

1 International Criminal Court
2 Appeals Chamber
3 Situation: Republic of Mali
4 In the case of The Prosecutor vs Ahmad Al Faqi Al Mahdi - ICC-01/12-01/15
5 Presiding Judge Solomy Balungi Bossa, Judge Marc Perrin de Brichambaut and
6 Judge Gocha Lordkipanidze
7 Hearing Concerning the Reduction of Sentence - Courtroom 1
8 Tuesday, 12 October 2021
9 (The hearing starts in open session at 9.36 a.m.)
10 THE COURT USHER: [9:36:15] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE BOSSA: [9:36:40] Good morning, everyone.
14 Would the court officer please place the matter on the record.
15 THE COURT OFFICER: [9:36:48] Good morning, your Honours.
16 The situation in Mali, in the case The Prosecutor versus Ahmad Al Faqi Al Mahdi,
17 case reference ICC-01/12-01/15.
18 And we're in open session.
19 PRESIDING JUDGE BOSSA: [9:37:02] Thank you.
20 I'm Judge Solomy Balungi Bossa, presiding. Seated to my right is Judge Marc
21 Perrin de Brichambaut and to my left is Judge Gocha Lordkipanidze. Together we
22 constitute the Panel of three judges appointed by the Appeals Chamber for the
23 purpose of conducting the review concerning reduction of sentence of
24 Mr Ahmad Al Faqi Al Mahdi. I will henceforth refer to him as Mr Al Mahdi.
25 I welcome everyone to this hearing today. We are also joined by various Registry

1 staff members and legal staff of the Appeals Chamber whom I welcome and thank for
2 their assistance.

3 I now invite the parties and participants to introduce themselves for the record.

4 Beginning with the Defence of Mr Al Mahdi, please introduce yourself and those
5 present with you today.

6 MR AOUINI: [9:38:06](Interpretation) Good morning, your Honours. My name is
7 Mohamed Aouini. I am the counsel for Mr Ahmad Al Faqi Al Mahdi. Attending
8 with me in this hearing is Ms Sylvianne Glodjion. I greet you and I greet every
9 person present in this hearing.

10 Thank you, Madam President, your Honours.

11 PRESIDING JUDGE BOSSA: [9:38:37] Thank you, Counsel.

12 Mr Al Mahdi is present, is he, Counsel?

13 MR AOUINI: [9:38:48](Interpretation) Yes, Madam President, indeed he is with us
14 and he is seated behind me. Thank you.

15 PRESIDING JUDGE BOSSA: [9:38:59] Okay. The presence of Mr Al Mahdi is
16 noted.

17 Next the Office of the Prosecutor, please.

18 MR DUTERTRE: [9:39:16](Interpretation) Good morning, your Honour,
19 your Honours. The Prosecution is represented by my colleague Yayoi Yamaguchi
20 behind me, my colleague Mousa Allafi on my left, and myself Gilles Dutertre.

21 And I would also like to greet everybody in the courtroom and the interpreters who
22 are helping us today. Thank you, your Honour.

23 PRESIDING JUDGE BOSSA: [9:39:41] Thank you, Counsel.

24 The representative of victims.

25 MR KASSONGO: [9:39:50](Interpretation) Good morning, your Honour, your

1 Honours. Good morning to everyone. The Legal Representatives team is
2 composed today of Madam Aline Delehayé who is assisting me on my right; behind
3 me, Madam Laurine Chereau, who is assisting us; and myself Maître Kassongo. This
4 is the team of the Legal Representatives of Victims and we would like to thank you,
5 your Honour.

6 PRESIDING JUDGE BOSSA: [9:40:28] Thank you, Mr Kassongo.

7 The Registry, please.

8 MR DUTERTRE: [9:40:37](Interpretation) Thank you very much, your Honour, your
9 Honours. For the Registry with myself this morning, there is Natalie Wagner, who is
10 a legal officer in my office; and I am Marc Dubuisson, Director of Legal Services for
11 the Registrar Peter Lewis. Thank you.

12 PRESIDING JUDGE BOSSA: [9:40:59] Thank you.

13 We have noted appearances from everyone. Thank you.

14 Overview of the proceedings.

15 As mentioned earlier, today's proceedings concern the review of Mr Al Mahdi's
16 sentence. By way of background, I recall that on 27 September 2016, the Trial
17 Chamber VIII convicted Mr Al Mahdi as a co-perpetrator under Article 25(3)(a) of the
18 Statute for the war crime under Article 8(2)(e)(iv) of the Statute, of intentionally
19 directing attacks against 10 buildings of a religious and historical character in
20 Timbuktu, Mali on or about 30 June 2012 and 11 July 2012. On the same day,
21 Mr Al Mahdi was sentenced to a period of nine years of imprisonment with
22 deduction of time spent in detention.

23 By 18 September 2021, Mr Al Mahdi had served two thirds of his sentence. Pursuant
24 to Article 110(3) of the Statute, read with Rule 224(1) of the Rules, a hearing to
25 determine whether his sentence should be reduced at this stage shall be convened by

1 the Panel. To this end, on 29 July 2021, an order scheduling a hearing for today was
2 issued.

3 On 30 August 2021, and in anticipation of this hearing, the Panel received written
4 observations from the Registrar. On the same date, the Panel also received
5 observations from the Republic of Mali, being the state of enforcement of a reparation
6 order pursuant to Article 75 of the Statute on the criteria, set out in Rule 223 of the
7 Rules. On 31 August 2021, the United Kingdom of Great Britain and Northern
8 Ireland, being the state of enforcement of any penalty under Article 77 of the Statute,
9 submitted its observations on the criteria set out in Rule 223 of the Rules. On
10 13 September 2021, the Panel invited -- received written submissions from
11 Mr Al Mahdi, the Prosecutor, the Legal Representatives of Victims on the factors and
12 criteria for sentence reduction provided in Article 110(4) of the Statute and Rule 223 of
13 the Rules.

14 Today, the Panel will hear oral submissions from the parties and participants on these
15 factors and criteria and on the various issues raised in the written submissions.

16 In addition, the Panel may, if it considers it necessary, pose questions to the parties
17 and participants during the afternoon session of this hearing.

18 Mr Al Mahdi will also have the opportunity to personally address the Panel before
19 closing the hearing.

20 Procedural matters.

21 Before beginning the hearing of submissions, there are a few procedural issues that I
22 wish to briefly address.

23 On 30 September 2021, the Panel issued an order (hereinafter the order of
24 30 September 2021) setting out directions on the conduct of this hearing. The
25 order of 30 September 2021 noted that the United Kingdom of Great Britain and

1 Northern Ireland had indicated that they would not participate in the hearing today.
2 On 8 October 2021, the Registrar communicated by way of a filing with registration
3 number ICC-01/12-01/15-423 that the Republic of Mali's participation at the hearing
4 was in doubt. As no representative from the Republic of Mali is present in the
5 courtroom, the Panel notes for the record that their non-participation -- the Panel
6 notes for the record their non-participation at the hearing today. As mentioned, the
7 Panel is seized with the written submissions received from both these states which
8 will assist the Panel in its determination of the issues concerning sentence review.
9 As a result of the Republic of Mali's non-participation, it is necessary to adjust the
10 schedule of the first session of the hearing as follows:
11 The Registry should prepare to make their intervention in the first session after the
12 submissions of Mr Kassongo, the Legal Representative of Victims.
13 We will break for approximately two hours for lunch and resume the second session
14 promptly at 13 hours and not at 14 hours as originally indicated.
15 The order of 30 September 2021 also stipulated the sequence and time allocated for
16 the submissions of the parties and participants, as well as certain issues that the Panel
17 requested the parties and participants to address in their respective oral submissions.
18 In this regard, the parties and participants are reminded that they may address any
19 relevant issues pertaining to this sentence review without exceeding the issues raised
20 in their or the other participants' written submissions within the time frame set by the
21 Panel. The court officer will be monitoring the time and will indicate to the party or
22 participants two minutes before the end of the allocated time.
23 Importantly, the parties and participants are reminded to refrain from referring to
24 certain information that has been classified as confidential in open session. The
25 parties and participants are expected to alert the Panel in advance when they intend

1 to refer to confidential information in order to permit sufficient time to go into closed
2 or private session.

3 Finally, the Panel recalls that we authorised the use of Arabic at this hearing as it is a
4 language that Mr Al Mahdi fully understands and speaks and permitted counsel for
5 Mr Al Mahdi to render his submissions in Arabic. Consequently, interpretation will
6 be provided simultaneously throughout the hearing in Arabic, English and French.

7 The parties and participants are therefore reminded to speak slowly and to pause in
8 between sentences to allow adequate time for the interpretation.

9 Unless there are questions with respect to what I have just said, we will now proceed
10 with the hearing -- with hearing the submissions of the Defence of Mr Al Mahdi.

11 I see no indication that there are any questions.

12 So, Mr Aouini, you have the floor for 30 minutes. As I mentioned, could you please
13 first indicate whether any of your submissions can be made in open session.

14 MR AOUINI: [9:49:08] (Interpretation) Thank you, Madam President.

15 Your Honours, I am honoured to stand before you today representing

16 Mr Ahmad Al Faqi Al Mahdi in this very important stage in the proceedings
17 concerning my client, which is also a decisive stage in his life.

18 On behalf of Mr Al Mahdi, I request to your Honours today a reduction of the
19 sentence to which he was judged and to -- and the sentence as to the period spent in
20 imprisonment to this day. This is in accordance with Rules 223, 224(1) of the Rules
21 of Procedure and Evidence, as well as Article 110(3) -- paragraphs (3) and (4) and
22 Article 65 of the Statute.

23 PRESIDING JUDGE BOSSA: [9:50:17] Counsel, please indicate whether you want to
24 address us in open session or in private session fully? You may continue, but please
25 alert us when you've reached a point where we have to go into private session.

1 Thank you.

2 MR AOUINI: [9:50:39] (Interpretation) Thank you, Madam President. I do have a
3 request later on in my submissions where I will ask to move to a closed session.
4 Some of my submissions concern confidential matters. I will alert you at that point
5 in time.

6 PRESIDING JUDGE BOSSA: [9:51:06] Thank you, Counsel.

7 MR AOUINI: [9:51:10] (Interpretation) I stand before you, Madam President, your
8 Honours, today after six years since the detention of Mr Al Mahdi by the
9 International Criminal Court and since the beginning of his trial in September 2015, at
10 which Mr Al Mahdi expressed in unequivocal terms, without any hesitation or
11 ambiguity, in which he expressed his admission of guilt and his interest in seeking
12 forgiveness from his family, from the people of Timbuktu, from the people of Mali
13 and from all stakeholders in the international community.

14 On that day, Mr Al Mahdi not only acknowledged his past actions, but also
15 committed by -- to himself and to the Court, committed to justice and to reaching the
16 truth, a truth that victims in Mali and in Timbuktu yearn to unveil.

17 We stand today in the same place and we see that Mr Al Mahdi has delivered on
18 what he promised to do, as he provided testimony and admissions from the very first
19 stages of the proceedings out of pure and candid conviction with no quo -- no quid
20 pro quo and without acquiescing to any pressure or intimidation, regardless of the
21 obstacles and against all odds and impediments.

22 Madam President, your Honours, this hearing is a hearing where Mr Al Mahdi asks
23 your Honours to see him with clemency. He requests all stakeholders, including
24 and especially the victims, civil society and those working to preserve international
25 heritage, as well as the people of his city and his nation and all members of the

1 international community and your Honours, to look at him in that -- with that
2 perspective and that he be listened to and be understood after six years spent in
3 detention, during which he moved to become a better person.

4 Mr Al Mahdi today speaks Arabic fluently and has learned French and English, IT,
5 math at the detention centre, as well as cooking, sewing, playing music,
6 using -- playing the piano and the guitar. Mr Al Mahdi today is a balanced man and
7 an open-minded man. He is a living encyclopedia of the Islamic faith, a moderate
8 faith, and he is also knowledgeable about the threats facing Islamic knowledge and
9 had to stand up to the threats facing Islam in a jurisprudential capacity.

10 The positive development Mr Al Mahdi has been through and has achieved is thanks
11 to his integration, education, cultivation and open-mindedness to the world, to the
12 outside world which have turned him into a society-friendly person. Not only that,
13 but a person that can benefit society and that can make -- that can turn himself into a
14 person active right at the core of society.

15 Madam President, I am pointing out these conditions and these developments
16 regarding the personality and the psyche of Mr Al Mahdi, but I'd like to reiterate
17 again that from the very first stage he did express his commitment to admitting his
18 guilt and his past actions. He did so without hesitation and without walking back
19 his word. This is true up to this day, provable throughout the proceedings before
20 this Court.

21 This is a position that he remains adamant to and that should be taken into
22 consideration.

23 Mr Al Mahdi has been determined to continue on this path of admitting his guilt and
24 in his cooperation with the Court without stalling and without delay and without
25 asking for a quid pro quo. This is due to his faith in the values of justice,

1 righteous and out of his feeling of regrets about what happened and also out of
2 his determination to seek forgiveness from the people of Timbuktu and the people of
3 Mali and of all of mankind.

4 I would like to move on now to the subject of reducing the sentence on Mr Al Mahdi
5 in accordance with Article 110 of the Rome Statute and Rules 223 of the Rules of
6 Procedure and Evidence.

7 I would like now to move to the points addressed in our written submissions. What
8 I may add in regard is that Mr Al Mahdi, according to the viewpoint of his Defence
9 team, meets all the criteria and factors stipulated by Article 110(4) of the Statute in
10 general and in particular terms, and this should support the request for -- for
11 reducing his sentence.

12 When we look at every -- every paragraph of Article 110, your Honourable Chamber,
13 your Honourable Panel will find the compelling evidence that the criteria are met in
14 the case of Mr Al Mahdi to his benefit.

15 Now, let's begin with paragraph 1 -- paragraph (a), which is "The early and
16 continuing willingness of the person to cooperate with the Court in its investigations
17 and prosecutions." It is very clear to your Honours that Mr Al Mahdi cooperated
18 and admitted fully and candidly all of his past actions. This is true from the first
19 moment he appeared here and he continued to deliver on that commitment until the
20 last stages of his proceedings.

21 Mr Al Mahdi admitted very frankly and in detail the charges attributed to him and
22 expressed remorse, deep remorse about his actions. He asked forgiveness from the
23 victims, the children of the saints whose *shrines were demolished. He also
24 apologised to the people of Timbuktu, to the people of Mali and to the international
25 community.

1 He also extended advice to Muslims worldwide, that they should never engage in
2 similar conduct. He remained determined to cooperate with this Court as a way of
3 contributing to the administration of justice, repairing victims, and also contributing
4 to national reconciliation and peace-building back in his homeland. From the
5 first -- from the very first hearing, he expressed as a suspect then that he was
6 committed to unveiling the truth, a position he maintained when he was brought by
7 the Prosecutor to The Hague for his trial.

8 Mr Al Mahdi never stalled the proceedings and never missed an opportunity to
9 showcase that stance in the most official terms possible.

10 He never engaged in any action that can put into question his honesty and his
11 intentions. This is something he maintained throughout the proceedings up until
12 the stage of reparations and other parts of later proceedings.

13 In every opportunity, Mr Al Mahdi continued to cooperate with justice and continued
14 to share the truth even when the truth was against him. This is all documented
15 before your Honours.

16 Madam President, your Honours, if possible, I would like to address very briefly the
17 second and third part of my submissions in a closed session, a closed session that
18 should last only a few minutes.

19 PRESIDING JUDGE BOSSA: [10:01:05] Registry, should it be closed or private?

20 THE COURT OFFICER: [10:01:10] Your Honour, I believe Mr Aouini meant private
21 session (Overlapping speakers)

22 PRESIDING JUDGE BOSSA: [10:01:17] Can we go into private session, please.

23 Sorry, public. We regret this, but it's necessary.

24 (Private session at 10.01 a.m.)

25 THE COURT OFFICER: [10:01:38] We are in private session, your Honour.

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16 (Open session at 10.06 a.m.)

17 THE COURT OFFICER: [10:06:31] We are back to open session, your Honour.

18 PRESIDING JUDGE BOSSA: [10:06:35] Counsel, you may proceed.

19 MR AOUINI: [10:06:40](Interpretation) Madam President, your Honours, going

20 back to this paragraph specifically, we see that Mr Al Mahdi meets the requirements

21 of this element or this criterion on the early and continuous preparedness by the

22 person to cooperate with the Court when it comes to investigation and prosecution.

23 Now we go to paragraph 2(b) (sic), "The voluntary assistance of the person in

24 enabling the enforcement of the judgments and orders of the Court in other cases, and

25 in particular providing assistance in locating assets subject to orders of fine, forfeiture

1 or reparation which may be used for the benefit of victims".

2 And here, Madam President, Honourable Judges, we know that you are aware of the
3 economic situation of Mr Al Mahdi. He is an indigent person. This is why this
4 criterion is not applicable to Mr Al Mahdi.

5 However, because this paragraph addresses the issue of victims, we must address the
6 contribution that Mr Al Mahdi wanted to do, which is a type of personal
7 compensation towards the victims. Mr Al Mahdi, as you see the suggestion by the
8 Trust Fund for Victims in the possibility of participating in the programme of the
9 symbolic manifestation done by the Trust Fund in March of this year. However,
10 unfortunately that was not possible, for the reasons that I have mentioned in the
11 private session.

12 However, Mr Al Mahdi will be delivering to you the message that he had intended
13 for the participation in the manifestation of the aforementioned fund, which is the
14 Trust Fund for Victims.

15 Now, paragraph 3(c) "Other factors establishing a clear and significant change of
16 circumstances sufficient to justify the reduction of sentence, as provided in the Rules
17 of Procedure and Evidence."

18 And here going back to the elements of the Rule 223 of the Rules of Procedure and
19 Evidence, we can see as well that they all apply in the case of Mr Al Mahdi.

20 I will go by each one.

21 So Rule 223(a) "The conduct of the sentenced person while in detention, which shows
22 a genuine dissociation from his or her crime".

23 Madam President, Honourable Judges, we see that the Court has to take into
24 consideration the fact that Mr Al Mahdi has done everything he could and seized
25 every opportunity to disassociate himself from the crime and to confirm this before

1 the Chambers with which he was in contact during the proceedings and with the
2 different parties that he was in contact with during the sentence.

3 Madam President, Honourable Judges, everyone who was in contact with
4 Mr Al Mahdi in any matter can confirm that he had cut with the mistakes of the past
5 and he made huge strides towards a more positive future.

6 The most important evidence for this is the fact that there were no complaints from
7 Mr Al Mahdi and the lack of any evidence that he was -- events, excuse me, that he
8 was in involved in. And that despite all of the circumstances that Mr Al Mahdi went
9 through during his sentence.

10 (b) "The prospect of resocialisation and successful resettlement of the sentenced
11 person".

12 Madam President, Honourable Judges, you can see the evolution and development of
13 Mr Al Mahdi throughout the six years that he spent in detention. Throughout that
14 period Mr Al Mahdi has seized every opportunity he had. He was able to prepare
15 himself for the future through several skills. Mr Al Mahdi, within the detention
16 centres, has demonstrated his capacity to integrate and to adapt and he was
17 successful in integrating the different circles where he lived.

18 Mr Al Mahdi has been able to learn languages, arts and crafts throughout his
19 sentence.

20 Mr Al Mahdi has been open to the surrounding world that was very different from
21 the environment where he lived before coming to The Hague.

22 Because of the great efforts that he did in order to have a better integration,
23 Mr Al Mahdi has provided for himself the necessary factors. He gained the right to
24 a true opportunity and chance to start this new life.

25 Now we talk about the paragraph related to whether the early release of the

1 sentenced person would give rise to significant social instability. I will address
2 briefly this point, saying the following:

3 Everything that we have mentioned in terms of the development and the
4 rehabilitation that Mr Al Mahdi was able to get into makes it -- makes the negative
5 impact almost inexistent.

6 I will stop here about this point and if you have any question about it I will go back to
7 it later.

8 Paragraph (d) "Any significant action taken by the sentenced person for the benefit of
9 the victims as well as any impact on the victims and their families as a result of the
10 early release".

11 Madam President, Honourable Judges, we see that this paragraph is linked to the
12 previous paragraph and we notice that Mr Al Mahdi never hesitated to do what he
13 would towards the victims, even if that was done symbolically through providing his
14 apologies and asking for forgiveness. This is why we do not see any negative
15 procedure that Mr Al Mahdi can do, specifically when it comes to the surrounding
16 circumstances.

17 Paragraph (e) "Individual circumstances of the sentenced person, including a
18 worsening state of physical or mental health or advanced age."

19 Madam President, Honourable Judges, I call upon you to look at the period spent by
20 Mr Al Mahdi. The personal circumstances that surrounded Mr Al Mahdi
21 throughout that period were hard and difficult.

22 I call upon the Judges to go back to all the elements that I have addressed in the
23 private session, for they show the immensity of the difficulties that have beset
24 Mr Al Mahdi. He wasn't able to see his family.

25 We see that the elapsed period -- Madam President, Honourable Judges, we see that

1 the period spent by Mr Al Mahdi in exceptional circumstances -- Madam President,
2 are we still in a private session?

3 PRESIDING JUDGE BOSSA: [10:16:09] I think we are back in open session.

4 (Overlapping speakers) to closed -- private session?

5 MR AOUINI: [10:16:21](Interpretation) No, no, Madam President. All the rest can
6 be done in open session.

7 And I was saying that the period that was spent by Mr Al Mahdi in exceptional
8 circumstances and much harder than ordinary circumstances is a severe sentence
9 equivalent to a much longer sentence in ordinary circumstances. We call upon the
10 Court to take that into consideration when looking into our request today when it
11 comes to reducing the sentence of Mr Al Mahdi.

12 Conclusion.

13 In conclusion, Madam President, Honourable Judges, I would like to say that today's
14 session on reducing or request for reducing the sentence of Mr Al Mahdi is an
15 opportunity that Mr Al Mahdi seeks to receive an acknowledgment or a clear signal
16 from the international community and from the international justice.

17 THE COURT OFFICER: [10:17:26] Two minutes left.

18 MR AOUINI: [10:17:28](Interpretation) That his apology has been accepted and that
19 he had already cut with the mistakes of the past and that was all welcome.

20 Mr Al Mahdi has made efforts, mentally and morally, to reach this stage today.

21 Mr Al Mahdi did not hesitate, since the first hearing or session, to show that he wants
22 to acknowledge his mistakes. He did not hesitate before this Court to say the truth
23 without any manipulation. He did not hesitate to accept the judgment of this
24 Chamber without any objection. He did not hesitate to contribute to justice and to
25 participate in clearing the truth when he was asked to do that.

1 And today Mr Al Mahdi stands before you asking you to give him a second
2 opportunity, a second chance to open a new chapter of his life because he proved that
3 he was ready for it.

4 Today this is another chance, Madam President, Honourable Judges, for the
5 international community and for the international justice. And this Chamber in this
6 Court has the opportunity to show the objectives and the basic principles for which
7 the Rome Statute was signed, specifically that the aim of this Court is to contribute to
8 upholding peace around the world and to limit international crimes and that the door
9 of humanity is open for whomever wants to go in, no matter the past injustices.

10 We ask this Honourable Chamber to uphold international justice and to show that
11 sanctions and punishment cannot be a revenge. This is a necessary suffering that the
12 accused has to go through so that he can have a true opportunity and a true chance to
13 go forward.

14 Madam President, Honourable Judges, the sentence has played its role and today we
15 ask you to give Mr Al Mahdi the opportunity and the chance to start a new life.

16 Based on this, we ask the Chamber to accept the request that we submitted and to
17 reconsider the reduction of the sentence of Mr Ahmad Al Faqi Al Mahdi and to limit
18 it to the period spent in detention since he was detained.

19 I thank you, Madam President. I thank you, Honourable Judges, for your attention.

20 Thank you.

21 PRESIDING JUDGE BOSSA: [10:21:05] Thank you, Counsel.

22 The Office of the Prosecutor, you now have the floor for the next 30 minutes.

23 Do we need to remain in private session or do we need to -- do we need to remain in
24 open session or do we need to go into private session?

25 MR DUTERTRE: [10:21:28] (Interpretation) Thank you, your Honour.

1 My submissions include public information and information that will require private
2 session. I will begin in open session. I will limit private session information as
3 much as possible. We may have to go into private session for a few minutes, but I
4 will try to maximise the amount of my presentation that can be made in open session.
5 Furthermore, to answer the Chamber's legal questions, in particular the questions
6 having to do with conditions that may be set if the sentence is reduced, it is possible
7 that I may go slightly past 30 minutes. I will try to -- my best not to have that
8 happen and I await your instructions in that regard.

9 PRESIDING JUDGE BOSSA: [10:22:27] Counsel, you want to start in open session?

10 MR DUTERTRE: [10:22:32](Interpretation) Yes, indeed, your Honour.

11 PRESIDING JUDGE BOSSA: [10:22:36] Okay. Try as much as possible to live
12 within the time which was allotted to you, please.

13 You may begin your submissions.

14 MR DUTERTRE: [10:22:51](Interpretation) I shall comply with your instructions,
15 Madam President.

16 Madam President, your Honours, as we were reminded at the beginning of today's
17 session, Mr Al Mahdi was condemned to nine years of imprisonment for voluntarily
18 leading attacks upon religious buildings and monuments in Timbuktu between 2012
19 and 2013, between 20 June and 2013.

20 He was arrested and transferred to the Court in 2015. He immediately admitted his
21 involvement in the events. He then quickly admitted his guilt in an agreement that
22 was signed with the Prosecution on 18 February 2016. He indicated that he would
23 not file an appeal if his sentence was between 9 and 11 years. This is a range that is
24 suitable in such cases, as I wish to stress. Of course such an agreement, which is
25 important for the administration of justice and the speediness of proceedings, was not

1 binding upon the Trial Chamber, whose task it was to stand in judgment of
2 Mr Al Mahdi.

3 Thus, there was proof beyond all reasonable doubt and Mr Al Mahdi indeed did
4 plead guilty on the day of his trial in August 2016. The Chamber considered the
5 evidence on the record of this case, considered the admission of guilt agreement and
6 handed down a sentence of nine years' imprisonment.

7 In 2016, the crimes were reviewed and the charges that stood in the name of
8 Mr Al Mahdi. And today, these matters come before your Chamber and it is your
9 Chamber's task to decide if Mr Al Mahdi should enjoy a reduction of his sentence in
10 light of the various criteria set out in Article 110 of the Rome Statute and in the Rules,
11 particularly Rule 223.

12 You will have to consider what has occurred in the past six years. For example, the
13 behaviour of Mr Al Mahdi in detention, which demonstrates that he has -- that he
14 regrets his crime. And also we must look to the future and his ability to rejoin
15 society. We also must consider the impact of a possible early release on the victims
16 and family members. And I stress that this is an extremely important criterion that
17 deserves your consideration. And I'm sure my colleague Mr Kassongo will wish to
18 speak to this matter.

19 Your assessment today and the decision that you shall hand down are a difficult
20 exercise. It's not so much a matter of judging a man for the events of the past, but
21 rather to take stock of a man and to look to the future and to consider the impact of a
22 reduction of his sentence, if you were to decide to reduce the sentence, and the
23 possible end of -- you must also consider, of course, his possible return to society.

24 Now, in 2016, the trial was held and the Chamber, the Trial Chamber considered the
25 gravity of the charges which affected the soul and the roots of an entire community,

1 and all of Mali and indeed of the entire international community, since the various
2 assets that were destroyed were part of UNESCO's Heritage list.

3 Today, when we look at the various criteria, the Prosecution submits that we are in
4 favour of a reduction of the sentence, which could have a number of conditions
5 attached to it to take into account the fears and concerns of victims.

6 In a few moments I will give a more detailed explanation of these points and, very
7 briefly, without going into all the criteria, some of which will require a presentation in
8 private session, I would like to state that Mr Al Mahdi immediately, right from the
9 very beginning, showed his willingness to cooperate with the Court. His behaviour
10 in detention shows that he disavows the crimes he committed and he has already
11 done so before the Trial Chamber. And what is more, the possible impact of his
12 release could have may be assorted with a number of conditions.

13 But, first of all, I do wish to address one particular point, namely the meaning that
14 must be attached to a "significant and clear change of circumstances sufficient to
15 justify the reduction of sentence", end of quote.

16 This is the third criteria that we find in Article 110(4)(c) of the Rome Statute.

17 This wording, "a clear and significant change of circumstances", has already been
18 reviewed in the Panel of the Katanga case. At the time, the appeals judge thought it
19 was sufficient to use the ordinary plain English meaning of the expression, and
20 *manifeste* in French was deemed to mean free of doubt, without ambiguity and very,
21 very obvious. As for -- as for appreciable consequences, they were defined as being
22 broad enough to be noted or to have an effect.

23 One factor that would correspond to a clear and significant change of circumstances
24 sufficient to justify the reduction of sentence is something that comes from the
25 assessment of your Panel.

1 Allow me to be more specific. In the Lubanga case, the Panel of judges stressed the
2 discretionary nature of this assessment under Article 110(4).

3 The Panel said, and I quote in English: (Speaks English)

4 "... given the discretionary nature of the decision, the presence of a factor in favour of
5 reduction does not in itself mean that a sentence will be reduced. Similarly, the
6 presence of a factor militating against a reduction of sentence does not preclude the
7 exercise of its discretion. Such factors must be weighed against factors in favour of
8 reduction to determine whether a reduction of sentence is appropriate."

9 (Interpretation) And taking that into account, if there has been a significant change in
10 circumstances such to justify a change in the sentence.

11 This is part of the overall assessment that the Bench will have to carry out and it's
12 dependent on the facts in the case in point.

13 However, the Bench in Lubanga provided evidence with regards to the conduct of
14 this assessment to the extent that other factors under 110(4)(c) refer to the Rules of
15 Procedure and Evidence. The Panel of the judges considered that in principle other
16 factors to take into consideration came into rule -- should be taken into account under
17 Rule 223.

18 And for its part in the Katanga case, the Bench said: (Speaks English)

19 "... given ... the factors under Rule 223(b) and (c) of the Rules of Procedure and
20 Evidence will be considered for the first time, it is necessary to find that there are
21 changed circumstances in relation to the factors listed in Rule 223(a), (d) and (e) of the
22 Rules of Procedure and Evidence from the time that the sentence was imposed."

23 (Interpretation) And a point which deserves attention, your Honour, the burden of
24 proving the presence of other factors isn't just for the convicted person. The Bench
25 in Lubanga concluded that it's incumbent upon all parties to review the sentence and

1 to provide relevant information in their possession concerning these other factors,
2 whether this is in favour or not of changing the sentence.

3 In total, the question of whether the information provided to the Chamber is sufficient
4 to establish a significant change in circumstances depends entirely on the
5 circumstances of the case.

6 If you would allow me, your Honour, your Honours, to now come to the
7 circumstances in the present case. And I will start with the criteria in 223(a) of the
8 Rules of Procedure and Evidence, namely, if the conduct of the person in detention
9 shows that he disavows his crime and which is obviously central to his general
10 attitude of his -- its indicative of his attitude and awareness. I shan't go into all the
11 different developments that have been mentioned in the written brief, but I would
12 just mention a few points that are worthy of attention.

13 Firstly, Mr Al Mahdi indeed admitted very early the fact that he was charged by the
14 Office of the Prosecutor. And when I said very quickly, that is to say from the first
15 interviews under 55(2) of the Rome Statute, and I'm referring to September 2015 here.
16 Mr Al Mahdi as well expressed his remorse during the trial when he pleaded guilty
17 on 22 August 2016, and at the time he said, "Ladies and gentlemen, I am in this
18 courtroom full of remorse and regret to confirm once again that the charges against
19 me by the Prosecution are true and accord with the truth." End of quote.

20 He stated furthermore that "I only have to say that all Muslims in the world should
21 resist this action which has no limits or benefits". And this was a message which
22 was clear and unambiguous.

23 The Trial Chamber noted his attitude. And he continued to express his remorse in
24 an article which appeared in a UNESCO article. And you saw it in the Registry
25 report. He continued to express his remorse throughout his detention to the chief of

1 detention.

2 At this stage in my submissions, your Honour, I would now like to go into private
3 session for a short moment before going back in public session and then furthermore
4 into private session for a slightly longer periods.

5 PRESIDING JUDGE BOSSA: [10:39:12] Thank you, Counsel.

6 We regret that we have to go into private session. Public, you are requested to bear
7 with us.

8 Registry.

9 (Private session at 10.39 a.m.)

10 THE COURT OFFICER: [10:39:31] We're in private session, your Honour.

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Open session at 10.41 a.m.)

3 THE COURT OFFICER: [10:41:34] We are back to open session.

4 PRESIDING JUDGE BOSSA: [10:41:40] (Microphone not activated)

5 MR DUTERTRE: [10:41:42] (Interpretation) Thank you very much, your Honour.

6 I now go to a second criteria, having addressed the criteria of his expression of
7 remorse, and now I'm going on to the criteria of Article 110(4)(a), namely, the fact that
8 the person from the start and in a continuous way expressed his will to cooperate
9 with investigations and prosecution.

10 And I have a certain number of remarks that I'd like to make. Perhaps the first can
11 be made in open session. It has to be said that Mr Al Mahdi cooperated with the
12 Office of the Prosecutor and did so from the first meeting in September 2015. His
13 rights were explained to him under Article 55(2) and he directly recognised his
14 involvement in the events without trying to disguise any participation in the
15 destruction and the attacks on property which he was charged with. And his
16 cooperation was followed with a guilty plea in 2016, which made it possible for an
17 extremely quick trial to be conducted in about one year in total in order to discover
18 the truth, and it made it possible to avoid an incalculable number of difficulties with
19 regards to witness protection because the fact was that the burden of proof was easier
20 to administer and we did not have to call witnesses here to demonstrate the facts that
21 he admitted to the Prosecution on the basis of very, very clear evidence.

22 And at this stage I would like to go into private session before finishing in open
23 session, your Honour.

24 PRESIDING JUDGE BOSSA: [10:44:05] Registry.

25 (Private session at 10.44 a.m.)

- 1 THE COURT OFFICER: [10:44:18] We're in private session, your Honours.
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
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- 8 (Redacted)
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12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Open session at 10.49 a.m.)
17 THE COURT OFFICER: [10:49:23] We are back to open session, your Honours.
18 And there's two minutes left for the Prosecution.
19 PRESIDING JUDGE BOSSA: [10:49:31] Yes, proceed, Prosecutor.
20 MR DUTERTRE: [10:49:35] (Interpretation) A couple of minutes might be a bit short.
21 I just beg your indulgence. I'll go into the matters of resocialisation and insertion.
22 If you go back to paragraphs 48, 52 concerning the possibilities of resocialisation and
23 successful resettlement on the impact of social stability and the impact on victims, this
24 was an incredibly important criteria as well and it has to be at the heart of your
25 decision.

1 And I know, in order to save time, my colleague, Maître Mayombo, will develop that
2 further. As such, I'll go further into the questions that you put to the participants in
3 this hearing, your Honours, concerning the position of the conditions when it comes
4 to a potential reduction of sentence for Mr Al Mahdi, which is very important at a
5 practical and legal -- from a practical and legal perspective.

6 The Office of the Prosecutor recognises this a matter which isn't clear in itself, but
7 ultimately the Prosecutor considers that the Chamber can -- Article 110 in such a way
8 that it can impose such conditions.

9 Certainly, firstly, your Honour, your Honours, you have to recognise that the text of
10 Article 110 doesn't set a reduction of sentence. This term "reduction of sentence" is
11 employed in Article 110, and as such it is suggested that the sentence -- the reduction
12 of sentence is put against its continuation in other forms, including with conditions.
13 Other tribunals where it concerns this matter have allowed significant options when it
14 comes to this reduction of sentence. That's the case for the ICTY, ICTR, the Lebanon
15 Tribunal, there is jurisprudence on pardons and the commutation of sentences as
16 well.

17 Also, there are specific guidelines in this regard that have been adopted. The fact
18 that detained persons can be released under certain conditions is not only about
19 reducing the sentence but also about commuting the sentence, a power which the
20 Chamber has.

21 Now, the Appeals Chamber in the Lubanga and Katanga case raised the different
22 regimes that are adopted by the Court compared to other tribunals and it noted that
23 the legal early release regime of the ad hoc tribunals is different to that of the Court.
24 Now, in this context there is an inherent power that the judges have. I refer the
25 Chamber to the Bemba case, which sheds light on this issue with regards to the

1 question of the suspension of the sentence, the conditional suspension of the sentence.
2 The Appeals Chamber stressed that the inherent power should be -- or inherent
3 authority should be restricted narrowly. And in the Statute, this shouldn't be
4 considered a lack therein.
5 Now, in this context if you are favourable to this position, it is necessary to do three
6 things.
7 First of all, to evaluate whether the question of the reduction of the sentence under
8 certain condition is different from that of conditional suspension. These are terms
9 which do not figure within the Statute, it must be said.
10 Furthermore, it's necessary to look at the term "reduction", which can be addressed
11 with prudence and with a view to considering the scope of application of the decision
12 in the Bemba case, which I have just mentioned.
13 Now, where it concerns the interpretation to be given to the terms of -- the term of
14 reduction, firstly, one can agree not to apply excessive importance to the term
15 "reduction" under Article 110 and apply a teleological interpretation about the
16 benefits accorded thereto as seen by the ad hoc tribunals. This term "reduction", if
17 interpreted correctly in accordance with the context and in light of its aim and
18 purpose, can be considered as interchangeable with the term of "commutation of
19 sentence" and "early release".
20 In this sense, it is possible to argue that substantively there is no difference between
21 granting a reduction of sentence or a commutation of sentence, and in this regard they
22 both have the same objective and consequence, namely, to provide early release of the
23 person found guilty when the conditions at a legal and factual level have been met.
24 Such an interpretation of the term "reduction" and the fact that it accords with (c) and
25 (d) of Rule 223 mention the early release of the person, and this also accords with the

1 practice before other international courts and tribunals.

2 Certainly it would seem that there is a tension between the terminology and criteria
3 under Rule 223, which takes into account different elements with regards to early
4 release, and the fact that Article 110 is essentially about a change in the sentence on
5 the basis of the crimes committed. But Article 110(4)(c) does refer to the Rules of
6 Procedure and Evidence and namely Rule 123 which speaks -- 223 which speaks
7 about early release.

8 Furthermore, such interpretation would correspond to the objective of 110 giving the
9 Court the flexibility in granting early release when the criteria are met, but only under
10 the -- where conditions are imposed thereto. If the Court, your Honour, your
11 Honours, does not have such flexibility to -- a convicted person could find themselves
12 restricted to detention even if the conditions are met. And this would be less
13 binding than continued detention. For example, if the only obstacle to early release
14 of a convicted person and the perspective that this might be a cause of social
15 instability in the country of origin - this is Rule 223(c) - it would be in accordance with
16 the aims to re-examine the sentence to order release subject to the provision that the
17 accused is not in that country -- or that the convicted person is not in that country.
18 The imposition of a detention -- continued detention on the sole grounds that there
19 are measures which could be easily put into place under 110 would be against the
20 objectives thereof.

21 Furthermore, if you would allow me to make a parallel here, if Article 60 of the
22 Statute on the detention of suspects and the accused does provide for conditions,
23 unlike Articles 110, it has to be taken into account that the suspect and detained
24 persons, the accused are presumed to be innocent, that liberty, that freedom is a
25 principle and that imposing conditions on release requires an explicit basis.

1 THE COURT OFFICER: [11:00:24] (Overlapping speakers) three minutes over, for
2 your information.

3 MR DUTERTRE: [11:00:25] (Interpretation) In other words, when it comes to a
4 person who has already been found guilty under Article 110, there may be the
5 possibility of a legal opinion.

6 I come now to my conclusion on this point and my ultimate conclusion, your
7 Honours.

8 The jurisprudence of the Appeals Chamber in the Bemba case, according to which the
9 certain powers can only be applied to unregulated sentences to put in place
10 mechanisms not provided for within the regulatory framework of the Court, does not
11 apply in this case.

12 The Appeals Chamber merely answered the question whether at the time that the
13 sentence was handed down that the Chamber -- whether the Chamber had the power
14 to impose a sentence other than imprisonment.

15 Under Article 110, the situation is different because the Court must determine
16 whether a person found guilty, who has already spent a period of time in detention,
17 may be released. It is possible to argue that under such circumstances the judges do
18 have the authority, the power to order early release without this being linked to
19 conditions. And this would also be in keeping with the jurisdiction under -- in the
20 Bemba case.

21 In all, the -- all in all, your Honours, the Prosecution is in favour of a reduction of
22 Mr Al Mahdi's sentence, according to your assessment, along with any conditions that
23 you may deem to be necessary.

24 I thank you, your Honours.

25 PRESIDING JUDGE BOSSA: [11:02:47] Thank you, Counsel for the Prosecution.

1 The Legal Representative of Victims, you have 15 minutes to make submissions on
2 behalf of the victims. And please advise whether we need to remain in private
3 session or go into -- whether we need to remain in open session or go into private
4 session.

5 MR KASSONGO: [11:03:19](Interpretation) Good morning, your Honours. Once
6 again, the Legal Representative of Victims is in a position to make our submissions in
7 open session and we will endeavour to limit as much as possible any information that
8 may require us to go into private session.

9 PRESIDING JUDGE BOSSA: [11:03:51] Thank you, Counsel.
10 Registry, where are we?

11 THE COURT OFFICER: [11:03:57] We're in open session, your Honour.

12 PRESIDING JUDGE BOSSA: [11:03:59] Okay. We are in open session.
13 Counsel, keep that in mind and proceed, please.

14 MR KASSONGO: [11:04:10](Interpretation) Madam President, your Honours, I am
15 making reference today's transcript, page 10, lines 1 to 10, to thank my Defence
16 colleague for his submissions regarding the new man, and the Legal Representative of
17 Victims thanks you.

18 Furthermore, at page 32 of today's hearing, line 28, on to page 33, line 1, I thank my
19 colleague from the Office of the Prosecutor who made a number of submissions
20 concerning the impact of your ruling to come concerning the situation of the victims.

21 Madam President, your Honours, today I wish to speak to the issue of reparations
22 and I wish to focus on the reparations and the consequences of -- your ruling will
23 have upon reparations.

24 Your Honours, you have received this special assignment, so to speak, concerning the
25 reduction of the sentence of Mr Al Mahdi. I am the Legal Representative of the

1 victims who are the descendants of the saints of Timbuktu. And at this particular
2 stage in the proceedings, namely this stage of reparations, nearly all of these victims
3 have been identified. Some have received reparations and some will be receiving
4 them relatively soon.

5 The sentence that was handed down in 2016 by Trial Chamber VIII on 27 September
6 opened the way to re-establishment and restoration of the chaos that had been
7 brought about by the destruction of the mausoleums and historic monuments that
8 had been destroyed during the events of 2012.

9 The idea that reparations would be individual in nature would be a matter of
10 repairing the links in the chain that have been broken. It would allow some to
11 regenerate, some to renew.

12 If your -- if this Honourable Panel would like a justification for reparations within the
13 framework of this particular case, if this is what you -- what you desire, I believe I can
14 offer some information about the impact of the decision on the process of reparations
15 itself.

16 In actual fact, your Honours, when interviewing the victims and when having
17 conversations with them, a number asked me to tell this Chamber about the scars, the
18 scars on their souls, the wounds that have been reopened. Allow me to summarise
19 what was said by one particular victim as an example, a person who does not
20 necessarily reflect the entirety of the victims. This victim said: "I do not agree. I
21 do not think he should be released because of all the harm he did to my ancestor."

22 Now this is not the general trend, but I wish to make this report to you.

23 Other victims, your Honours, are entirely in agreement with the arguments advanced
24 this morning. This would be a - hmm - a protective measure, in a way of speaking,
25 in relation to the impact of this decision, the impact on security. I am giving this

1 example because one sample of victims believe that Mr Al Mahdi can be forgiven.
2 They believe that the sentence can be reduced if it is requested in a context of pardon,
3 regret and a guarantee not to have recourse to violence ever again. I quote the
4 victim once again who said, quote: "Because I am a good Muslim and he is too." Of
5 course, this victim was speaking of Mr Al Mahdi.
6 Madam President, at this particular opportunity the victims who are speaking
7 through us have expressed support for a reduction of Mr Al Mahdi's sentence, and all
8 the victims in this case are happy that Mr Al Mahdi has behaved well. He has
9 chosen to listen to reason and has turned a deaf ear to radicalisation and the use of
10 violence. The sentence handed down and served by Mr Al Mahdi has apparently
11 played its role in the process of Mr Al Mahdi's return to society.
12 All the same, your Honours, given that this sentence is a punishment that has an
13 impact on the return to society, on reparations to all victims eligible for compensation,
14 without all this will be dependent on the assessment of your Chamber, your exercise
15 of striking the right balance between Mr Al Mahdi's interests on the one hand and the
16 hesitations expressed by a certain category of victims.
17 Madam President, your Honours, the system of reparations currently underway has
18 made it possible to repair the links of the chains, so to speak, between the community
19 and the worship of the ancestors. So any measure for Mr Al Mahdi's return to
20 society and to encourage him will be a positive thing.
21 The same thing holds true for collective forms of reparations, or individual
22 reparations, be it for the victims of -- some victims may derive an individual benefit
23 or in a collective manner.
24 With the Al Mahdi case, we have seen a new kind of reparations come to light, a
25 specifically individual connotation adjusted to the situation of the victims of

1 Timbuktu.

2 Your Honours, the sentence handed down against Mr Al Mahdi was historical and
3 any reduction of this sentence will also be historical.

4 I would like to speak briefly to the relevance of my learned colleague who just spoke
5 concerning Article 110. Through our voice, the victims do note the good behaviour
6 of Mr Al Mahdi and the pardon that Mr Al Mahdi desires. It is to be hoped that
7 Mr Al Mahdi continues along a path of wisdom and reason. And the victims call
8 upon your Chamber for -- well, if this reduction were to happen, this would be a
9 guarantee that the destruction of mausoleums would not occur again.

10 However, they do wish to draw to the Chamber's attention their desire to see the
11 process of reparations continue its path for obvious reasons that have to do with not
12 only the meaning to be attributed to reparations but also to the form of reparations.
13 The system of reparations that is currently in place is a speedy one and an effective
14 one. It has begun -- it has become, rather, the foundation for a form of restorative
15 justice at the International Criminal Court. It is indeed -- it represents the vanguard.
16 It is something new, something innovated, a new mechanism for reparations. This
17 process of reparations is a guarantee.

18 In conclusion, Madam President, your Honours, I wish to quote one particular source
19 of doctrine. And this point was made by a scholar who wrote in 2011, and I quote:
20 "It is an imperative to ensure that reparations are comprehensive and rapid so that
21 they should be effective. And the return of the victim to the family, the human
22 family, is vital. Reparations also means taking care of others, the people who have
23 been victimised, in the complexity of all the suffering they have endured."

24 So there you have it.

25 Madam President, your Honours, as Legal Representative of Victims, after having

1 consulted the victims at the reparations stage, I wish to express the views and
2 concerns of the victims so that this Panel may have the necessary information to make
3 its assessment.

4 I thank you, your Honours.

5 PRESIDING JUDGE BOSSA: [11:18:58] Thank you, Mr Kassongo.

6 May we now have the representative of the Registry. You have the floor for the next
7 15 minutes. And please indicate whether we remain in open session or go into
8 private session.

9 MR DUBUISSON: [11:19:24](Interpretation) Thank you, Madam President,
10 your Honours.

11 I do not intend to have to go -- I don't intend to request private or closed session.

12 I think we can remain in open session and I shall be brief.

13 PRESIDING JUDGE BOSSA: [11:19:50] Please continue.

14 MR DUBUISSON: [11:19:53](Interpretation) Thank you.

15 Not being a party or a participant in these proceedings, I shall restrict myself in my
16 remarks to factual information regarding the detention of the convicted person.

17 I met Mr Al Mahdi in Niger as part of an arrest and handover operation. We had an
18 opportunity to speak to one another and a number of measures were taken to
19 organise the transfer of Al Mahdi.

20 Mr Al Mahdi, right from the very beginning, was extremely respectful in his contacts
21 with us. And he cooperated fully with the authorities and with the Court.

22 Then he was detained at the detention -- September from 2015 to 2018. And then, as
23 part of his sentence, he was transferred to the United Kingdom.

24 As the Prosecutor has already said, I can confirm that Mr Al Mahdi expressed
25 remorse to the acting head of the detention unit.

1 Turning now to Mr Al Mahdi's behaviour whilst in detention. Mr Al Mahdi was
2 always respectful and extremely polite towards others and had very cordial dealings
3 with his co-detainees and the staff of the Registry and the medical service. Indeed,
4 he was able to work within the detention unit, taking part in a number of activities,
5 and he is entirely able to take time for himself and be on his own.

6 I can also confirm what his Defence counsel has already said. He did take part,
7 enthusiastically, in a number of educational programmes, sports activities and other
8 activities.

9 Allow me to be a bit more specific. In The Hague our detention centre is a detention
10 centre, not a prison. One does not serve a sentence in our facility. Usually there -- a
11 proper prison sentence includes a number of activities, awareness, return to society,
12 but we do not have such programmes here at our facility. But whilst in detention
13 elsewhere, Mr Al Mahdi did take full advantage of programmes and activities offered
14 to him.

15 What is important to Mr Al Mahdi is his family. His family is extremely important
16 to him. And indeed, as is the case for many detainees and inmates throughout the
17 world and more closer to home in The Hague, Mr Al Mahdi had tremendous
18 difficulties in communicating with visitors and, in particular, with his family. Very
19 little communications with his family in recent years.

20 Now, if I could turn to the victims for a few moments. Of course I completely agree
21 with the remarks made by the Legal Representative of Victims, but I can say that we
22 did gather some views from victims within our own sphere of possibilities. These
23 victims did express fears for their safety. And this is not just the case in this
24 particular case, this is so in all cases before the Court. Some victims would also like
25 to see a number of guarantees or conditions related to any early release. It is not my

1 task to determine whether conditions or guarantees would be appropriate in this
2 particular case.

3 What is clear is that for the Registry, it is important for the Registry to be able to
4 prepare the victims, no matter what the decision may be. And we must be able to
5 organise awareness-raising programmes and communication programmes to explain
6 the decision that is taken.

7 So there you have it. I will conclude on that point and I thank you.

8 PRESIDING JUDGE BOSSA: [11:25:22] Thank you, Mr Dubuisson.

9 This concludes the first session of today's hearing. We will have the lunch break and
10 resume at 1 p.m.

11 Thank you very much all.

12 THE COURT USHER: [11:25:38] All rise.

13 (Recess taken at 11.25 a.m.)

14 (Upon resuming in open session at 1.01 p.m.)

15 THE COURT USHER: [13:01:48] All rise.

16 Please be seated.

17 PRESIDING JUDGE BOSSA: [13:02:33] Good afternoon and welcome to the second
18 session of this hearing.

19 I notice that there are some new faces in the courtroom. Could we have them
20 introduced for the record, please.

21 MS DAHURON-JACOBY: [13:02:55] Yes, your Honours. Good afternoon.

22 This is -- for the Registry this afternoon Marc Dubuisson is replaced by myself,
23 Charlotte Dahuron-Jacoby, Chief of the Court Management Section.

24 PRESIDING JUDGE BOSSA: [13:03:13] Thank you.

25 Are there any changes we need to take note of?

1 Okay. So we will resume with the response of the Defence. Mr Aouini, you have
2 10 minutes, if needed, to respond to the submissions of the Prosecutor and the other
3 participants.

4 Do we need to go into private session? You are the best judge of that. Let us know,
5 please.

6 MR AOUINI: [13:03:50] (Interpretation) Thank you, Madam President, your
7 Honours.

8 There is no need to move into private session because in my remarks, which I am
9 going to deliver, there is nothing requiring confidentiality or moving into a private
10 session.

11 What I would like to say is that all the parties, i.e -- and the participants, i.e., the
12 Prosecution, the LRVs, and the Registry, they all delivered remarks that show to a
13 great extent that Mr Al Mahdi meets all required criteria that would allow your
14 Honours to consider the reduction of his sentence to which he was judged.

15 And as counsel for Mr Al Mahdi, I would like to say that he fully trusts the fairness of
16 your Honours, of the Presiding Judge to be the best -- he fully trusts that you are best
17 positioned to judge his actions, his words and his conduct throughout the
18 proceedings.

19 Your Honours, Madam President and the Honourable Judges, you are the best
20 spokespersons on behalf of international justice and the best positioned to speak in
21 the name of the great values which this Court represents, not only by addressing the
22 crimes and by deciding punishments, but also by contributing to social reconciliation
23 and reform in societies torn by conflict and war, in addition to rehabilitation and
24 resocialisation.

25 Madam President, your Honours, Mr Al Mahdi meets the requirements. He

1 admitted his guilt, he cooperated, he expressed regret, he sought forgiveness from all
2 concerned stakeholders: His family in Timbuktu, the people of Timbuktu, the
3 people of Mali, the international community and all concerned stakeholders,
4 including the victims and those harmed by his actions.

5 As a person, he has changed and become a better person and he has all the attributes
6 that qualify him to be a good citizen in society. Therefore, we ask your Honours to
7 exercise clemency over him and reduce -- and consequently reduce his sentence.

8 Thank you.

9 PRESIDING JUDGE BOSSA: [13:07:31] Thank you, Counsel.

10 The Panel will now pose a few questions to the parties and participants.

11 Everyone has five minutes to answer the questions put by the judges. And I will
12 pose the first question and it is to the Legal Representatives of the victims. And
13 please indicate whether your answer requires a private or open session.

14 So Mr Kassongo, please clarify with some specificity what impact Mr Al Mahdi's
15 early release, if so ordered, would have on the ongoing reparations process? Is the
16 question clear?

17 MR KASSONGO: [13:08:42](Interpretation) Thank you very much,
18 Madam President, your Honours.

19 The question is indeed clear. And this would allow me to answer you with a good
20 deal of precaution. And if I feel it is necessary, then I will request that we go into a
21 private session for a few factual details.

22 PRESIDING JUDGE BOSSA: [13:09:13] Registry.

23 (Private session at 1.09 p.m.)

24 THE COURT OFFICER: [13:09:29] We're in private session, your Honours.

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Open session at 1.11 p.m.)

17 THE COURT OFFICER: [13:11:33] We are back to open session, your Honour.

18 PRESIDING JUDGE BOSSA: [13:11:36] Yes, please proceed.

19 MR KASSONGO: [13:11:41](Interpretation) Thank you very much,

20 Madam President, your Honours.

21 The reparations process requires security in terms of procedure, security in terms of
22 procedure because the actors that are present out in the field putting these reparations
23 into place must feel that they are safe. The impact of any presence, were this
24 sentence to be shortened, will have an impact on the organs of this process and on
25 their safety.

1 And for this very reason, when they find themselves at the end of this process, the
2 impact will be lesser and will -- it will not really have much of an impact at all, in fact.
3 Quite simply to say that if we provide security for those organs that are furnishing
4 reparations, will enable us to in fact implement said reparations. The impact will
5 also be real with regard to those who are the descendants of the victims. They will
6 be wondering. And the Legal Representatives had raised this in his submissions.
7 I would refer you to our submissions dated 13 September 2021 to paragraph 24
8 thereof.

9 But quite simply to say and to point out that there are security concerns that will
10 come into play once the release is total. But one can make people safe in the decision
11 that you will be handing down. It is true that it is not an insurmountable difficulty,
12 and as such the Legal Representatives for Victims will be in a position to explain and
13 appease the concerns of those individuals. And that's why this difficulty is not
14 insurmountable and it does not stand in the way of the whole procedure, nor does it
15 stand in the way of the reduction of the sentence.

16 Madam President, your Honours, the impact will be very real if the organs that we
17 are -- part and parcel of the reparations procedure, that is, if we are put to one side
18 and not at all included in the management, advice and safety provisions for the
19 victims. And that is why the Legal Representative for Victims is requesting, to the
20 extent possible, that your Chamber consider, because you are in a position to do so,
21 and it is up to you, of course, and we cannot speak on your behalf.

22 This is my response that I wanted to give to the Chamber. Thank you.

23 PRESIDING JUDGE BOSSA: [13:16:33] Thank you.

24 The next question will be posed by Judge Lordkipanidze.

25 JUDGE LORDKIPANIDZE: [13:16:42] Thank you. My question goes to -- for the

1 counsel of the -- for the Prosecutor.

2 In response to the Panel's question on the imposition of conditions in connection with
3 the early release of Mr Al Mahdi, you provided an example in the earlier session,
4 namely, that if the only obstacle to early release of the sentenced person is that he
5 might be a cause of social instability in that country of origin, a possible condition that
6 could be attached to early release is that such a person should not be released to that
7 particular country. That's why I have two questions.

8 First, could you please clarify what is a legal basis for that, in particular, on what basis
9 Article 110 and Rule 223 could be interpreted as to allow this Panel to exercise its
10 discretion to impose such conditions on early release. First.

11 And second, how would such conditions be enforced and who would be responsible
12 for doing so?

13 MR DUTERTRE: [13:18:39](Interpretation) Thank you very much, your Honour, for
14 this question.

15 There might have been an interpretation issue when I was making my submissions to
16 the extent that I was providing an example, amongst others, of a case where all the
17 conditions had been met and there might have been an obstacle to a reduction of the
18 sentence. And I was making mention indeed the impact upon society.

19 But that was not the only example. And in your question I have understood that
20 maybe there was an interpretation issue.

21 The legal foundation of Articles 110(4) and 123 is part and parcel of the inherent
22 power of the Chamber, in the sense that you will understand that there is a lacuna in
23 the text of Article 110 with regard to the issue at hand.

24 And this brings us to the decision in the Bemba case with regard to Article 77, which
25 lists the sentences that can be handed down by the tribunal. And in this context and

1 on the basis of the principle of equality, the Appeals Chamber had indicated that
2 silence on the matter cannot be considered a lacuna or a shortcoming and that the
3 inherent power should not be applied in that context, that is to say, to hand down a
4 sentence and then suspend it.

5 So there is the handing down of the sentence and then there is the execution of said
6 sentence. The handing down of the sentence is Article 77, and the execution of the
7 sentence falls under Article 110, and one should possibly make the distinction
8 between a sentence which could have been assimilated with a suspended sentence
9 and its execution which falls within the matters of concern and also falls under
10 national jurisdictions. Of course we can consider that the list of sentences under
11 Article 77 is exhaustive, that there are no lacunae. We're here talking about handing
12 down sentences.

13 But under Article 110 we are in the execution of said sentence. And were we to
14 associate this with the terminology of Rule 223, we are talking here about an early
15 release, which is not quite simply a reduction of a sentence in the form of
16 commutation of sentence, that is. In the lack of any applicable conditions, then it is
17 your inherent power to decide on the matter.

18 Of course, then the issue of control returns, which is a question of control and a
19 question of implementation of control, which is somewhat more complex in nature.

20 And were we to suppose that we are in the continuation of a sentence here, a sentence
21 that then is ongoing under different conditions, so that is to say release under
22 conditions, it behoves the Court to be able to control the implementation of these
23 measures.

24 I would underscore that, and I would like to provide an example, namely that very
25 recently on 7 October 2021, we in the Lukic case -- in the Lukic case there was a

1 release, with a number of conditions attached, which were provided in an agreement
2 attached to said decision and which is provided for in the disposition of the decision.

3 I'm referring here to a case of the MICT dated 14-67-ES.4.

4 So that is an example of practice that shows both the relevance and the usefulness of
5 conditions in the execution and application of sentences handed down by the
6 international courts and which could also provide information for your Panel.

7 Thank you very much, your Honours.

8 PRESIDING JUDGE BOSSA: [13:25:05] Thank you.

9 The last question will be posed by Judge Perrin de Brichambaut.

10 JUDGE PERRIN DE BRICHAMBAUT: [13:25:14](Interpretation) Thank you,

11 Madam President. My question is for the Defence team.

12 The Defence team, could you please indicate to us what Mr Al Mahdi's intentions are
13 once he will have completed his sentence. Thank you.

14 PRESIDING JUDGE BOSSA: [13:25:37] And please indicate whether you think we
15 should be in open or private session.

16 MR AOUINI: [13:25:46](Interpretation) We may speak in open session,

17 Madam President, your Honours.

18 Mr Al Mahdi, during his detention and imprisonment in implementation of the
19 sentence for more than six years, he devoted himself to self-reform and to training.

20 He learned several languages. Today he was able -- he is now able to speak Arabic,
21 French and English. He also learned mathematics and other -- in addition to other
22 areas of knowledge and also crafts.

23 He is completely open-minded now. He has changed totally and he would be a
24 good citizen in any society. I reassure your Honours that, if released, Mr Al Mahdi
25 would be an active and beneficial element in any society he finds himself in.

1 As to his intentions after his release, you are probably aware of the fact that he is an
2 Islam -- he's an Islamic scholar. He has drafted many articles that enshrine moderate
3 Islamic thinking. He has a clear philosophy about that and this is part and parcel of
4 his intentions.

5 He intends to be a good citizen in any country, including in Europe.

6 He has a philosophy, an interpretation, and solutions that address religious
7 extremism. He is preparing now a thesis about advice that can be given to Muslims
8 to take a distance from all extremist trends, religious extremist trends.

9 He has lived himself with the highest leaders of radical militant groups, such as
10 Al-Qaeda and others. He was very close to these leaders and, after he got back his
11 senses and regretted his past actions and after admitting his errors, he was able to
12 learn the lessons and to come up with certain things that can be of benefit to mankind,
13 but to Muslims particularly, especially Muslim youth who might go astray and wind
14 up being radical and join extremist groups all over the world.

15 His intention is to be a lecturer, a writer in any country that he might find himself in,
16 with a view to benefiting the society he will live among.

17 Mr Al Mahdi has written a book that lays out advice and -- and solutions that can be
18 useful to Muslims to distance themselves from the other path, the path of religious
19 extremism, regardless what form it takes.

20 This is what I wanted to say in this regard. Thank you, Madam President.

21 PRESIDING JUDGE BOSSA: [13:30:30] Thank you, Counsel.

22 Mr Al Mahdi is now invited to address the Panel.

23 Mr Aouini, could you please indicate if we need to remain in private session.

24 Mr Al Mahdi, you have 20 minutes. I remind you to please speak slowly for the
25 benefit of the interpreters.

1 MR AOUINI: [13:31:04](Interpretation) Thank you very much, Madam President.

2 He has tried in his remarks to stay away from any confidential information, so we can
3 stay in an open session. He would like, obviously, to deliver his remarks to the
4 Chamber but also to all concerned stakeholders and the international community and
5 to anyone who follows this hearing.

6 Thank you very much, Madam President.

7 PRESIDING JUDGE BOSSA: [13:31:34] Thank you, Counsel.

8 Mr Al Mahdi, you may begin your address.

9 MR AL MAHDI: [13:31:45](Interpretation) Madam President, Honourable Judges,
10 warm greetings to all of you and to all the parties in this hearing and to all attendees.
11 I stand before you today to express to you, and to the entire world through you, my
12 deepest remorse, sadness and regret for all the crimes that I committed in the past and
13 all the damages that resulted from these crimes against my brothers and sisters and
14 my beloved people of Timbuktu, and against my dear homeland, the Republic of Mali,
15 and against the entire humanity.

16 I deeply regret all my crimes and I feel deep, sincere and genuine remorse that
17 awakened my heart and my conscience and prompted me to repent and change. I
18 stand before you to express my sincerest apology that comes from my broken heart to
19 the victims of violence and extremism in Timbuktu, the grandchildren of saints.

20 I apologise to the people and government of my country and to the international
21 community in its entirety, especially the international bodies which sponsor human
22 rights and World Heritage.

23 I stand before you today feeling extremely remorseful and apologising to you. I'm a
24 changed person, completely dissociated from crime, to appeal to you for forgiveness.

25 With full trust in the greatness of your wisdom, I hope that my apology is accepted

1 and that my repentance and remorse is welcomed. I appeal to you to give me a new
2 chance to translate this remorse and this repentance into good deeds that serve the
3 society and justice.

4 Madam President, Honourable Judges, this deep remorse is what made me in the first
5 place to cooperate with the Court in order to establish the truth and to achieve justice.

6 It was a continuous and unconditional cooperation which started by facilitating the
7 investigation with me and admitting to my guilt and taking responsibility of my
8 action (Redacted)

9 where I explained to them frankly and honestly all the facts that I knew and
10 witnessed during the events in Timbuktu in 2012, as well as all the related reasons
11 and consequences of such events.

12 The main motive behind this cooperation was to satisfy my conscience and to
13 convince myself that I am walking on the right path towards correcting my mistakes,
14 and I did that by contributing in achieving justice, even if that was through giving the
15 investigators one single piece of information.

16 Madam President, your Honours, this sense of remorse and subsequent repentance
17 and my willingness to end my association with crime have all led me to take bold
18 decisions towards change and dissociation with crime and its reason -- and its
19 reasons.

20 I have made use, good use of all the means that were made available to me in the
21 detention centre and in the prison (Redacted). I made good use of all the material
22 and moral support that I received to rebuild my personality constructively on a basis
23 of positive thinking, balanced emotions and good behaviour.

24 This was after I reviewed all my past convictions and ideals that I had in the past, and
25 I picked from them only the ideals that promote tolerance, peace and mercy to the

1 entire humanity. And I left behind in a rubbish bin any conviction or ideal that can
2 be used as a basis for hate, aggression or extremism.

3 The generous and good treatment that I received from people who are not Muslims
4 was one of the factors that helped in purifying and opening my heart and encouraged
5 me to move forward towards mending myself and rebuilding it.

6 The first people who had this impact on me were a group of the Office of the
7 Prosecution of this Court from the first day I met them and also members of staff in
8 the detention centre and (Redacted), as well as some of the prisoners
9 and detainees.

10 Madam President, Honourable Judges, my love for change and willingness to achieve
11 it made me challenge the hard circumstances that I have been through, some of which
12 have resulted from my special security conditions that were a result of my
13 cooperation with the Court. One of these difficult circumstances was spending my
14 sentence in a country that I considered as exiled. My entire family, all my relatives
15 and my friends and all my acquaintances lived across seas and oceans on the other
16 side of the earth. This resulted in me spending three consecutive years without
17 receiving a visit, a present, nor even a letter, while I saw other prisoners enjoying this
18 every day.

19 Amongst these hard circumstances also was the fact that I was subjected to physical
20 and verbal assaults which led to taking extra security measures, that meant that I had
21 to spend three months in completely solitary isolation.

22 Madam President, your Honours, I challenged all these circumstances and I turned
23 my pains and disappointment into means to help me explore myself and finding my
24 weaknesses and my strengths. I moved forward towards building my personality
25 and preparing myself to integrate in the society and serving it. I did that through

1 participating in all the activities that were available for prisoners as and when the
2 previously mentioned circumstances allowed.

3 I learned new skills and gained varied experiences which developed my personality
4 and improved my reasoning level, making sure all the time to stay physically fit. I
5 studied math and IT and I managed to communicate in English. I practised drawing,
6 music, chess, yoga and sports. All that was to prepare myself to be a good citizen
7 who is capable of interacting positively with different communities and societies and
8 capable of benefiting myself as well as others.

9 In conclusion, Madam President, your Honours, I stand before you today to appeal to
10 you to accept my remorse and my repentance and to give me a new opportunity. I
11 appeal to you to uncuff my hands so that I can support my family who desperately
12 need me and so that I can serve the society and continue with my studies.

13 I confirm to you my pledges to you that I have dissociated completely with world of
14 crime and extremism and that I will never go back to it. I will never go back to it.

15 And to those who might have some suspicions and concerns, I would like to confirm
16 that I will always stand by the people of Timbuktu. I will stand by the people and
17 government of my country in order to achieve justice and peace and to promote
18 reconciliation and stability. I will always be in the service of justice, no matter how
19 difficult this can be. I will live in the future with only three objectives: Peace,
20 knowledge, and production.

21 Thank you, Madam President. Thank you, your Honours. Thank you for giving
22 me this opportunity to speak to you. This is the message that I give to you today.

23 And I have another message which I wrote on 30 March and this is to the Victims
24 Trust Fund, if you allow me to read it as well.

25 PRESIDING JUDGE BOSSA: [13:46:40] Registry, can you please come forward.

1 Okay. You may start -- okay. Can you do that in five minutes, Mr Al Mahdi?

2 MR AL MAHDI: [13:47:37] (Interpretation) Six minutes, if you allow me,

3 Madam President.

4 PRESIDING JUDGE BOSSA: [13:47:41] Okay. You may begin.

5 MR AL MAHDI: [13:48:02] (Interpretation) On this historic day where people with

6 life conscience stand in solidarity with the victims of violence and extremism in

7 Timbuktu, the great city of Timbuktu, I am honoured to address my beloved brothers

8 and sister, the grandchildren of saints and sponsors of knowledge and religion and

9 the entire society of Timbuktu. I would like to address the citizens of my dear

10 homeland, the Republic of Mali, and to the international community in general.

11 At a time where I can't attend personally with you, I stand by you with my voice,

12 conscience and heart, I stand in solidarity with you and I would like to confirm to you

13 that I will do my best in order to rebuild links of care and love and brotherhood

14 between me and my people in Timbuktu, this good relationship that unfortunately

15 was the first -- I was the first one to abuse and to cut.

16 I am one of the sons of this country that submitted to the weaknesses and walked in a

17 path that imposed radical views on the generous people of this great city. Those

18 groups have destroyed a huge amount of heritage and historic buildings in Timbuktu

19 and they have undermined the traditions of its people and undermined the

20 importance of their ancestors to them and mocked the international community

21 which sponsors and preserves the authenticity of our city.

22 Sadly, I was one of the people who got recruited to implement such destructive

23 actions, but I now admit to my guilt and express my deepest remorse for the

24 destruction of the Heritage sites and of all what resulted from, from such destruction,

25 the material and the moral damages that cannot be valued. Entire families suffered

1 such damages.

2 And at the time where I am still being punished, where I am still very punished, I was
3 fined to a specific amount of money to compensate -- to compensate for my -- for the
4 damages and actions that I made. However, I totally understand that the moral loss
5 cannot be compensated.

6 It is very sad that my conscience now has awakened in a time which can be
7 considered as too late, but I hope that in the future I will be able to contribute in
8 preserving the mausoleums and manuscripts or anything else that can relieve the
9 pain of my brothers and sisters and my beloved people who were subjected to such
10 atrocities.

11 Here I don't want to -- I don't want to waste this opportunity to confirm to you my
12 solidarity with you and with the international community, and I would like to go
13 back to you as a son of this country, a sincere son of the country. I don't have any
14 doubt that your generous hearts will not -- will not reject me and will forgive -- will
15 forgive me, because you read -- you read from the Koran that reconciliation is good
16 and that those who forgive will receive their rewards from God.

17 Thank you very much and peace and blessings be upon you all.

18 Thank you, Madam President, for giving me this opportunity again.

19 PRESIDING JUDGE BOSSA: [13:54:27] Thank you, Mr Al Mahdi. The Panel
20 assures you that we will take -- we will, to the greatest extent possible, take into
21 consideration the matters you have raised today.

22 Now closing of the hearing. Are we in open session?

23 THE COURT OFFICER: [13:54:47] We are in open session, your Honour.

24 PRESIDING JUDGE BOSSA: [13:54:49] Okay. Thank you.

25 The Panel thanks the parties and participants for their assistance with respect to this

- 1 hearing.
- 2 Rule 224(2) of the Rules provides that following the review hearing, the Panel's
- 3 decision and the reasons for it should be communicated to the review participants as
- 4 soon as possible.
- 5 The Panel informs the parties and participants and Mr Al Mahdi that it is working
- 6 diligently to ensure that the issuance of its decision occurs in a timely manner -- in as
- 7 timely a manner as possible.
- 8 This concludes today's hearing. And I thank you all and have a good day.
- 9 THE COURT USHER: [13:55:36] All rise.
- 10 (The hearing ends in open session at 1.55 p.m.)