

Annex A

Public Redacted Version

Sent: 20 February 2020 19:40

To: Trial Chamber VIII Communications

Subject: Joint request for limited extension of time to complete the screening process

* On behalf of Pieter de Baan and Maître Kassongo *

Dear Judges,

1. The present email is a request for a limited extension of time (until 4 June 2020) to complete the collection of applications for individual reparations and is submitted jointly by the Trust Fund for Victims ("TFV") and the Legal Representative of Victims ("LRV").
2. It is submitted by way of email due to technical reasons. The Trust Fund team and the LRV's case manager [REDACTED] and the IT facilities are such that it is strictly impossible to finalise and formally submit any court's document. Additionally, it renders coordination with the LRV himself (Maître Kassongo) and the rest of the Trust Fund team (all in The Hague) close to impossible, due to the poor network connection (phone and internet). In light of the imminence of the deadline, the TFV and the LRV deem it necessary to submit their joint request this day so as to evaluate whether it should proceed to the planning of further meetings of identified potential beneficiaries. Should the judges so order, the present request can be placed on the record promptly upon return from Timbuktu.

I. BACKGROUND

1. On 12 July 2018, Trial Chamber VIII ("Trial Chamber") issued a decision on the draft implementation plan ("Decision of the DIP") wherein it laid down the features of the organisation of the screening process for individual applications for reparations.
2. On 2 November 2018, the Trust Fund filed its updated draft implementation plan ("UIP").
3. On 4 March 2019, the Trial Chamber approved the UIP and set the deadline for the collection of applications to one year after the issuance of the decision ("4 March Decision").

II. CLASSIFICATION OF THE PRESENT EMAIL

4. Pursuant to regulation 23 *bis* (1) of the Regulations of the Court, the Trust Fund and the Legal Representative of Victims ("LRV") are sending this request as confidential *ex parte*, in line with the confidentiality level of information related to individual reparations. A confidential redacted version is sent to the Defence simultaneously.

III. Request For Extension of Time

5. The LRV and the Trust Fund jointly seek a limited extension of time to complete the collection of applications from all potentially eligible victims. They submit that good cause exists within the meaning of Regulation 35 of the Regulations of the Court to the extent that (i) residual pools of victims have been identified in various cities of Mali and neighbouring countries, and actions have already been taken to reach out to these individuals; (ii) already collected applications require consolidation from the LRV (that is the collection of the required attestation form a figure of authority); (iii) the detrimental impact of leaving aside these individuals who have already been identified would be excessive compared to a limited extension of deadline the necessity to expedite the process; and (iv) extending the deadline for a limited period of time does not violate any procedural rights, be it for the Defence or victims having already submitted their claims.

(i) Groups of identified victims out of reach before 4 March 2020

6. The Trust Fund and the LRV are pleased to inform the Chamber that, since the issuance of the 4 March Decision, they have succeeded in identifying almost all potential beneficiaries and to collect their application forms when they wished to submit one. The continuous presence of the Trust Fund and the LRV in Mali since September 2019 [REDACTED] permit the collection of applications of almost all potential beneficiaries identified in Timbuktu and Bamako to date. However, keeping the set deadline would result in the exclusion of certain groups identified in Bamako, Timbuktu and outside of these locations. Lastly, it cannot be excluded that certain individuals would present themselves shortly after the deadline, in particular those associated with [REDACTED]

Potential beneficiaries identified in Bamako and Timbuktu

7. During the identification and collection processes, the Trust Fund and the LRV were faced with two circumstances. First, some of the individuals identified were unable to attend the collection meetings in spite of the fact that several invitations were made to each family, in Timbuktu and in Bamako. In particular, in Timbuktu, applications were collected [REDACTED]

[REDACTED] Therefore, some families preferred coming in small groups to avoid being too visible if they all came to [REDACTED] on the same day (bearing in mind that since these families are the ones associated with the mausoleums, they are notable and very well known in Timbuktu). Second, in Bamako, despite meetings being sometimes schedules on Saturdays and Sundays, attendance to the Trust Fund and LRV collection meetings was complicated by the fact the people's work schedule did not always enable them to show up and that distances and traffic within Bamako required that each individual free themselves up for at least half a day. Thus, for each mausoleum, a very limited pool of identified individuals having expressed their willingness to submit an application remains to be met. By way of example, the [REDACTED]

8. Most importantly, the Trust Fund and the LRV have progressively identified residual pools of victims outside Bamako and Timbuktu as well as in neighbouring countries. These individuals have been either discovered by the Trust Fund or that they have approached the Trust Fund *motu proprio* after learning about the reparations procedure. They possess a low yet existent knowledge of the fact that reparations are being awarded as the result of the *Al Mahdi* case and some of them have already formed some expectations.

9. By way of example, the Trust Fund and the LRV are pleased to report that they were able to collect an application from a Malian potential beneficiary [REDACTED] [REDACTED]. During the meeting with the Trust Fund in [REDACTED] the potential beneficiary expressed his great appreciation for having the possibility to submit an application in the context of the *Al Mahdi* case while residing outside of Mali.

10. The Trust Fund and the LRV submit that the extension of the deadline will be used to collect applications from target areas where individuals related to the Protected Buildings currently reside. The locations where most of these potential beneficiaries reside include

[REDACTED] The Trust Fund has further gathered information on the number of individuals per town connected to the Protected Buildings. [REDACTED]

██████████ For those victims living in other locations, the Trust Fund and the LRV will arrange their transportation to bigger urban centres or, as a measure of last resort, interviews on the phone. This would only be feasible if the education level of the applicant is adequate, and the telecommunication networks are reliable.

11. In short, the poor quality of the telecommunication system in the Sahel region, the security situation rendering any travel extremely cumbersome (in terms of the logistics and safety aspects associated to it and that need to be carefully planned, involving a number of

external stakeholders) are such that reaching out to all these individuals by the deadline of 4 March 2020 is unfeasible.

12. The Trust Fund and the LRV wish to assure the Chamber that concrete steps have already been taken to ensure the prompt collection of applications. Specifically, in relation to cities within Mali such as [REDACTED] the Trust Fund has already prepared a mission plan for one of its local intermediary to travel there and collect all these applications. Logistical constraints are such that it is not feasible to complete the collection by 4 March 2020. To be concrete: flights from Timbuktu to [REDACTED] are scheduled only once a week on Wednesday and obtaining a sit for a non UN staff takes at least a week. Besides, it was not deemed advisable to organise such a mission before reaching a certain level of confidence that all, or at least most, potential individuals residing there have been identified and before making sure they are interested to submit an application. Organising many missions there would not only be financially ill-advised but would also increase the exposure of the intermediary. Similarly, for those individuals residing in Bamako, meetings have been [REDACTED] [REDACTED] so that chances that individuals can free themselves up are increased.

(ii) Consolidation of applications

13. The LRV wishes to bring to the attention of the Chamber the fact that complications faced during the consolidation process (that is the act of contacting a figure of authority about an application and making them sign an attestation) also call for an extension of time.

14. Indeed, the fact that the vast majority of persons of authority reside in Timbuktu tends to slow down the consolidation process. First the consolidation process requires a prior analysis of the application in order to determine the person of authority entitled to consolidate the application, depending on the Protected Building at issue. Although the first mission to Timbuktu allowed for signification progress with the consolidation of existing applications, in view of the expected number of applications to be collected during that mission (an average day generating approximately 40 applications), the LRV believes that it will be unable to consolidate the entirety of the applications collected by 4 March 2020.

(iii) Detrimental impact of leaving aside this group of potential beneficiaries

15. The LRV and the Trust Fund submit that the detrimental impact of not permitting these individuals to submit a reparation application are much greater than the slight delay in completing the screening process by 4 March.

16. The LRV and the Trust Fund respectfully recall that, so far, victim identification processes at the Court have been confronted with the impossibility to identify all potentially eligible victims in a span of time that would not violate any procedural rights, be if of the

Defence or of other victims having already submitted their claim. For instance, this has been the situation in cases arising out of the situation of the Democratic Republic of Congo. In these contexts, the prospect of identifying all eligible victim is almost impossible to meet, considering that the Ituri region spread over 65 000 square kilometers, that it is inhabited by 3.5 to 5.5 million inhabitants and that the charges brought against the accused or convicted persons are broad.

17. The situation in Timbuktu, and in the Al Mahdi case in particular is very different. While it is difficult to access accurate data, the city and its surroundings counts approximately 70 000 individuals. The criteria for individual reparations set out in the Reparations Order are such that the pool of potential victims is clearly defined and encompasses a finite number of individuals, which would in turn call for a relatively short and well-established extension of time. Families associated with the Protected Buildings are all either of Songhai (the vast majority) or Arab (mostly for direct descendants of Al Kounti) ethnicity and [REDACTED]

[REDACTED] Due to the cultural subset associated with the mausoleums, all potential beneficiaries would know each other, and despite continuous reminders about confidentiality, share information with each other.

18. A unique feature of this group of individuals is also that a lot of them are very mobile, regularly traveling for personal or professional purposes within the country and even outside Mali. While this factor has facilitated the operations at the time during which travelling to Timbuktu was impossible, allowing for engagement in the capital, it now constitutes a challenge as individuals are constantly moving around and are sometimes out of reach for relatively prolonged period of time.

19. Considering the tightly-knit nature of the communities' connections, leaving aside one victim would become evident and could also be falsely interpreted as the result of some hidden intention from the Court. This would result in harm to the individual affected and potentially create familial and social tensions since beneficiaries would be perceived as having "retained" the information for their own interest. It is noted that obtaining lists of potential beneficiaries proved difficult precisely for this reason: those in a position to generate such lists were often very reluctant because they feared that they would forget individuals. This fear was so strong that most of them initially elected to not communicate any information. It is only when they were reassured that the list they would provide was just a working tool, which would be enhanced in the course of field work, that they accepted to share names with the Trust Fund.

20. While it is not possible to travel to all locations mentioned above (for security and budgetary reasons), it is also not conceivable to not enable potentially eligible victims residing in these locations to make an application for the mere reason that they do not live in

the usual area of operations of the Court, moreover when the reason for their displacement is largely due to the conflict. Excluding them on the basis that their place of residence is such that it did not permit to reach them early enough would lead to revictimization.

21. Additionally, the overall perception of a large group of victims is that the process started in November 2019, that is when the Trust Fund and the LRV succeeded to operate within Timbuktu. While information had been disseminated months before through community leaders in Timbuktu, it penetrated the communities much deeper after the November mission. Indeed, the direct interaction with the Timbuktu population, with the potential eligible women and the [REDACTED] harnessed the community's acceptance of the reparation process.

22. The Trust Fund and the LRV wish to report to the Trial Chamber that the Reparations Order has been very positively received, and that it is playing a positive social role in narrating and repairing the crimes committed by Mr Al Mahdi. In particular, it is appreciated that it is collective in nature and recognised that the sub-group identified by the Trial Chamber as having suffered an increased form of harm and thereby eligible for individual reparations (e.g. direct descendants, masons and guardians) has been correctly identified and defined. The Trust Fund and the LRV fear that excluding victims, solely for the reason that they could not be reached sufficiently early may put a negative and counter-productive spin on the way reparations are being received so far.

(iv) The extension of time does not affect any other rights

23. In addition to the potentially detrimental impact on the familial and social fabric of late comers being rejected, the Trust Fund and the LRV submit that victims have a procedural right to equal treatment and that it would be unfair and unjustifiable to reject an application on the sole basis that it was submitted late. In this context, the Trust Fund and the LRV recall that in the DIP Decision, the Chamber expressly stated that outreach should be conducted in a discreet fashion. This methodology proved apposite to the security situation but its inevitable corollary is that the information has spread at a different pace than it would have if unrestricted public outreach activities could have been conducted.

24. The LRV and the TFV submit that granting the present request does not impact adversely on any protected right of the Defence or of any other victim already associated with the process. The Defence will not be affected in any manner by this decision as the liability amount has already been set for a long time and victims having submitted an application prior to the deadline will receive their reparations without any delay. Further, the limited extension sought will also not affect the time frame of implementation of the reparations.

(v) Conclusion

25. As a result, the Trust Fund and the LRV respectfully request that the Chamber grants an extension of time to complete the collection of applications. The Trust Fund has already proceeded to the identification of those residing outside of Bamako and Timbuktu, that is, the extension is not requested with the intent to continue identifying new groups of potentially eligible victims. It is merely required to make the logistical arrangements necessary to collect forms from those individuals already identified individuals. Further, the Trust Fund and the LRV have already taken measures to make sure that the collection of these application forms is conducted as a matter of priority.

26. The Trust Fund and the LRV respectfully request an overall extension of four months, with the new submission deadline being set on 4 July 2020. The Trust Fund and the LRV believe that three months (that is until 4 June 2020) will be sufficient to take the necessary steps to reach out to victims. In this time, the Trust Fund and the LRV are planning to organise missions within and outside Mali to make sure that all individuals identified are met and placed in a position to submit an application. Organizing missions outside Mali require more logistical arrangements to the extent that the Court does not have field offices in some of the locations. This time would also permit conducting conference calls for individuals completely out of reach, and enable the consolidation of applications on the side of the LRV.

27. While the number of potential beneficiaries is decreasing as a result of the circles of affected individuals becoming smaller, in the Trust Fund's and LRV's experience each group of victims met leads to the identification of new potential beneficiaries. Accordingly, the Trust Fund and the LRV respectfully submit that a fourth month is needed to allow the last residual pool of potential beneficiaries to come forward. During this last fourth month, however, no proactive identification or collection steps would be taken (such as planning conference calls or missions). However, should any individual present themselves, their application would be received.

28. Accordingly, the LRV and the Trust Fund respectfully request the Trial Chamber to grant an extension of time to complete the screening process by 4 July 2020, with no proactive identification or collection action to be undertaken from 4 June 2020 onwards.

FOR THE FOREGOING REASONS

The Legal Representative of Victims and the Trust Fund respectfully request the Trial Chamber to extend the deadline to complete the identification of potential individuals and the collection of their applications to 4 July 2020, as set out in paragraph 26 above.

Kind regards,

Mayombo Kassongo and Pieter de Baan