

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/12-01/15**
Date: **11 December 2017**

THE APPEALS CHAMBER

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Christine Van den Wyngaert
Judge Howard Morrison
Judge Piotr Hofmański

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF

THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI

Public Document

**Response of the Defence for Mr Al Mahdi to
the Observations of the Trust Fund for Victims (ICC-01/12-01/15-250)**

Source: Defence for Mr Ahmad Al Faqi Al Mahdi

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

Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
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Mr Mohamed Aouini

Legal Representative of Victims

Mr Mayombo Kassongo

States' Representatives

REGISTRY

Registrar

Mr Herman von Hebel

Trust Fund for Victims

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The following is a public document.

A – PROCEDURAL HISTORY

1. Noting articles 65 and 75 of the Statute, rules 94 and 97(2) of the Rules of Procedure and Evidence and regulation 44 of the Regulations of the Court,
2. Noting the final judgment handed down on 27 September 2016,¹
3. Noting the decision of 29 September 2016 on the reparations calendar,²
4. Noting the decision of 9 March 2017 partially amending the reparations calendar,³
5. Noting the Reparations Order of 17 August 2017,⁴
6. Noting the Notice of Appeal submitted by the Legal Representative of Victims on 18 September 2017 and the subsequent Brief in Support of the Appeal (in part and limited) against the Reparations Order,⁵
7. Noting the Appeals Chamber decision of 7 November 2017 setting the time limits by which the parties and any other participants were to submit their observations on the appeal,⁶
8. Noting the Appeals Chamber decision of 24 November 2017,⁷ issued in response to the request of the Trust Fund for Victims (“Trust Fund”),⁸ extending the time limits set in the Decision of 7 November 2017,

¹ ICC-01/12-01/15-171.

² ICC-01/12-01/15-172.

³ ICC-01/12-01/15-206-Red.

⁴ ICC-01/12-01/15-236.

⁵ ICC-01/12-01/15-238-Conf-Corr-tENG, ICC-01/12-01/15-242-Conf-Exp-Corr and Annexes, ICC-01/12-01/15-244-tENG.

⁶ ICC-01/12-01/15-246.

⁷ ICC-01/12-01/15-249.

⁸ ICC-01/12-01/15-248.

9. Noting the Trust Fund for Victim's observations of 29 November 2017, to which the Defence for Mr Al Mahdi and the Legal Representative of Victims had until 11 December 2017 to respond.⁹

B – DEFENCE OBSERVATIONS

10. The Defence for Mr Al Mahdi respectfully submits to the Chamber its observations as follows:
11. The partial appeal lodged by the Legal Representative of Victims concerns only "the principle of administrative screening or the screening criterion for victims applying for individual reparations for consequential economic harm" following the destruction of the Protected Buildings.¹⁰ The Trust Fund limited the scope of its observations – to which the present document responds. The Defence intends likewise to limit its observations to this matter.
12. The Legal Representative of Victims argues that the Trial Chamber's decision grants the Trust Fund the "administrative authority to screen reparations applications and assess the applicants' eligibility". The Trust Fund pinpoints the cases where such authority is attributed to it, but in the instant case it leaves it to the Chamber to decide the limits of its role. The Defence considers that it might well be necessary for the Bench to provide clarification on this matter concerning the categories of applicants the Trust Fund is authorized to screen in the instant case.
13. The Legal Representative of Victims also states that the matter of reparations for consequential harm was not resolved by the Chamber, but was left to the Trust Fund to decide whether there is an exclusive "link between the Protected Buildings and the consequential economic losses for which individual reparations are claimed". The Legal Representative of Victims argues that this is a non-transferable prerogative of the Chamber and that the Chamber must carry

⁹ ICC-01/12-01/15-250.

¹⁰ ICC-01/12-01/15-238-Conf-Corr-tENG, para. X.

out this duty itself rather than delegate it to the Trust Fund. The Trust Fund again leaves this to the Chamber and distinguishes between victims participating in the instant proceedings and anyone who comes forward only at the reparations phase. The Defence agrees.

14. Generally speaking, given that Mr Al Mahdi has made an admission of guilt and responsibility, apologized to all victims and intends to work towards reconciliation, he has no intention of coming between the victims and their right to reparations. The Defence therefore aligns itself with this position.
15. The Legal Representative of Victims also requests that his appeal, in part and limited, not be granted suspensive effect so as to allow the normal course of the reparations envisaged with the Trust Fund.¹¹ The Trust Fund has not taken a position on this matter; for its part, the Defence does not object.
16. The Legal Representative of Victims also argues that the 139 victims he represents in the instant case have already been identified by the Chamber as eligible for the reparations to be implemented by the Trust Fund, and that the Trust Fund need not reassess their eligibility for individual reparations for harm caused by an exclusive link between the Protected Buildings and their livelihoods. The Trust Fund maintains that the Chamber should adjudicate. For its part, the Defence contends that these 139 victims have been identified as applicants in the proceedings, but that alone does not mean that they have been identified, accepted and confirmed as eligible for reparations, whether individual or not.
17. The Defence recalls that it did not have access to sufficient information in the highly redacted application forms transmitted to it to be able to take a position on the definitive victim status of the applicants. While maintaining its discretion on the exercise of victims' rights, the Defence is of the view that the Bench should determine the victim status of applicants and their eligibility for reparations for "individual" harm exclusively linked to the Protected Buildings on the basis of the information to which it has had access and any additional questions it may

¹¹ ICC-01/12-01/15-238-Conf-Corr-tENG, para. XV.

wish to ask. The Defence reiterates its request for the provision of significantly less redacted versions of the applications already transmitted to it.

18. Regarding all victims other than the 139 who have participated in the proceedings to date, the Trust Fund maintains that – in accordance with the Regulations of the Trust Fund for Victims – it is within its remit to evaluate their dossiers and decide whether they are eligible for reparations for economic harm. The Defence seconds this observation of the Trust Fund as it is perfectly justified by the Regulations of the Trust Fund, which the Trust Fund has cited at great length.
19. With reference to previous rulings in *Lubanga*, the Trust Fund has pointed out that the *Lubanga* case concerned collective reparations, whereas the instant case is about individual reparations. The Trust Fund therefore considers that the situation is not comparable and that the Bench should decide. The Defence seconds this position.
20. The Trust Fund recalls that it is an administrative organ of the Court, mandated with implementing Court orders concerning reparations for harm. As such, it states that it will not venture to comment on issues that concern only the parties and on which the Bench should decide; it is committed to faithfully implementing orders handed down from the Bench, as in *Katanga*, whether or not they relate to victims already identified by the Bench. The Defence considers this position to be the correct one as the Trust Fund is not a party to the proceedings.
21. The Trust Fund understands that, in the instant case, the Legal Representative of Victims is questioning its authority to determine the beneficiaries of individual reparations, on the basis of regulations 59 and 60 of the Regulations of the Trust Fund, which apply when the Chamber does (regulation 59) and does not (regulation 60) identify the beneficiaries.
22. On the other hand, in the context of its mandate to assist victims, the Trust Fund maintains that it is entirely free to determine the criteria it considers appropriate for identifying the victims to whom it will offer reparations. This is fully in line with the Regulations of the Trust Fund and the Defence agrees.

23. Recalling the institutional nature of the Office of Public Counsel for Victims (“OPCV”), the Trust Fund considers that it may be appropriate for the Chamber to solicit the legal views of the OPCV in this capacity and not as a (biased) legal representative – a role the OPCV does not have in the instant case. For its part, the Defence considers that the opinion of the OPCV is not required in the instant case.

FOR THESE REASONS

The Defence for Mr Ahmad Al Faqi Al Mahdi respectfully requests the Court to take into account its above observations and:

- (a) Assess in detail the dossiers of the 139 participating victims and determine, individually, their eligibility for reparations for the harm yet to be determined;
- (b) Find that the harm must be intrinsically linked to the destruction of the Protected Buildings;
- (c) Find that indisputable proof must be established that the victims did derive substantial income from activities exclusively linked with the Buildings;
- (d) *[TRANSLATION] For the indirect victims, order the meticulous verification of their link in this case with the direct victims (close relatives, individuals dependent on the principal victims and who were affected by the harm endured by those victims) and ensure the veracity of the harm they allege.¹²*
- (e) *[TRANSLATION] For any reparations for individual harm, order that the harm be meticulously assessed on a case-by-case basis, with the possibility for the Defence to submit observations – in accordance with the principle of adversarial proceedings – especially with regard to the documents submitted by the applicants as proof of their*

¹² ICC-01/12-01/15-226-Red, p 18, para. (b).

*identities, the harm they claim and the causal link between the harm and the Al Mahdi case.*¹³

Without prejudice

And justice shall be done.

Dated this 11 December 2017

At The Hague

[signed]

Mohamed Aouini, Lead Counsel

¹³ ICC-01/12-01/15-226-Red, p. 19, para. (e).