

1 International Criminal Court
2 Trial Chamber VIII
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Ahmad Al Faqi Al Mahdi - ICC-01/12-01/15
5 Presiding Judge Raul Pangalangan, Judge Antoine Kesia-Mbe Mindua and
6 Judge Bertram Schmitt
7 Judgment and sentencing hearing - Courtroom 3
8 Tuesday, 27 September 2016
9 (The judgment starts in open session at 11.32 a.m.)
10 THE COURT USHER: [11:32:24] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE PANGALANGAN: [11:32:45] Good morning, everyone, and
14 welcome back to the courtroom.
15 Court officer, please call the case.
16 THE COURT OFFICER: [11:32:54] Thank you, Mr President.
17 The situation in Mali in the case of The Prosecutor versus Ahmad Al Faqi Al Mahdi, case
18 reference ICC-01/12-01/15.
19 For the record, we are in open session.
20 PRESIDING JUDGE PANGALANGAN: [11:33:10] Thank you. Thank you so much.
21 Trial Chamber VIII of the International Criminal Court hereby delivers a summary of the
22 Chamber's judgment in the case of The Prosecutor versus Ahmad Al Faqi Al Mahdi as to
23 whether Ahmad Al Mahdi is guilty of the crime of intentionally directing attacks against
24 protected objects, alleged to have been committed between 30 June 2012 and 11 July 2012
25 in Timbuktu, Mali, against 10 sites of a religious and historic character. The judgment is

1 being issued simultaneously in English, French and Arabic. The Chamber underscores
2 that only the written judgment in English is authoritative.

3 I now ask the parties to introduce themselves. For the appearances we will begin with
4 the Prosecution.

5 MS BENSOUA: [11:34:21] Mr President, the Office of the Prosecutor is represented
6 today by Gilles Dutertre, senior trial lawyer; Colin Black, trial lawyer;
7 Jagganaden Muneesamy, trial lawyer; Sarah Coquillaud, assistant trial lawyer;
8 Richard Nsanzabaganwa, cooperation adviser; Sanja Bokulic, case manager; and myself,
9 Fatou Bensouda.

10 PRESIDING JUDGE PANGALANGAN: [11:34:54] Thank you. Thank you so much,
11 Madam Prosecutor.

12 And for the Defence.

13 MR AOUINI: [11:35:10] (Interpretation) Good morning, your Honours. The
14 Defence team of Mr Ahmad Al Faqi Al Mahdi is represented by myself, by
15 Jean-Louis Gilissen, Emma Sylviane Glodjinon, Colin Gilissen, Judith Akebe,
16 Amin Abed Ali, and Ms Elodie Toujas, as well as myself, Mohamed Aouini. Thank you,
17 your Honour.

18 PRESIDING JUDGE PANGALANGAN: [11:35:41] Thank you so much, Counsel.
19 And for the victims.

20 MR KASSONGO: [11:35:50] (Interpretation) Thank you very much, your Honour.
21 Mayombo Kassongo, representative of the victims. And my team is represented by
22 myself along with Clara Gérard-Rodriguez. She is with me today and we are entirely at
23 your disposal, your Honour. I thank you.

24 PRESIDING JUDGE PANGALANGAN: [11:36:14] Thank you. Thank you very much,
25 Counsel.

1 The Chamber will now start by recalling briefly the procedural steps that led up to today's
2 hearing.

3 On 18 September 2015, the Single Judge of Pre-Trial Chamber I issued a warrant for
4 Mr Ahmad Al Faqi Al Mahdi's arrest. He was transferred to The Hague on 26
5 September 2015 and his first appearance took place on 30 September 2015.

6 On 18 February 2016, the parties reached a plea agreement in relation to the charge.

7 Mr Al Mahdi indicated to the Prosecution that he accepted his responsibility for the crime
8 charged and provided a detailed account of his actions.

9 On 24 March 2016, the Pre-Trial Chamber confirmed the charge.

10 The Chamber was constituted on 2 May 2016 and has since issued 18 decisions and orders
11 and 12 oral decisions. One status conference was held on 24 May 2016 in preparation for
12 the trial. During this status conference, it was decided that, in the event of a conviction,
13 the judgment and sentence in this case would be rendered simultaneously.

14 The trial was held between 22 and 24 August 2016. Mr Al Mahdi made an admission of
15 guilt. All oral submissions relating to the judgment and sentencing were received, and
16 the Prosecution presented the testimony of three witnesses.

17 On the first day of trial, Mr Al Mahdi confirmed that he understood the nature of the
18 charge against him, and the consequences of an admission of guilt; that he had made an
19 admission of guilt voluntarily, after sufficient consultation with Defence counsel; that he
20 waived his rights to plead not guilty and to require the Prosecution to prove the charges
21 beyond reasonable doubt at a full trial; not confess guilt and to remain silent; raise
22 defences and grounds for excluding criminal responsibility, and to present admissible
23 evidence at a full trial; examine the witnesses against him and to obtain the examination
24 of witnesses on his behalf at a full trial; and appeal a conviction or sentence, provided the
25 sentence is not in excess of the recommended sentencing range; finally, that he accepted

1 his individual criminal responsibility for the charge, including all modes of liability
2 alleged.

3 The Chamber will now present the Accused and the crime he is charged with.

4 Mr Ahmad Al Faqi Al Mahdi, also known as Abou Tourab, was born in Agoune in the
5 region of Timbuktu, Mali. He is between 30 and 40 years old and belongs to a family
6 recognized in his community for having a particularly good knowledge of Islam. Having
7 received Quranic education since his childhood, Mr Al Mahdi has a thorough knowledge
8 of the Quran and gave lectures as an expert on religious matters. He joined the armed
9 group known as Ansar Dine in April 2012.

10 Mr Al Mahdi is charged with intentionally directing attacks against 10 buildings of a
11 religious and historical character in Timbuktu, Mali, between 30 June 2012 and 11
12 July 2012.

13 The Chamber will now recall the context in which the alleged crime was committed.

14 In January 2012, a conflict of non-international character took place in the territory of Mali.

15 In the context of and in relation to that conflict, armed violence took place and led to
16 different armed groups taking control of the north of the country. In early April 2012,
17 following the retreat of Malian armed forces, the groups Ansar Dine and Al-Qaeda in the
18 Islamic Maghreb took control of Timbuktu. From then until January 2013, Ansar Dine
19 and the AQIM imposed their religious and political edicts on the territory of Timbuktu
20 and its people. They did so through a local government, which included an Islamic
21 tribunal, an Islamic police force, a media commission and a morality brigade. This
22 morality brigade was called the Hesbah.

23 After living briefly in Algeria, Mr Al Mahdi returned to Mali around the beginning of
24 April to provide support to these armed movements. Mr Al Mahdi was in direct contact
25 with the leaders of Ansar Dine and AQIM, including Iyad Ag Ghaly, the leader of Ansar

1 Dine, Abou Zeid, the 'Governor' of Timbuktu under the armed groups, Yahia Abou Al
2 Hammam, an AQIM chief, and Abdallah Al Chinguetti, a religious scholar within AQIM.
3 Mr Al Mahdi was viewed as an expert on matters of religion, and was consulted in this
4 capacity, including by the Islamic tribunal. Mr Al Mahdi was very active in aspects of
5 the Ansar Dine and AQIM administration.

6 Abou Zeid asked Mr Al Mahdi to lead the Hesbah, and he did so from its creation in
7 April 2012 until September 2012. He wrote a document on the role of the Hesbah and its
8 objectives, which was then distributed to the other government structures put in place.
9 The Hesbah was entrusted with regulating the morality of the people of Timbuktu, and of
10 preventing, suppressing and repressing anything perceived by the occupiers to constitute
11 a visible vice.

12 When the governor of Timbuktu at the time, Abou Zeid, and his collaborators were
13 informed of the practices of the Timbuktu population related to these mausoleums,
14 Mr Al Mahdi was asked to monitor the cemeteries visited by the residents. The objective
15 was to raise awareness amongst the population to stop such practices and, as the case may
16 be, to prohibit them from pursuing them. Mr Al Mahdi did this monitoring for around
17 one month, taking notes on the inhabitants' behaviour at the mausoleums, meeting with
18 local religious leaders and explaining on the radio what could and could not be done at
19 the mausoleums.

20 The mausoleums of saints and mosques of Timbuktu are an integral part of the religious
21 life of its inhabitants. Timbuktu's mausoleums and mosques constitute a common
22 heritage for the community. These mausoleums are frequently visited by the
23 residents - they are places of prayer and, for some, places of pilgrimage.

24 I will now proceed to discuss the destruction of the sites.

25 In late June 2012, the leader of Ansar Dine, Ag Ghaly, made the decision to destroy the

1 mausoleums, in consultation with two prominent AQIM members, Al Chinguetti and Al
2 Hammam. Mr Al Mahdi was also consulted by Abou Zeid before this decision was
3 made. Mr Al Mahdi expressed his opinion that all Islamic jurists agree on the prohibition
4 of any construction over a tomb, but recommended not destroying the mausoleums so as
5 to maintain relations between the population and the occupying groups. Nevertheless,
6 Ag Ghaly gave the instruction to proceed to Abou Zeid, who in turn transmitted it to
7 Mr Al Mahdi in his capacity as the chief of the Hesbah.

8 Despite his initial reservations, Mr Al Mahdi accepted to conduct the attack without
9 hesitation on receipt of the instruction. He was conscious of the object of the common
10 plan to attack these sites. Mr Al Mahdi wrote a sermon dedicated to the destruction of
11 the mausoleums, which was read at the Friday prayer at the launch of the attack. He
12 personally determined the sequence in which the buildings were to be attacked.

13 The attack itself was carried out between 30 June 2012 and 11 July 2012. Ten of the most
14 important and well-known sites in Timbuktu were attacked and destroyed by
15 Mr Al Mahdi and other individuals adhering to the same common plan:

16 (i) The Sidi Mahamoud Ben Omar Mohamed Aquit mausoleum, on 30 June 2012:
17 Around 60 individuals, in the presence of Mr Al Mahdi and Al Chinguetti, razed the
18 mausoleum to the ground. Armed men ensured the security of those who were actively
19 engaged in destroying the mausoleum.

20 (ii) The Sheikh Mohamed Mahmoud Al Arawani mausoleum on 30 June 2012; it was also
21 destroyed.

22 (iii) The Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti mausoleum,
23 located in the Sidi El Mokhtar cemetery and visited by pilgrims from Mali and elsewhere,
24 on 30 June 2012. Mr Al Mahdi supervised the destruction and gave instructions, along
25 with tools, to the attackers.

1 (iv) The Alpha Moya mausoleum, located in the Alpha Moya cemetery and visited in
2 order to pray and make offerings, on 30 June 2012. Mr Al Mahdi directly participated
3 and Abou Zeid also visited the site around the time of the attack. As previously, there
4 was a security cordon of 30 combatants protecting those who were engaged in the
5 destruction.

6 (v) The Sheikh Mouhamad El Mikki mausoleum, a place of spiritual retreat and
7 reflection, located in the Three Saints Cemetery, on the following day, 1 July 2012. The
8 mausoleum was completely destroyed.

9 The Sheikh Abdoul Kassim Attouaty mausoleum, located in the Three Saints Cemetery
10 and built in the sixteenth century on 1 July 2012.

11 We are now on number seven. The Sheikh Sidi Ahmed Ben Amar Arragadi mausoleum,
12 located in the Three Saints Cemetery, on 1 July 2012. Mr Al Mahdi physically
13 participated in the attack, which completely destroyed the mausoleum.

14 (viii) The door of Sidi Yahia mosque on 2 July 2012. Legend had it that this door had
15 not been opened for 500 years and that opening it would lead to the Last Judgment.

16 Al Chinguetti told Al Mahdi that the door had to be opened, and both went to the site
17 with pickaxes that Mr Al Mahdi bought with Hesbah funds. Mr Al Mahdi explained the
18 destruction to journalists while it was taking place.

19 (ix) and (x) The two mausoleums adjoining the Djingareyber mosque, especially visited
20 on Mondays and Fridays and for important religious celebrations, on or around 10 to 11
21 July 2012. Al Chinguetti asked Mr Al Mahdi to destroy the mausoleums, who agreed
22 and oversaw the attack. Mr Al Mahdi physically took part in the destruction, and
23 decided at one point that a bulldozer should be used. When the attackers were clearing
24 the rubble towards the end of the acts of destruction, Abou Zeid and Al Chinguetti,
25 among others, came to provide and demonstrate their support at the site. The

1 mausoleums were destroyed -- the mausoleums destroyed were the Ahmed Fulane
2 mausoleum and the Bahaber Babadié mausoleum.

3 All these sites were dedicated to religion and historic monuments and were not military
4 objectives. With the exception of the Sheikh Mohamed Mahmoud Al Arawani
5 mausoleum, all these buildings are protected status as UNESCO World Heritage sites.

6 I will now proceed to the role of Mr Al Mahdi.

7 In respect of the role of Mr Al Mahdi, the Chamber finds that he knew that he exercised
8 joint control over the attack and was fully implicated in its execution. He contributed to
9 the attack in the following ways:

10 (i) he supervised the execution of the operations, using his men from the Hesbah and
11 overseeing the other attackers who came to participate in the operations;

12 (ii) he collected, bought and distributed the necessary tools/means in order to successfully
13 carry out the attack;

14 (iii) he was present at all the attack sites, giving instructions and moral support;

15 (iv) he personally participated in the attack that led to the destruction of at least five sites:
16 The Alpha Moya mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi mausoleum, the
17 door of the Sidi Yahia mosque, the Ahmed Fulane mausoleum and the Bahaber Babadié
18 mausoleum; and

19 (v) he was responsible, having been designated by Al Chinguetti, for communicating with
20 journalists to explain and justify the attack.

21 I now proceed to the conclusion by the Chamber.

22 On the basis of the accused's statements in open court and the agreement he signed with
23 the Prosecution, the Chamber is satisfied that the accused understands the nature and
24 consequences of the admission of guilt and that the admission was made voluntarily after
25 having sufficient consultation with Defence counsel. The Chamber is also satisfied that

1 the admission of guilt is supported by the facts of the case.

2 The Chamber finds beyond reasonable doubt that the admission of guilt, together with the
3 additional evidence presented, satisfies the essential facts to prove the crime of attacking
4 protected objects under Article 8(2)(e)(iv) of the Rome Statute.

5 The Chamber considers that Mr Al Mahdi's contributions collectively qualify as an
6 essential contribution with the resulting power to frustrate the commission of the crime:
7 Mr Al Mahdi was the head of the Hesbah, one of the four primary institutions established
8 by the Ansar Dine and AQIM upon occupying Timbuktu. He had overall responsibility
9 for the execution phase of the attack, determining the sequence in which the buildings
10 would be destroyed, making the necessary logistical arrangements and justifying the
11 attack to the broader world through media interviews. Mr Al Mahdi personally oversaw
12 the attack itself - he was present at all of the attack sites and directly participated in the
13 destruction of five of the protected mausoleums and mosques.

14 The Chamber is also satisfied that Mr Al Mahdi's contributions were made pursuant to an
15 agreement with others which led to the commission of the crimes. This is evidenced by:
16 Mr Al Mahdi's role in the Ansar Dine leadership; the effective decision taken by
17 Mr Ag Ghaly and other members of the leadership to attack the mausoleums and
18 mosques; Mr Al Mahdi's sermon on destroying the buildings immediately before the
19 attack; Mr Al Mahdi's choice of the sequence in which the buildings would be destroyed;
20 and the coordinated and deliberate manner in which the attack was carried out.

21 Noting Mr Al Mahdi's direct participation in many incidents and his role as media
22 spokesperson in justifying the attack, the Chamber is also satisfied that Mr Al Mahdi
23 personally meets the subjective elements of the crimes.

24 For these reasons, the Chamber considers all elements of Article 25(3)(a) co-perpetration
25 to be established.

1 Accordingly, the Chamber unanimously finds that Mr Al Mahdi is guilty, within the
2 meaning of Article 25(3)(a) of the crime of attacking the protected sites mentioned earlier
3 as a war crime under Article 8(2)(e)(iv).

4 With regard to the other modes of liability confirmed by the Pre-Trial Chamber, namely:
5 Article 25(3)(b), soliciting and inducing; Article 25(3)(c), aiding and abetting, Article
6 25(3)(d), contributing in any other way, and all accepted by Mr Al Mahdi, the Chamber
7 makes the following conclusions:

8 The Appeals Chamber has noted that the statute differentiates between principal, which is
9 25(3)(a), and accessorial, which is 25(3)(b) to (d) liability, with principals bearing more
10 blameworthiness 'generally speaking and all other things being equal.' In accordance
11 with this general rule, given that the Chamber has decided that all elements of
12 co-perpetration are met there is no need to make any further findings on the accessorial
13 liability alternatives.

14 The Chamber further notes that the Pre-Trial Chamber confirmed Article 25(3)(a) direct
15 perpetration for the five buildings where Mr Al Mahdi personally participated in the
16 destruction. On the basis of the analysis above, and noting that Article 8(2)(e)(iv) of the
17 Statute criminalises the act of directing a specific kind of attack irrespective of whether the
18 buildings in question are destroyed, the Chamber considers that Mr Al Mahdi satisfies all
19 the elements for both direct perpetration and co-perpetration.

20 As also submitted by the Prosecution, the Chamber notes that Mr Al Mahdi oversaw the
21 entire attack against all 10 buildings, and that co-perpetration encapsulates not only his
22 physical participation but also his position of authority in relation to the crimes
23 committed. The Chamber finds that attacking all 10 mausoleums and mosques as a
24 co-perpetrator best reflects Mr Al Mahdi's criminal responsibility. On this finding,
25 Mr Al Mahdi's direct participation in relation to five of the attacks supports the Chamber's

1 conclusions that he made an essential contribution to the crimes charged pursuant to a
2 criminal plan.

3 Having concluded that Mr Al Mahdi is responsible for intentionally attacking the above
4 mentioned protected objects as a co-perpetrator, the Chamber will now read the summary
5 of the reasoning followed for the determination of the appropriate sentence. In doing so,
6 the Chamber has considered the gravity of the crime as well as whether or not mitigating
7 or aggravating circumstances exist.

8 As regards the gravity requirement, the Chamber first notes that, unlike other accused
9 convicted by this Court, Mr Al Mahdi is not charged with crimes against persons but with
10 a crime against property. In the view of the Chamber, even if inherently grave, crimes
11 against property are generally of lesser gravity than crimes against persons.

12 With regard to the extent of the damage caused, the Chamber recalls that most of the 10
13 sites were completely destroyed. Moreover, the attack was carefully planned and lasted
14 approximately 10 days. Additionally, the impact of the attack on the population was
15 heightened by the fact that it was relayed in the media. The Chamber also notes the
16 testimony of Witness P-431, a Malian expert in cultural matters, and Witness P-151, a
17 UNESCO witness, who explained that Timbuktu was an emblematic city with a mythical
18 dimension and that it played a crucial role in the expansion of Islam in the region.

19 Timbuktu is at the heart of Mali's cultural heritage, in particular thanks to its manuscripts
20 and to the mausoleums of the saints. The mausoleums reflected part of Timbuktu's
21 history and its role in the expansion of Islam. They were of great importance -- they were
22 of great importance of the people Timbuktu, who admired them and were attached to
23 them. They reflected their commitment to Islam and played a psychological role to the
24 extent that they were perceived as protecting the people of Timbuktu. Witness P-151 also
25 described how the people of Timbuktu were collectively ensuring that the mausoleums

1 remained in good condition in the course of symbolic maintenance events including all
2 the entire community -- including women, the elderly and young people. The
3 mausoleums were among the most cherished buildings of the city and they were visited
4 by the inhabitants of the city, who used them as a place for prayer while some of them
5 used them as pilgrimage locations.

6 Thus, the Chamber considers that the fact that the targeted buildings were not only
7 religious buildings but also had a symbolic and emotional value for the inhabitants of
8 Timbuktu is relevant in assessing the gravity of the crime committed.

9 Furthermore, all the sites but one, namely the Sheikh Mohamed Mahmoud Al Arawani
10 mausoleum, were UNESCO World Heritage sites and, as such, their attack appears to be
11 of particular gravity as their destruction does not only affect the direct victims of the
12 crimes, namely the faithful and inhabitants of Timbuktu, but also people throughout Mali
13 and the international community. The Chamber notes the testimony of Witness P-431,
14 the Malian expert, who indicated that the people of Timbuktu protested against the
15 destruction and refused to see the mausoleums razed to the ground. The witness
16 testified that destroying the mausoleums, to which the people of Timbuktu had an
17 emotional attachment, was a war activity aimed at breaking the soul of the people of
18 Timbuktu. In general, the population of Mali, who considered Timbuktu as a source of
19 pride, were indignant to see these acts take place. Moreover, Witness P-151 described
20 how the entire international community, in the belief that heritage is part of cultural life, is
21 suffering as a result of the destruction of the protected sites.

22 Lastly, the Chamber notes that the crime was committed for religious motives. Indeed,
23 during the period they ruled over the territory of Timbuktu, Ansar Dine and AQIM took
24 measures to impose their religious edicts on the population. The creation of the Hesbah,
25 which was headed by Mr Al Mahdi, was meant precisely to eradicate any visible vice it

1 identified in Timbuktu. Furthermore, when the leaders of Ansar Dine discovered the
2 practices of the inhabitants of Timbuktu, they led a campaign explaining what should and
3 should not be done with the mausoleums. In the end they decided to destroy the sites in
4 order to stop these prohibited practices. The Chamber considers that the discriminatory
5 religious motive invoked for the destruction of the sites is undoubtedly relevant in its
6 assessment of the gravity of the crime.

7 The Chamber thus concludes that the crime for which Mr Al Mahdi is convicted is of
8 significant gravity.

9 I now proceed to Mr Al Mahdi's culpable conduct.

10 The Chamber then considered Mr Al Mahdi's culpable conduct. In doing so, the
11 Chamber considered Mr Al Mahdi's degree of participation, his degree of intent and, to a
12 certain extent, the means employed to execute the crime.

13 The Chamber notes that Mr Al Mahdi played an essential role in the execution of the
14 attack. As the head of the Hesbah, he was charged with executing the common plan.
15 He organised all the logistics of the attack, oversaw the entire operation, supervised its
16 execution, decided in which order the sites should be destroyed, collected and distributed
17 the necessary tools, provided logistical and moral support to the direct perpetrators and
18 supervised them and was present at every site.

19 In relation to Mr Al Mahdi's intent, the Chamber notes that, in addition to attending the
20 destruction of each site, Mr Al Mahdi personally participated in the destruction of at least
21 five of the sites. Moreover, he justified the necessity of the attack by writing a sermon
22 that was read before the attack and by giving public speeches as the destructions were
23 occurring.

24 The Chamber did not find any aggravating circumstances.

25 In this regard, the Chamber is not convinced by the Prosecution's submission that

1 Mr Al Mahdi abused his power and official capacity as head of the Hesbah and that this is
2 an aggravating circumstance. Indeed, in line with the Appeals Chamber's jurisprudence,
3 the Chamber considers that the mere fact that Mr Al Mahdi committed the crime in this
4 position does not as such constitute an aggravating circumstance. Furthermore, in his
5 capacity as head of the Hesbah, Mr Al Mahdi initially advised against the destruction of
6 the sites.

7 In relation to the Prosecution's argument that the fact that the crime affected multiple
8 victims is an aggravating circumstance, the Chamber has already taken into account the
9 far-reaching impact of the crime committed by Mr Al Mahdi in its assessment of the
10 gravity of the crime and cannot therefore consider it as an aggravating circumstance.
11 Similarly, the Chamber has already considered the religious nature of the attack as part of
12 its assessment of the gravity. Accordingly it cannot be considered as an aggravating
13 circumstance.

14 In relation to Mr Al Mahdi's culpable conduct, the Chamber has found two mitigating
15 circumstances, namely his reluctance to commit the crime and the means of execution
16 employed to commit it.

17 The Chamber notes that, despite accepting the decision to destroy the sites and his full
18 implication in its commission, Mr Al Mahdi was initially reluctant to destroy them. The
19 Chamber finds that this reluctance is of some relevance for the determination of the
20 sentence and attaches weight to it.

21 The Chamber clarifies that, contrary to the Defence's submissions, the fact that
22 Mr Al Mahdi committed the crime as part of an organised group, does not constitute a
23 mitigating circumstance. The Chamber recalls that, once the decision to destroy the sites
24 had been taken by other members of the group, Mr Al Mahdi fully endorsed it and he was
25 fully implicated in the execution of the attack.

1 Furthermore, the Chamber notes that, except for the destruction at the Djingareyber
2 mosque, for which he recommended that a bulldozer be used, Mr Al Mahdi advised
3 against using a bulldozer at all of the other sites so as not to damage the graves next to the
4 mausoleums and made sure that the attackers showed respect for the constructions next
5 to the mausoleum while carrying out the attack.

6 With regard to Mr Al Mahdi's lack of preparation for assuming responsibilities as head of
7 the Hesbah, as alleged by the Defence, the Chamber notes that the Defence did not make
8 any effort to support his argument and therefore rejects it.

9 In sum, the Chamber considers that Mr Al Mahdi's initial reluctance to destroy the sites,
10 as well as his recommendation not to use a bulldozer, do constitute mitigating
11 circumstances.

12 Turning now to Mr Al Mahdi's individual circumstances, the Chamber does not consider
13 that Mr Al Mahdi's age and economic background are of relevance. Furthermore, an
14 absence of prior convictions is a fairly common feature among individuals convicted by
15 international tribunals and shall not, contrary to Defence's submission, be counted as a
16 relevant mitigating circumstance. Additionally, the Chamber does not intend to give any
17 weight, be it aggravating or mitigating, to the fact that Mr Al Mahdi was a scholar and
18 expert in religious matters, irrespective of the evidence of his positive role in his
19 community before the take-over of the city by Ansar Dine.

20 Despite serious security concerns for his family, whom he has not seen since his transfer
21 to the Court, Mr Al Mahdi has been behaving in an irreproachable manner in detention
22 and made a statement stating his appreciation of the manner in which he had been treated
23 by the Court as a whole. The Chamber considers that this factor is relevant, despite it
24 being a legitimate expectation of any detainee, and attributes limited weight to it.

25 Similarly, the Chamber accepts the Defence's arguments that Mr Al Mahdi's admission of

1 guilt and cooperation with the Prosecution, as discussed further below, show that he is
2 likely to successfully reintegrate into society and accords a limited weight to them.
3 More importantly, the Chamber notes that Mr Al Mahdi admitted his guilt. The
4 Chamber further observes that Mr Al Mahdi took responsibility for his actions as early as
5 the first day of his interviews with the Prosecution. Subsequently, the parties reached an
6 agreement sufficiently early in the proceedings, namely before the confirmation of
7 charges, to help substantially speed up the proceedings.
8 Additionally, not only did Mr Al Mahdi accept his responsibility but he also provided a
9 detailed account of his actions, facilitating the Chamber's establishment of the facts of the
10 case.
11 The Chamber considers that an admission of guilt is undoubtedly a mitigating
12 circumstance and gives it substantial weight. In this regard, the Chamber notes that the
13 admission was made early, fully and appears to be genuine, led by the real desire to take
14 responsibility for the acts he committed and showing honest repentance. This admission
15 of guilt undoubtedly contributed to the rapid resolution of this case, thus saving the
16 Court's time and resources and relieving witnesses and victims of what can be a stressful
17 burden of giving evidence in Court. Moreover, this admission may also further peace
18 and reconciliation in Northern Mali by alleviating the victims' moral suffering through
19 acknowledgement of the significance of the destruction. Lastly, such an admission may
20 have a deterrent effect on others tempted to commit similar acts in Mali and elsewhere.
21 This said, the Chamber notes that this admission is made against a backdrop of
22 overwhelming evidence pointing to Mr Al Mahdi's guilt.
23 In addition to admitting his guilt in full, Mr Al Mahdi has been cooperating with the
24 Prosecution substantially, as detailed at length by Witness P-182. The Chamber notes
25 that this cooperation has been spontaneous and started as early as the first day of his

1 interviews. Mr Al Mahdi responded in an honest manner and his cooperation enabled
2 the Prosecution to corroborate, clarify and specify information it already had in its
3 possession. During his interviews with the Prosecution, Mr Al Mahdi did not show any
4 reluctance in touching upon his own acts.

5 The Chamber is also mindful of the fact that Mr Al Mahdi has cooperated despite being
6 fully aware that his cooperation with the Prosecution increased the security profile of his
7 family. Accordingly, the Chamber considers that Mr Al Mahdi's substantial cooperation
8 with the Prosecution is an important factor going to the mitigation of the sentence to be
9 imposed.

10 The Chamber notes that, as early as the first day of trial, Mr Al Mahdi expressed genuine
11 remorse for his acts. The Chamber also notes that Mr Al Mahdi has expressed 'deep
12 regret and great pain.' He insisted that the remorse he was feeling was for the damage
13 caused to his family, his community in Timbuktu, his country and the international
14 community. Not only did Mr Al Mahdi categorically express his remorse, he made a
15 solemn promise that 'this was the first and last wrongful act he will ever commit.'

16 Mr Al Mahdi also indicated that he was willing to 'accept the judgment of the Chamber.'

17 Lastly, Mr Al Mahdi called on people not to become involved in the same acts that he was
18 involved in because, and to quote 'because they are not going to lead to any good for
19 humanity.'

20 In addition to expressing remorse, and contrary to the submission of the LRV, the Legal
21 Representative of Victims, the Chamber does note that Mr Al Mahdi has expressed
22 sentiments of empathy towards the victims of the crime he committed. The Chamber
23 refers to the example of actions showing his empathy cited by the Defence, such as
24 Mr Al Mahdi's offer to the imam of the Sidi Yahia mosque to reimburse the cost of the
25 door.

1 The Chamber considers that such expression of remorse and empathy to the victims is a
2 substantial factor going to the mitigation of the sentence.

3 We now proceed to the determination of the sentence.

4 The Chamber has balanced all these factors to determine the appropriate sentence. It has
5 taken into account the mitigating circumstances found, and considered the circumstances
6 both of the convicted person and the crime. In order to sufficiently and adequately
7 reflect the moral and economic harm suffered by the victims of the present case and fulfil
8 the objectives of sentencing, the Chamber has imposed a sentence that is proportionate to
9 the gravity of the crime and the individual circumstances and culpability of Mr Al Mahdi.

10 In its written submissions, the Prosecution submitted that Mr Al Mahdi's sentence should
11 be between nine and eleven years. The Defence made extensive submissions on the
12 adequate assessment of the gravity of the crime charged, the absence of aggravating
13 circumstances and the importance of the mitigating circumstances in this case. The Legal
14 Representative of Victims requested that the sentence handed down on Mr Al Mahdi be
15 severe and exemplary.

16 I now address the counsel for the Defence. Mr Aouini, the Court will now ask the
17 defendant to rise. Will the accused, Mr Al Mahdi, rise.

18 Mr Al Mahdi, the crime which you have been convicted of is of significant gravity. This
19 said, the Chamber has found no aggravating circumstances and five mitigating
20 circumstances, namely: Your admission of guilt; your cooperation with the Prosecution;
21 the remorse and empathy you have expressed for the victims; your initial reluctance to
22 commit the crime and the steps you took to limit the damage caused; and even of limited
23 importance, your good behaviour in detention despite your family situation. Taking into
24 account all these factors, the Chamber, unanimously, sentences you to nine years of
25 imprisonment.

- 1 In accordance with the Appeals Chamber's jurisprudence, the time you have spent in
2 detention in accordance with an order of this Court, namely since your arrest pursuant to
3 the warrant issued on 18 September 2015, shall be deducted from your sentence.
- 4 Mr Al Mahdi, you may now sit down. You may sit down.
- 5 At this point, on behalf of the Trial Chamber, the Chamber thanks all the parties and
6 participants, as well as all the staff from the Registry for their tireless efforts to make these
7 hearings possible. The Chamber gives a special thanks to the translators, who greatly
8 assisted the Chamber to make it possible to issue the judgment and sentence in English,
9 French and Arabic simultaneously.
- 10 This concludes today's hearings.
- 11 THE COURT USHER: [12:19:45] All rise.
- 12 (The judgment ends in open session at 12.20 p.m.)