regarding Individual Reparations for Economic Harm, 31 August 2018, ICC-01/12-01/15-280, paras 7-8.

¹³ *As discussed in, inter alia:* Request, ICC-01/12-01/15-289-Red, paras 18-26, 32-50; LRV Response, ICC-01/12-01/15-294-Conf, paras 23-44.

¹⁴ In this respect, the Chamber takes no position on what would be the appropriate French translation of the contents of the attestation forms. *See* LRV Response, ICC-01/12-01/15-294-Conf, paras 19-22.

¹⁵ *See* LRV Response, ICC-01/12-01/15-294-Conf, paras 16-17, 21.

the reasons'), the LRV submits that it should not be necessary for the victim to explain why he/she does not want their identity disclosed to the Defence.¹⁶

12. The Chamber recalls that it gave the Defence the right to file submissions in response to individual reparations requests, and this right was not disturbed by the Appeals Chamber judgment on the reparations order.¹⁷ Noting that the Defence retains a limited interest in the contents of the reparations applications, the Chamber considers it reasonable to invite victims to explain why they want to have their identities withheld.
13. However, although the victims can be invited to explain their reasons for non-disclosure, this explanation cannot be required. The Chamber recalls the Appeals Chamber's conclusion that victims may participate in the screening process 'even if they wish not to have their identity disclosed to Mr Al Mahdi.'¹⁸ As such, although this question may stay in the application form, no victim may face adverse consequences for not specifying his/her reasons for non-disclosure. Accordingly, the Chamber directs the TFV to modify question 6 of the New Application Form to make it explicit that specifying the reasons for non-disclosure is optional.

¹⁶ LRV Response, ICC-01/12-01/15-294-Conf, para. 18.

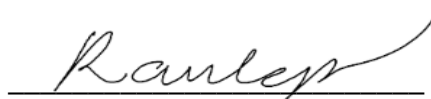
¹⁷ See Appeals Chamber, Public redacted Judgment on the appeal of the victims against the "Reparations Order", 8 March 2018, ICC-01/12-01/15-259-Red2, A ('Reparations Judgment'), paras 78-96, 99 (amending the Reparations Order to permit applicants to participate who do not wish for their identity to be disclosed to Mr Al Mahdi, but without amending the possibility for the Defence to file a submission on the individual reparations requested). See also ICC-01/12-01/15-273-Red, paras 37-47.

¹⁸ Reparations Judgment, ICC-01/12-01/15-259-Red2, para. 95.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

ADOPTS the New Application Form (ICC-01/12-01/15-299-Conf-Anx1) for use during the implementation of reparations, subject to paragraph 13 above.

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 21 November 2018

At The Hague, The Netherlands