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## Al Mahdi before the International Criminal Court (ICC): Reparations Order

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### Fokus

On 17 August 2017, the Trial Chamber in the ICC's *Al Mahdi* case ordered individual and collective reparations concurrently as well as symbolic measures for the community of Timbuktu for damage to the attacked religious and historic buildings, consequential economic harm, and for moral harm. Mr. Al Mahdi's liability for these reparations was set at 2.7 million euros. The Malian state and UNESCO, representing the international community, were each awarded the symbolic amount of one euro.

#### Sources:

*The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, Reparations Order, ICC-01/12-01/15, 17 August 2017.

*The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Trial Chamber VIII, Final Submission on the reparations proceedings – The Trust Fund for Victims, ICC-01/12-01/15, 16 June 2017.

On 27 September 2016, the ICC convicted Mr. Ahmad Al Mahdi for co-perpetrating the war crime of intentionally directing attacks against religious and historic buildings under Article 8(2)(e)(iv) of the Rome Statute within the context of the non-international armed conflict in Timbuktu, Mali in 2012. Al Mahdi was sentenced to nine years imprisonment. The targeted buildings included nine mausoleums of saints and the door of the Sidi Yahia mosque. Beyond holding a prominent place in the cultural identity and religious practices of Timbuktu's communities, nine of the ten sites also constituted UNESCO World Cultural Heritage. On 17 August 2017, Trial Chamber VIII issued a Reparations Order, finding Al Mahdi liable for 2.7 million euros in expenses for individual, collective, and symbolic reparations for the community of Timbuktu. Drawing on symbolic reparations, the Reparations Order awards Mali and the international community, represented by UNESCO for the purpose of this case, one euro.

Whereas the judgement highlighted three groups – the faithful inhabitants of Timbuktu, people throughout Mali, and the international community – to have been affected by the destruction, the Reparations Order was limited to the community of Timbuktu. This stemmed from acknowledging that the harm suffered by these groups varied in degree and nature and was reflected in the fact that all reparations applications pertained to the community of Timbuktu.

The subsequent assessment focused on five categories of harm: damage to the Protected Buildings, consequential economic loss, moral harm, bodily harm, and damage to other property. Assessing the destruction of the Protected Buildings, the Chamber considered the impact on the community of Timbuktu as a whole and awarded collective reparations with the aim of rehabilitating the sites, seeking to ensure non-repetition of such attacks. The Chamber further reasoned that UNESCO's prior efforts to rebuild or restore the sites did not play a role in Al Mahdi's liability for the damage caused. For the economic harm caused by Al Mahdi, the Chamber awarded individual and collective reparations concurrently. The award of individual reparations through compensation is conditioned on *exclusive* dependence of a person's livelihood on the Protected Buildings. Collective reparations were awarded to the community of Timbuktu for rehabilitation. Awarding individual and collective reparations for moral harm, the Chamber distinguished between the community of Timbuktu and those whose ancestors' burial sites were damaged, referring to the descendants of the saints. The latter group is awarded individual reparations through compensation; the community of Timbuktu is to receive collective reparations for "mental pain/anguish and disruption of culture" (para. 90). Finding that it could not conclude to the requisite standard of proof concerning Al Mahdi's liability, the Chamber did not order reparations for any bodily harm suffered as a result of the attack and damage to other property.

In light of Al Mahdi's indigence, the Chamber reaffirmed the Appeals Chamber's determination in *Lubanga*, arguing that it would be erroneous to let this impact the reparations award. Accordingly, the Chamber encouraged the Trust Fund for Victims (TFV) to complement both the individual and collective reparations and to engage in fundraising efforts. The TFV had previously identified the continued instability in Timbuktu and Northern Mali and the number of displaced victims as a particular challenge to the drafting process and the feasibility of the implementation plan for the reparations. The TFV is to submit the implementation plan for the reparations to the Chamber for approval within the swift timeframe of six months, on 16 February 2018.

### Verantwortung

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