

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/12-01/15
Date: 2 December 2016

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**

**UNESCO AMICUS CURIAE OBSERVATIONS
SUBMITTED PURSUANT TO RULE 103 OF THE RULES OF PROCEDURE AND EVIDENCE**

**Source: UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND
CULTURAL ORGANIZATION (UNESCO)**

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

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Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

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UNESCO's general approach to conflicts

1. As a global leader in the protection of cultural heritage, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has a long record of leading interventions aimed at protecting and rehabilitating cultural heritage in times of conflict, from early campaigns in Cambodia and Bosnia-Herzegovina, to more recent efforts in Mali, Libya, Syria, Yemen, Afghanistan and Iraq. Cultural heritage is particularly vulnerable during conflicts due to its symbolic value, facing the threat of intentional destruction, looting and the disruption of intangible cultural practices. The loss of heritage during times of conflict can deprive a community of its identity and memory, as well as the physical testimony of its past. Those destroying cultural heritage seek to disrupt the social fabric of societies. By destroying culture, adversaries seek to weaken the foundations of national cohesion by disseminating fear and hatred, weakening resistance and breaking the bonds that tie individuals and groups together.
2. UNESCO strongly believes that such 'cultural cleansing' constitutes a security issue. Protecting culture is a core value of the international community that cannot be separated from the protection of human life.
3. In the face of protracted conflicts, UNESCO has adopted a Strategy for reinforcing the Organization's action for the protection of culture and the promotion of cultural pluralism in the event of armed conflict. The strategy's two key objectives are to:
 - strengthen the ability of Member States to prevent, mitigate, and recover the loss of cultural heritage and diversity as a result of conflict;
 - incorporate the protection of culture into humanitarian action, security strategies and peacebuilding processes.

4. In this context, the 39th session of the World Heritage Committee adopted the Bonn Declaration on 29 June 2015, which condemns attacks against World Heritage sites perpetrated by the Islamic State in Iraq and the Levant (ISIL, also known as Daesh) and expresses its concern over other sites in Syria and Yemen. It further recommends that the cultural dimension be included in peacekeeping efforts undertaken by the United Nations where necessary and that UNESCO coordinate the international response regarding the protection of cultural heritage in conflict and natural disaster situations.
5. The protection of cultural heritage is an important part of international humanitarian law, notably under the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict and its two Protocols, which forbids targeting cultural property and using its immediate surroundings for military purposes. Intentionally directing attacks against cultural heritage and its misappropriation in armed conflicts may constitute war crimes as stipulated by Article 8 of the Rome Statute of the International Criminal Court (ICC). In response to the increased targeting and destruction of culture in conflict situations, UNESCO is working to ensure that international obligations in this regard are upheld and to fight impunity for cultural heritage destruction.
6. UNESCO also works at the United Nations to encourage the adoption of Security Council resolutions condemning the destruction of cultural heritage and the illicit trafficking of cultural property. Several resolutions have been passed recently by the United Nations Security Council, thanks to UNESCO's advocacy, as in the case of Syria, Iraq and Mali. The United Nations Security Council Resolutions 2100 (2013) on Mali and 2199 (2015) on Iraq and Syria represent a major breakthrough in recognizing the importance of cultural heritage in maintaining peace among communities, as well as the links between the illicit trafficking of cultural property and the financing of extremist groups.

7. Finally, UNESCO implements its mandate through its conventions – legally binding international treaties – covering the Protection of Cultural Property in Armed Conflict (1954), the Fight against the Illicit Trafficking in Cultural Property (1970), World Heritage (1972) and Intangible Cultural Heritage (2003). These instruments provide legal frameworks for protecting cultural heritage. These conventions contain mechanisms for international cooperation, including financial assistance, in various aspects of heritage protection. They establish obligations for their States Parties and a global collective responsibility for protecting heritage. Decisions and actions in that respect are taken through the intergovernmental committees established under each Convention. In the event of a conflict, UNESCO calls on the attention of the States involved and on those that are Party to the Conventions to comply with their international obligations, in particular those under the 1954 and 1970 Conventions. The nature of contemporary conflicts, however, presents as a challenge, as they often involve armed non-state actors, with whom intergovernmental organizations cannot establish relations. UNESCO tries to develop cooperation with entities such as the Geneva Call, which works in promoting principles inspired from international humanitarian law along armed non-state actors.

The Case of Timbuktu

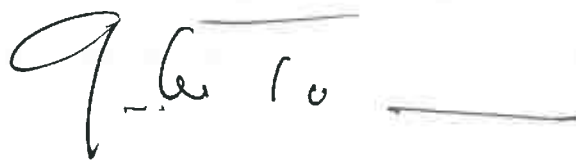
8. Timbuktu was inscribed on the World Heritage List in 1988 under criteria (ii), (iv) and (v). The property is made up of the three large mosques (Djingareyber, Sankoré and Sidi Yahia), as well as 16 mausoleums of saints, which bear witness to the city's prestigious past and its essential role in spreading Islam in Africa, serving as an intellectual, spiritual and cultural capital of the south Sahara region in the 15th century.

9. This heritage reflects the life and history of local communities, and represents a link between the past, present and future. In addition, for residents the mausoleums of saints, the oldest of which dates from the 13th century, also provide a psychological sense of protection of their city. These mausoleums occupy a prominent place in the cultural identity and religious beliefs of local communities. In the eyes of the inhabitants of Timbuktu, they remain important places of pilgrimage for the faithful, who come not only from Mali and neighboring countries of West Africa, but from other countries in the Islamic world, to make pilgrimages on Mondays and Fridays.
10. The destruction of monuments¹ has undermined the preservation of Timbuktu's history and identity and, more generally, Mali's rich culture. It has given rise to social and moral unrest characterized by fear, humiliation, trauma and despair. Local communities have seen their beliefs shaken and their dignity flouted. This situation has disrupted the social fabric and created a threat to national unity, social cohesion and peace.
11. In response to this situation, and at the request of Mali, UNESCO mobilized several partners, including the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), the European Union and Switzerland, to support efforts to rebuild and rehabilitate the cultural heritage of Timbuktu and to assist local communities to recover.

¹ According to UNESCO, during the occupation of Timbuktu by armed rebel groups between April 2012 and January 2013, 14 of the 16 mausoleums were completely destroyed. Three mosques were also poorly maintained. The mosque of Sidi Yahia was the most affected. Its 'secret door' was torn off, and structural problems have worsened. The emblematic Al Farouk monument, symbolizing the divine protection of the city, was razed. Even the city's ancient manuscripts were not spared; 4,203 were burned or stolen. Traditional cultural manifestations and practices were banned.

12. The destroyed mausoleums were completely rebuilt in 2015, while the mosques and libraries of manuscripts were rehabilitated, with some 400,000 ancient manuscripts saved. The process of reconstructing the Monument Al Farouk was initiated. Over US \$ 3 million was provided for these activities.
13. In this context, UNESCO cooperated with the ICC between January 2013 and October 2015, including through the organization of several working sessions during which UNESCO provided the ICC with critical photographic and cartographic documentation pertaining to the destruction of cultural heritage in Timbuktu. A representative of the ICC also participated in the first international mission to assess damage to cultural heritage in Timbuktu organized by UNESCO in June 2013. Technical expertise from UNESCO was also mobilized to respond to ICC questions and provide all necessary clarifications for the ICC investigation. UNESCO's contribution was instrumental in defining the charges against Ahmad Al Faqi Al Mahdi, the leader of the rebel group, who was sentenced on 27 September 2016 to nine years in prison for the deliberate destruction of nine mausoleums in Timbuktu.
14. Today, the various actions carried out by UNESCO and the Malian Government will contribute to enabling communities to regain confidence, hope and strength, to recover and to plan for the future. These communities have demonstrated tremendous courage, embodying the values of tolerance, dialogue and peace in a manner that resonates well beyond the borders of Mali.
15. With regard to financial compensation for damages caused by the destruction of the monuments in Timbuktu, UNESCO will support any ICC action aimed at assisting local communities, as they have been the principal victims. It would be appropriate that these reparations be used for collective actions. These actions should be taken and defined in close consultation with the local communities and

the Malian Government. UNESCO stands prepared to support these efforts by sharing its rich experience in rebuilding the cultural heritage of Timbuktu.

A handwritten signature in black ink, appearing to read 'G. Trasancos', is positioned above a horizontal line. The signature is written in a cursive style with some underlines.

Signed by Guillermo Trasancos, Officer-in-charge,
on behalf of Ms. Anna Segall, Legal Adviser of the United Nations Educational,
Scientific and Cultural Organization (UNESCO)

2 December 2016

Paris, France