

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 Trial Hearing - Courtroom 1  
8 Wednesday, 24 August 2016  
9 (The trial hearing starts in open session at 9.11 a.m.)  
10 THE COURT USHER: [9:11:31] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE PANGALANGAN: [9:11:55] Court officer, please call the case.  
14 THE COURT OFFICER: [9:12:01] Thank you, Mr President.  
15 The situation in the Republic of Mali in the case of The Prosecutor versus Ahmad Al Faqi  
16 Al Mahdi, case reference ICC-01/12-01/15.  
17 We are in open session.  
18 PRESIDING JUDGE PANGALANGAN: [9:12:19] Good morning, everyone. Welcome  
19 back to the Court.  
20 We will now take appearances for the record. For the Prosecution, please.  
21 MR DUTERTRE: [9:12:34] (Interpretation) Good morning, your Honours. The  
22 Prosecution is represented today by Colin Black; Sanja Bokulic; Jagganaden Muneesamy,  
23 Sarah Coquillaud; Emma Brandon; Paolo Proli; as well as myself, Jean Dutertre. Thank  
24 you, your Honour.  
25 PRESIDING JUDGE PANGALANGAN: [9:13:05] Thank you, Mr Dutertre.

1 And for the Defence.

2 MR AOUINI: [9:13:24] (Interpretation) Good morning, Mr President. The Defence  
3 team is composed of Mr Jean-Louis Gilissen, Ms Glodjinon, Ms Judith Akebe,  
4 Mr Colin Gilissen and myself, Mohamed Aouini. Thank you, your Honour.

5 PRESIDING JUDGE PANGALANGAN: [9:13:41] Thank you. Thank you, Mr Aouini.  
6 And for the Legal Representative for the Victims.

7 MR ABDOU: [9:13:47] Good morning, Mr President. Good morning, your Honours.  
8 Appearing on behalf of the victims, Mohamed Abdou from the OPCV, assisted by  
9 Clara Rodriguez, case manager. And we will also be able to have Counsel Kassongo in  
10 during this day.

11 PRESIDING JUDGE PANGALANGAN: [9:14:07] Thank you. Thank you.

12 Before continuing, the Chamber notes that at this point in the trial all documents to be  
13 considered by the Chamber have been formally received and all scheduled witnesses have  
14 testified. The Presiding Judge will now close the evidence record pursuant to Rule 141(1)  
15 of the Rules, closing the evidence record for purposes both of the judgment and the  
16 sentence.

17 May I ask Mr Dutertre then if he has any further submissions to make?

18 MR DUTERTRE: [9:14:56] (Interpretation) Thank you, your Honours. The  
19 Prosecution does have some submissions for the Chamber today and those submissions  
20 should last an hour, perhaps a bit less than that.

21 PRESIDING JUDGE PANGALANGAN: [9:15:16] Thank you. Please proceed.

22 MR GILISSEN: [9:15:22] (Interpretation) Your Honour, with your leave, with your  
23 leave, your Honour, this is what in actual fact you mentioned a few moments ago; namely,  
24 the reception of all items of evidence. The Chamber has disclosed to all parties and  
25 participants and of course to the Chamber the two witness statements that we obtained at

1 the very last moment and I would like to ask for these items to be placed on the case  
2 record as evidentiary items. I thank you very much.

3 PRESIDING JUDGE PANGALANGAN: [9:16:12] Thank you very much, Counsel.

4 Yes, the Chamber has received those files and we acknowledge that those files are now  
5 part of the record of the case. Thank you.

6 Let us resume, Mr Duterte.

7 MR DUTERTRE: [9:16:37] (Interpretation) Thank you, your Honour.

8 Your Honours, the Prosecution believes that the guilt of Mr Ahmad Al Faqi Al Mahdi has  
9 been established beyond all reasonable doubt. We believe that you should find him  
10 guilty of the war crime of attacking 10 sites, 10 historic monuments and buildings devoted  
11 to religion in Timbuktu in June and July 2012.

12 This finding would come under Article 8(2)(e)(iv) of the Statute.

13 Mr Al Mahdi's guilt is obvious given the documentary evidence and the testimony we  
14 have heard. Over the course of this hearing you have been convinced yourself of his  
15 involvement and the central role he played in this case. His guilt is clear-cut, particularly  
16 given the many videos that showed him in the process of destroying the mausoleums and  
17 justifying what he did to the media.

18 Mr Al Mahdi has acknowledged all the events, the details and pled guilty.

19 Furthermore, in reference to our submissions of 22 July, I would now like to turn directly  
20 to sentencing.

21 The sentence should serve as an example, it should be fair, and for the reasons that I will  
22 set out in a few moments, and also we must consider the specific circumstances of this  
23 case.

24 To begin, what are the principles that we should apply in this particular case? I will  
25 cover these briefly.

1 First of all, under Article 77(1) of the Statute, and Rule 145 of the Regulation on evidence  
2 and procedure, the maximum sentence for these incidents is 30 years.

3 Once that has been considered, what are the specific factors that you must take into  
4 account to decide the sentence to be handed down? Once again the rules of the Court  
5 serve as our guide.

6 Article 78 of the Statute provides that the Chamber must take into account the seriousness  
7 of the crime and the individual circumstances of the person found guilty.

8 Rule 145 of the Regulation of evidence and procedure also specifies that the sentence must  
9 be a reflection of the guilt of the person found guilty and the Chamber must take all  
10 relevant factors into account. Rule 145 also then provides a list of these factors, not an  
11 exhaustive list, a non-exhaustive list, but these factors include the gravity of the crime and  
12 the situation of the person found guilty. This Rule also mentions the circumstances  
13 under which the crime was committed and the harm done; in other words, the harm done  
14 to the victims.

15 The Rule 145 also mentions the person's degree of participation in commission of the  
16 crime, the moral element and the person's educational level.

17 Rule 145 also states that the Chamber shall consider aggravating circumstances and  
18 limiting circumstances. Once again, the Rule sets out a list, not exhaustive, but a list.  
19 Aggravating circumstances, for example, the existence of discriminatory motives at the  
20 time of the crime. As for mitigating circumstances, that would include the behaviour of  
21 the person found guilty after the fact. This is one point quite relevant in this particular  
22 case and I will come back to this in a few moments. Given these technical aspects,  
23 we -- for example, it must be applied taking into account the meaning that should be  
24 attached to this sentence. When I say "meaning" I mean this in all exceptions of the word.  
25 The sentence must be a punishment. This also takes us to the fact that the sentence

1 should also have a certain deterrence. We must not forget the important objective, which  
2 is to help the victims heal.

3 Your Honours, I have set out a number of lines of argument that will explain these  
4 elements in support of my submissions.

5 Now I would like to provide you with a summary of the Prosecution's position regarding  
6 sentencing, the determination of a suitable sentence for the war crime committed by  
7 Mr Al Mahdi, then I will delve into the details.

8 The Prosecution wishes to stress today that the sentence that you will hand down must be  
9 fair and it must be firm. And everyone must find this to be the case, be it the victims, the  
10 inhabitants of Timbuktu, the people of Mali and the international community. The  
11 sentence must be understood by each and all and ideally even by the accused, even from  
12 different perspectives. The sentence must also provide justice to the victims, the people  
13 of Timbuktu and the people of Mali for the losses and the intense suffering they endured  
14 because of the attack and the destruction of the mausoleums of their saints. The sentence  
15 should also be a retribution of the action taken by the person found guilty. Mr Al Mahdi  
16 was the leader, the mastermind, he took part in the destruction physically, he claimed  
17 responsibility for the attack to the media and he justified his actions by speaking to the  
18 media.

19 The sentence must also be a deterrent. Deterrence is one of the objectives that the  
20 international community wished to uphold by establishing this Court. This is one part of  
21 the sentence that should discourage the commission of similar crimes in Mali or elsewhere  
22 in the world.

23 What is more, we must consider that Mr Al Mahdi showed a certain behaviour before the  
24 Court. He did acknowledge what had happened, express remorse and cooperated with  
25 the Prosecution. Thus, the Prosecution will call for a sentence that considers all of these

1 various factors.

2 I will now discuss each one of these factors or elements in greater detail.

3 First of all, the Prosecution believes that the sentence should reflect the extent of the  
4 damage done to the mausoleums and to the sacred door of the Sidi Yahia mosque. We  
5 know that all of these buildings, with one exception, were listed -- listed buildings and  
6 were considered to be part of humanity's heritage. The Prosecution stresses that the  
7 sentence you will hand down should reflect the fact that these buildings were so precious  
8 to the local people. This sentence must consider and reflect the extent of the harm done  
9 to the people of Timbuktu themselves, it must correspond to the true tragedy that this  
10 destruction was for them.

11 I am not going to repeat what Madam Prosecutor said so elegantly at the beginning of the  
12 trial. However, I would remind the Chamber that these monuments attacked and  
13 destroyed were sacred, historic, they served religious, social functions and were a form or  
14 an expression, rather, of the community's identity. This strikes at the very heart of the  
15 issue. We are talking about the heritage of this committee which has been attacked. The  
16 heritage of the committee was destroyed and this means that part of their history was  
17 destroyed, part of their present has been destroyed. And we must also consider what the  
18 impact will be on the community's future.

19 As Madam Prosecutor said to you in her opening statements, heritage is not something  
20 frivolous or a luxury item, heritage is part of whom we are, it is an extension of ourselves.  
21 Heritage means that -- well, if heritage is destroyed we are like a traveller without any  
22 belongings, like beings without soul, history or memory. The 10 sites that were targeted,  
23 attacked and destroyed in Timbuktu were a very true incarnation of the city and closely  
24 linked to the life of the inhabitants. I refer you to the written statement of Witness P-125,  
25 who stated that the mausoleums were -- are very important in the daily life of inhabitants.

1 Please also recall the words uttered by P-431 yesterday. He stressed the importance of  
2 Timbuktu's cultural buildings in the eyes of the local people. In response to a question  
3 from the Bench he said that the mausoleums are public buildings, buildings belonging to  
4 the entire community, they are places where people go to pray, they represent a form of  
5 protection, and he said that the mausoleums were always very much admired.  
6 Our evidence contains a long list of similar comments from other inhabitants of Timbuktu  
7 regarding the mausoleums and their destruction. I'm sure you heard many such  
8 statements throughout the course of the trial, but P-431 was the expert, he, himself, saw  
9 just how much the people of Timbuktu were attached, deeply attached to their cultural  
10 practices and these buildings. He also told the Court just how much the city mobilised  
11 and took action to conserve these cultural buildings, including the mosques and the  
12 mausoleums.

13 What is more, on this particular point, your Honours, the destruction was deeply  
14 humiliating to the entire community, the people of Timbuktu, who found themselves  
15 oppressed by Ansar Dine and AQIM. The attack showed that these armed groups were  
16 intolerant and they held the cultural practices of the local people in disdain. These  
17 armed groups only had their own ideological vision, so when an entire people must stand  
18 aside powerless and watch their history being destroyed, their memories being destroyed,  
19 their roots being destroyed. There are no words to describe the suffering that they  
20 endured. Let us be very clear, this is not a case of vandalism or damage done to a  
21 building, what happened here was a form of serious violence that harmed an entire  
22 community and struck a blow to the very soul of Timbuktu and its inhabitants.

23 I would like to stress one particular point: Today we have the Legal Representatives of  
24 Victims here at the hearing and they will be speaking to what their clients have endured,  
25 but I think we must remember that the entire community suffered because of

1 Mr Al Mahdi's crime and the destruction will have a long-term impact. What will the  
2 impact be on future generations?

3 We are dealing with a crime that has hit and harmed the people in question at all levels,  
4 intellectually, spiritually, and at the very core of their being.

5 I would now move on to another aspect of the seriousness of the crime.

6 Nine of the 10 buildings attacked were listed on the World Heritage List and so they had a  
7 certain value, a value that went far beyond Timbuktu, they were a sign, a representation, a  
8 symbol of history, a symbol of the expansion of Islam in Africa. P-431 told you that  
9 Timbuktu had always been a very outstanding or significant place within the heritage of  
10 Mali. The mausoleums of the Muslim saints bore witness to the prestigious past of the  
11 city. Mr Bandarin, assistant director general of UNESCO, responsible for culture stated  
12 that Timbuktu was a cultural centre of high importance. He compared the role of  
13 Timbuktu in the past in Africa to the role that Florence played in Europe in other days as a  
14 centre of teaching and intellectual thought. He mentioned the golden age of Timbuktu in  
15 the 15th and 16th centuries. At that time the Djingareyber mosque was built. We also  
16 stressed that the mausoleums that were built on the graves of these Muslim saints were  
17 very important. This explains, your Honours, why over the years ongoing major efforts  
18 have been made by the people of Timbuktu and the international community to preserve  
19 the mausoleums.

20 Once again, remember the testimony given by Mr Bandarin. He stated that many  
21 missions had been conducted to the site. He also mentioned -- correction, Witness 431  
22 talked about the Timbuktu conservation and management plan for 2006 to 2010. All of  
23 that confirms the importance of these mausoleums and the mosques of Timbuktu,  
24 important for the people of Mali and the international community.

25 We also saw the ongoing care that has been taken to conserve the buildings. This also

1 came out in the many statements given by Mrs Bokova, director general of UNESCO.  
2 And this point also was brought out when the international community reacted to what  
3 happened, even in the statement from the United Nations Security Council.  
4 At the beginning of the trial we said, and this was a statement given by the Africa group  
5 within UNESCO, that group said, and I quote: (Speaks English) "It is not only Mali which  
6 is affected by the destruction of heritage sites in that country. Mali's heritage sites are  
7 Africa heritage sites and they are also the world's heritage sites."  
8 (Interpretation) So it is certain that mausoleums have been rebuilt, but as the Judges of  
9 the ICTY noted in the Jokic case, reconstruction does not make it possible to get back the  
10 intrinsic value of destroyed sites because some of the authentic materials have been  
11 destroyed.  
12 In total, your Honour, your Honours, the attack carried out by the accused has been a  
13 considerable harm against all of us. When I say everyone, I also mean everybody in this  
14 hearing. The mausoleums are Timbuktu and are part of the history of humanity of which  
15 we are all the inheritors. And when you make the sentence it has to make sure that  
16 nobody can demolish and raze to the ground historic monuments and buildings given  
17 over to religion which are part of a common cultural heritage built centuries ago. And  
18 this is the reason why the sentence has to send a clear message showing that this is  
19 criminal behaviour which the international community denounces and does not tolerate.  
20 I've finished with the gravity of the crimes and I shall now move on to the role, the  
21 specific role that Mr Al Mahdi had in the commission of crimes within this case. And I  
22 would like to stress the following three points: The attack was premeditated and  
23 organised within the framework of a common plan; Mr Al Mahdi, who lived in Timbuktu,  
24 knew perfectly the importance and historic and religious value of the attacked sites. The  
25 attack showed a discriminatory intent.

1 First of all, your Honour, your Honours, the attack was premeditated. We're not talking  
2 about a spontaneous action at the last minute and without reflection. No. The attack  
3 was thought out, it was prepared and implemented in a deliberate way and Mr Al Mahdi  
4 had an important part in this process. He was the person who surveyed and identified  
5 the mausoleums which were visited by the population. In the first place, he had  
6 certain -- been advised to not destroy it, to not attack the population. But when the  
7 decision was taken by Iyad Ag Ghaly and the presidency he accepted this decision and he  
8 willingly prepared and planned the attack as the head of the Hisbah, the morality brigade.  
9 He also followed the instructions. And on the Friday before the attack he gave a  
10 psychological preparation for the population, he decided on the sequence in which the  
11 mausoleums were going to be destroyed, from the north and going towards the south,  
12 and he also provided the necessary tools for its destruction. In other terms, Mr Al Mahdi  
13 is not just an executor at the bottom level who was caught up in the action. Furthermore,  
14 he knew very well the value of the property attacked, he knows Timbuktu and he knew  
15 what these monuments represented at a religious, symbolic and social level.  
16 During his hearing in September 2015, during his interview, he also recognized that the  
17 people to whom the mausoleums are dedicated are Muslim saints. He also knew that the  
18 population went to these mausoleums to fulfil rights and to pray. The explanations and  
19 statements made by him on the different sites attacked during the destruction also clearly  
20 show that he was perfectly aware of the historic and religious dimension of the sites.  
21 And here I refer you to what he said, in particular during the destruction of the  
22 Djingareyber mosque and the Bahaber Babadié and Ahamed Fulane mausoleums. It's  
23 also established that at least with regards to the site of these mosques, Al Mahdi knew that  
24 the two mausoleums in question, Bahaber Babadié and Ahamed Fulane, was part of the  
25 UNESCO World Heritage.

1 A third point, and I've mentioned it, is that the attack was motivated by an intent of  
2 religious discrimination. I've also addressed this point from the point of view of  
3 intolerance, but I would like to address it from the point of view of discrimination. The  
4 attack and the destruction was clearly carried out against the beliefs and cultural practices  
5 of the people of Timbuktu, which were different from those of the occupiers, and it's the  
6 very reason -- well, these practices constituted the *raison d'être* for the attacks.

7 Mr Al Mahdi shows in his statements that this was the case. And here I would refer you  
8 to the video 0025-0174 in which Al Mahdi states, and here I quote, "We destroyed the  
9 cemeteries as a preventative measure to ensure that these cemeteries were not taken as  
10 idols." End of quote. The objective of the destruction was therefore to prevent the  
11 inhabitants from carrying out their cultural and secular practices which were distinctive  
12 from those of the occupiers.

13 Your Honour, your Honours, having addressed the issue of gravity, and thereafter the  
14 role and behaviour of Mr Al Mahdi in the preparatory phase of the attack, please allow  
15 me now to address the issue of the destruction itself and the role of the accused at the time  
16 of the destruction thereof.

17 Mr Al Mahdi had a key role in the execution of the attack. He was the conductor thereof.  
18 His participation in the attack was essential, and I've already said. By way of preparation  
19 of the attack he decided on the sequence for destruction, but you have to add his concrete  
20 role in that execution. He was present at every site that was destroyed; he had a role of  
21 support and moral support as well for the attackers, he supervised the attackers, that is to  
22 say his own men of the Hisbah and other members of armed groups made available to  
23 him; he provided the tools necessary for the destruction; he used Hisbah funds in order to  
24 procure the necessary equipment; he provided food and drink; he also determined the  
25 way in which the attackers would behave in place and also the methods to be used; he

1 also decided on the use of a bulldozer to complete the destruction of the mosque of  
2 Djingareyber; and he personally and physically participated in the destruction of at least  
3 five of the attacked sites. And this was done to justify the crimes that were committed.  
4 And it's for all these reasons that the Prosecution points out that his criminal  
5 responsibility under Article 25(3)(a) as a direct co-perpetrator best reflects his  
6 participation in the crime. And this is something he does not challenge, indeed he  
7 recognizes that.

8 But if you'd allow me to go back to two points, the role of Al Mahdi as a moral support in  
9 the attack, first of all, and I'd like to point out several elements here: Al Mahdi is the one  
10 who Abou Zeid consulted at the start of the occupation on the creation of different bodies  
11 in Timbuktu, he is the head of the morality brigade, he is the person who explains the  
12 sentences during public punishment before hundreds of persons, he is one of the two or  
13 three people who are specialists in religion in armed groups in Timbuktu and the person  
14 who is asked for opinions with regards to the different questions. He is therefore an  
15 important person. His continued presence and his acts of speaking on repeated  
16 occasions during the attacks therefore had a fundamental impact by supporting the  
17 attackers in their actions. And this is one of the factors on the basis of which we would  
18 state that he abused his authority. I would stress that his statements at the sites, which I  
19 have mentioned, also show that he completely assumed responsibility for the attack  
20 which he supervised and which he committed.

21 And this takes me to my next point, the destruction which are subject to this case took  
22 place from the end of June 2012 to 11 and 12 July 2012.

23 So Mr Al Mahdi and his co-perpetrators showed their destructive intent for over two  
24 weeks, a destructive will that they maintained rigorously until the end at the Sidi Yahia  
25 mosque. He refused the request of a person not to destroy the door. And also towards

1 the end, when it was a case of destroying both mausolées, Djingareyber, Mr Al Mahdi  
2 indicated that he did not even think twice about it. And throughout this the destruction  
3 was carried out in a systematic way, razing the mausoleums to the ground. Certainly the  
4 remains -- it's true that the remains of the saints were not touched in the destruction, they  
5 are buried underneath the mausoleums, but there is nothing left of the mausoleums  
6 themselves, they cannot be disassociated from the tombs of the saints that they were built  
7 to conserve. In Djingareyber mosque the attackers left no trace, no sign of, perceptible  
8 sign of the existence of the two mausoleums which had been built. If we come after the  
9 gravity of the crimes and his role in the attack, if you would be so kind, your Honours, let  
10 us go to the situation of Mr Al Mahdi himself.

11 Mr Al Mahdi is the son of a marabout. He told us that he was listened to within his tribe,  
12 he is an educated man, he studied abroad and travelled. He was a teacher and thereafter  
13 a school director. Certainly he joined Ansar Dine only in April 2012. The Prosecution  
14 does not contest that. But he had already been identified by leaders of the group because  
15 of his knowledge and his ideas, and when he joined Ansar Dine it was quick to the point  
16 that he was entrusted in the first weeks with the task of creating the Hisbah and to lead it  
17 and he had the confidence of Abou Zeid, the main person responsible for the armed  
18 groups in town. This wasn't given to everybody to have, as the accused will recognize a  
19 confidence and friendship links with the historical chief of AQIM whose criminal past is  
20 known. In other terms, we are speaking about a man with manifest intelligence, who  
21 very quickly founded direct and close links with the chief of armed groups, and it is  
22 included the destruction for the -- of goods of the population. And he knew what he was  
23 doing, destroying the sites which are subject to the charge.

24 If you would allow me to make a precision in this regard, the Defence will reference to the  
25 absence of previous criminal background of the accused. The Prosecution points out that

1 this isn't an attenuating circumstance as such. At best, it can only have minimum weight  
2 given the personal circumstances of the accused, but it should not attenuate the sentence.  
3 There are other elements mentioned by the Defence which can be taken into account as  
4 personal circumstances, but it does not constitute attenuating circumstances in its own  
5 right.

6 Having stated that, all the different elements that I have mentioned, the gravity, the role of  
7 Al Mahdi, his intention, his profile, call for a sentence which fully reflects his guilt and  
8 which is an effective deterrent, a sentence which gives justice to the victims. The  
9 perpetrators of such crimes must understand that these are serious crimes subject to  
10 heavy sanctions.

11 It cannot be tolerated that the heritage of a collectivity or world heritage can be  
12 deliberately destroyed with disdain for the importance that it has for other people. And  
13 this is the whole point of the hearing we are having today.

14 Now, your Honour, your Honours, the Prosecution also takes into account a certain  
15 number of elements which come after the crimes and these elements are significant. That  
16 is something that has to be stated from the outset and these elements do call for an  
17 attenuated sentence. And here we are talking about the admission of guilt, the  
18 cooperation that Mr Al Mahdi has shown and remorse which has been expressed at the  
19 hearing.

20 The Prosecution recognizes that during his interview with the Office of the Prosecutor in  
21 September 2015 Mr Al Mahdi showed his will from the very beginning to speak openly  
22 and to recognize his responsibility for his acts. He also immediately cooperated and  
23 recognized the crimes, providing numerous details which corroborated the evidence  
24 which the investigators had already collected. He also provided important information  
25 on other subjects. Thereafter Mr Al Mahdi very quickly signed numerous agreed facts on

1 different points within the case which showed his will to constantly recognize the crimes.  
2 And beyond the agreed facts, he took the initiative to go to the Prosecution to confirm his  
3 intention to plead guilty. Mr Al Mahdi initiated this step.  
4 Very shortly after his transfer to the headquarters of the Court, discussions took place  
5 from autumn 2015 and they led to the conclusion of an agreement on the admission of  
6 guilt. That you know. It was concluded before the confirmation of charges of  
7 March 2016. In this agreement, as you know, he committed himself in particular to  
8 recognize his guilt. As a counterpart, therefore, the Prosecution was going to ask for a  
9 sentence between 9 and 11 years. This agreement was made public last week and it also  
10 contains a complete narrative of the facts at the very heart of this case which are admitted  
11 by Mr Al Mahdi.  
12 The Prosecution also points out that Mr Al Mahdi continued to cooperate in a real and  
13 concrete way during the framework of the investigation carried out by the Office of the  
14 Prosecutor in Mali. This was mentioned in the hearing and this is an important aspect in  
15 a context in which security is very concerning.  
16 The Prosecution also notes that Mr Al Mahdi effectively pleaded guilty at the hearing and  
17 expressed remorse. This remorse are associated with a clear call for individuals  
18 throughout the world not to commit the crimes that he committed and he recognizes the  
19 consequences, that the consequences of these actions have no limit. The Prosecution also  
20 points out that this attitude are serious attenuating circumstances in this case and the  
21 Prosecution would ask the Chamber to take that into account in the determination of the  
22 sentence.  
23 Your Honour, I am now coming back to the agreement concluded between the  
24 Prosecution and the accused.  
25 As I just mentioned, this agreement says that the Prosecution will ask for a sentence

1 between 9 and 11 years of imprisonment. The accused also says that he will not ask for a  
2 sentence outside this framework. But, of course, this does not bind you in any way, you  
3 are free to judge this in complete sovereignty. And your decision will have great  
4 importance because it is the first decision with regards to an attack on an historic  
5 monument and a religious monument and it is also the first case where Article 65 has been  
6 implemented with this beneficial mechanism. And today after two days of hearing,  
7 almost at the end of this trial, the Prosecution calls upon the Chamber to give a sentence  
8 within this framework of 9 to 11 years of imprisonment. It considers that that takes into  
9 account the very serious gravity of the crime, its impact and the role of Mr Al Mahdi,  
10 while at the same time recognizing the real attenuating circumstances which come from  
11 his behaviour post facto. We are not here to decide about the perpetrator of an act of  
12 vandalism, we are here to give justice to memory, to reaffirm the importance of symbols  
13 in the existence of a people, we are here to repair the humiliation felt by a people without  
14 defence and under occupation while the symbols of their identity, their history and their  
15 religious vision was reduced to dust.

16 And the Prosecution also supports staying within this 9 to 11 years and believes you will  
17 establish an appropriate balance between, on the one hand, retribution for the criminal  
18 behaviour of Mr Al Mahdi and the necessary dissuasion or deterrent that this decision  
19 must have, and the attitude that he has constantly displayed thereafter.

20 And it is this framework of 9 to 11 years and all these different factors, your Honour, that I  
21 would ask you to bear in mind when you decide on the issue of the sentence.

22 I would like to thank you, your Honour, your Honours.

23 Mr President, your Honours, I have been informed that there is a translation problem at  
24 page 21, the first three lines, to the extent that the English does not exactly reflect what I  
25 said in French.

1 What I said is that the accused has committed himself not to appeal against any sentence  
2 that falls within the bracket of 9 to 11 years. Thank you, Mr President, for that  
3 clarification.

4 PRESIDING JUDGE PANGALANGAN: [9:58:32] Thank you very much, Mr Dutertre,  
5 for your statement, for that clarification, which is also consistent with what Mr Aouini  
6 clarified on Monday, during the hearing on Monday.

7 Is there any further statement from the Prosecution, Mr Dutertre?

8 MR DUTERTRE: [9:58:56] (Interpretation) No, Mr President. The Prosecution has  
9 no further observations. Thank you.

10 PRESIDING JUDGE PANGALANGAN: [9:59:03] Thank you. Thank you so much.

11 We will now proceed to the submissions by the Legal Representative for Victims and then  
12 by the Defence.

13 As Mr Aouini will be aware, under the Rules the last statement will be made by the  
14 Defence.

15 (Trial Chamber confers)

16 PRESIDING JUDGE PANGALANGAN: [10:00:04] It is now the turn of the Legal  
17 Representative for the Victims to make its submissions.

18 May we know if Mr Kassongo will be here soon?

19 MR ABDOU: [10:00:17] Yes, Mr President. Just the most up-to-date information, my  
20 understanding is that Mr Kassongo is on his way to the courtroom now. It should take  
21 between 5 or 10 minutes at most. So that's my understanding. And I believe that he  
22 would be able to be present in the courtroom and make the submissions on behalf of the  
23 victims in person himself.

24 Of course the OPCV in accordance with your Honours' decision has been appointed to  
25 represent and appear on behalf of the legal representative during his absence. While he's

1 not physically still here, but we expect him to be shortly in the courtroom, so I'm in your  
2 hands, your Honours.

3 PRESIDING JUDGE PANGALANGAN: [10:01:15] Thank you so much for that update.

4 In which case the Court will take a break so that we will have a chance to hear from  
5 Mr Kassongo himself.

6 Okay.

7 THE COURT USHER: [10:01:33] All rise.

8 (Recess taken at 10.01 a.m.)

9 (Upon resuming in open session at 10.13 a.m.)

10 THE COURT USHER: [10:13:23] All rise.

11 Please be seated.

12 PRESIDING JUDGE PANGALANGAN: [10:13:49] May we ask the Legal

13 Representative for Victims to present himself before the Court.

14 MR KASSONGO: [10:14:03] (Interpretation) Thank you, Mr President. My names  
15 are Kassongo Mayombo of the Congo Bar Association of the ICC Bar Association, of the  
16 ICC Bar Association Bureau, and I belong to an association which defends victims of  
17 international crimes.

18 PRESIDING JUDGE PANGALANGAN: [10:14:45] Thank you, Mr Kassongo. Please  
19 proceed with your submission.

20 MR KASSONGO: [10:14:56] (Interpretation) Thank you, Mr President.

21 I would like to start by tendering my sincere apologies to the Chamber and to all in the  
22 courtroom for my late appearance owing to circumstances beyond my control. I am just  
23 coming back from Timbuktu and I am happy to be here with you.

24 My submission will focus mostly on two items: First a number of remarks more or less  
25 relevant pertaining to this matter, while the second throng will deal with the response of

1 the victims relating to the guilt and to the request for pardon as expressed during the  
2 previous hearings.

3 Mr President, your Honours, I am the Legal Representative of the Victims of Timbuktu  
4 who have in their totality had to bear a shameful experience, shame that was brought  
5 upon them by Mr Al Mahdi and the members of Ansar Dine in the course of the events  
6 of 2012, an indescribably shameful experience that has befallen these people who have  
7 seen their ancestors uncovered and exposed using pickaxes, hoes and bladed weapons.  
8 The shame of seeing their saints uncovered, demystified and diminished without any  
9 form of explanation whatsoever.

10 Where there is shame, the desire to hide simply overwhelms a simple desire to veil over  
11 one's blemishes, yet the victims of Timbuktu have refused to go into hiding or to hide.  
12 Through us and by our voice they appear before your Chamber to express their views on  
13 their shame and suffering, but also on their hopes and confidence.

14 Mr President, your Honours, I am the spokesperson for the victims of Timbuktu, I am the  
15 voice of the monuments and mausoleums tolling here on behalf of these victims, tolling  
16 here that you may hear their cause and also the cause of the entire international  
17 community. This voice brings echoes to those listening of the hatred and the anger and  
18 violence that has been experienced, and it also carries the cries of their pain. That is what  
19 the victims of Timbuktu want to shout out so that they may be heard and understood.

20 Mr President, for the very first time, the first time in its history your Court has the  
21 opportunity to try a man, Mr Al Mahdi, for the destruction of a world cultural heritage.  
22 It is indeed a singular opportunity to address what we see as the constant destruction of  
23 historical and religious monuments which again must be said is ongoing, even to this day,  
24 across the world.

25 Mr President, when I took up this case, the victims were not participants in the

1 proceedings. Today, however, they appear before you in this matter because all of them,  
2 albeit in different ways, have experienced irreparable shame and suffering.

3 Your Honours, in order to understand these things, I raised three questions to myself at  
4 the very site of the crime during my interviews with victims in Timbuktu. The questions  
5 are as follows:

6 What is the relation between the victims and the mausoleums?

7 How did the victims feel at the time of the destruction of the mausoleums in 2012?

8 And what is the impact of the destruction four years later?

9 Without consulting each other, it must be said that all persons I interviewed had the same  
10 answer, all of them mentioned their suffering and their expectation that justice delivered  
11 would be commensurate to the crimes committed. All the victims whom I met expressed  
12 their shame and the intellectual disconnect that occurred after the destructions.

13 When I questioned victim a/35006/16, I quote, "I was overwhelmed, I had vertigo, I was  
14 powerless, I was unable to act."

15 All the victims whom I represent before you clearly expressed their shame and the fact  
16 that there was an intellectual disruption, as I mentioned a short while ago.

17 Mr President, the victims appear before your Court because they are able to prove that  
18 damage has been done in a direct nexus to the alleged crime. In the case at hand, it is the  
19 shame and the suffering that have been experienced by the victims arising from the  
20 destruction which amounts to moral prejudice directly linked to the crime committed by  
21 Mr Al Mahdi and the members of Ansar Dine.

22 Further to this moral prejudice there is also financial damage. When I interviewed the  
23 victims, a/35004/16, for example, shame again was mentioned, financial loss again was  
24 mentioned; therefore, there is moral prejudice and financial prejudice.

25 Many victims earned a living from tourism and pilgrimage activities in their area.

1 Following the crisis in Mali, tourists have abandoned the area and the incomes of victims  
2 have significantly been reduced. In any event, the prejudice suffered by the victims is  
3 shameful and has been brought to bear not only on the physical persons whom I  
4 represent, but also on the mausoleums as legal entities.

5 Mr President, your Honours, there is a direct link between the crime committed by  
6 Mr Al Mahdi and the members of his group on the one hand and the prejudice suffered  
7 by the victims on the other hand, the shame that the victims have experienced by seeing  
8 their saints stripped naked and the shame experienced by their powerlessness, the  
9 helplessness that arose because they could not do anything. You see, Mr President, it is  
10 not possible to defend spirits, rather the spirits protect and defend living people and they  
11 cannot ask living human beings to protect them.

12 In Timbuktu those alive stood helplessly as their saints were being attacked and that is the  
13 source of the shame that the victims feel, shame in relation to their saints for some and  
14 shame in relation to their ancestors for others.

15 Mr President, all those whom I represent today before you have very close links with their  
16 ancestors and their saints. These ancestors and saints were previously covered by their  
17 tombs which today have been demystified. The dead are already dead, but Mr Al Mahdi  
18 and his group took it out on their tombs with a view to terrorising the living. The  
19 accused and his group acted as a common entity with the intent to destroy monuments  
20 and the specific symbols that are the substrate of the identity and culture of a nation,  
21 namely Mali.

22 The intent was to assert a different identity, which at this historic moment does not in any  
23 way correspond to the values protected in the convention of The Hague.

24 Mr President, your Honours, I have been given the opportunity to see and to understand  
25 these things before this hearing, and I'm referring here to the scope of the prejudice on

1 damage suffered by the victims.

2 In Mali people believe in a single creator who breathed life into all things, living or not.

3 Ancestral worship is also important. Beliefs in magic are commonplace. Islam, which

4 initially was a religion for the elite, is widespread in Mali without, however, having

5 annihilated so to speak the animistic beliefs of the people. In Timbuktu most of the

6 inhabitants practice very strict Islam, yet they still cohabit with animistic or mixed-belief

7 systems. These belief systems have a profound influence on the organisation of society

8 which today is still being led by elders.

9 Once again, Islam and the Sharia have only been superimposed on these ancient customs.

10 Family duties, clan responsibilities pertaining to crimes, conflict settlement through

11 financial compensation are also matters that remain governed by a number of practices.

12 And in spite of the Islamisation of the people, the matrilineal lines continue to obtain and

13 succession has continued to be collateral.

14 Mr President, Timbuktu has had a prestigious past, but its troubled modern history has

15 led to the subsistence only of a few architectural vestiges. However, the religious

16 monuments remain an essential reference in today's town. The El-Hena, Kalidi,

17 Algoudour-Djingareyber mosques may have been destroyed a long time ago.

18 Three essential mosques, the Djingareyber mosque, the Sankore mosque and the Sidi

19 Yahia mosque fortunately still stand today as testimony of the greatness of Timbuktu.

20 Furthermore, in addition to the mosques, the 16 cemeteries and the mausoleums of the

21 saints continue to stand as essential elements of the local monuments in the area rather

22 than appear as piles of stones. These religious monuments are vestiges of ancient

23 centuries and bear significant religious and effective value to the people of Timbuktu and

24 are, indeed, a rampart that provides protection for the city founded between the 11th and

25 12th centuries by Tuareg tribes.

1 Timbuktu has been listed in the World Heritage since 1988 and has become an important  
2 as well as ancient centre of Islam and trade. The City of 333 Saints was at its highest in  
3 the 15th century as a Pearl of the Desert that it was at the time. Timbuktu was a major  
4 centre for Islamic teaching and through its mausoleums and mosques has continued to  
5 conserve rare treasures. This is the historical and cultural heritage that was destroyed by  
6 Mr Al Mahdi and his Ansar Dine accomplices. In the City of 333 Saints the group did not  
7 only attack simple or ordinary tombs, but targeted precious vestiges of African and world  
8 history. Such destruction is indeed tragic, not only for the country, but for all of Africa  
9 and for all of humanity.

10 This destruction is an annihilation of the efforts that were undertaken since 1993 by the  
11 Malian ministry in charge of culture. It is in 1993 that this ministry created the cultural  
12 mission of Timbuktu, a small structure whose basic role was to conserve and to promote  
13 the various sites in collaboration with various community groups.

14 Furthermore, Mr President, your Honours, there has always been within the international  
15 community a great concern for the protection of Timbuktu and its mausoleums. At the  
16 beginning of the crisis in Mali, the director general of UNESCO, Madam Irina Bokova,  
17 called out to all parties on no less than 10 occasions, she called out to the parties in the  
18 conflict to respect and protect these sites as well as called on the international community  
19 to be mobilised for the protection of the Malian cultural heritage.

20 Similarly, on behalf of the entire international community, UNESCO sent or addressed  
21 letters to the leaders of countries neighbouring Mali, to the African Union, to ECOWAS, to  
22 the Islamic Organisation for Education and Sciences and Culture, to the European Union,  
23 to the secretary general of the United Nations and to the International Criminal Court  
24 informing them and asking them to take all pertinent measures for the protection of the  
25 endangered heritage of Mali. That is how UNESCO called on all to cooperate in the

1 protection of these sites which testified to the golden age of Timbuktu and to its history  
2 that is around 10 or so centuries old.

3 Following the destruction of monuments in Timbuktu in June 2012, Madam Bokova  
4 expressed her disappointment and consternation. She said that information relating to  
5 the Sidi Mahamoud, Sidi Mokhtar and Alpha Moya mausoleums destructions was  
6 disconcerting. She argued that such destructions cannot be justified by any reason  
7 whatsoever. She then called on all the parties involved in the conflict to put an end to  
8 these terrible and irreversible acts and to show responsibility for the protection of the  
9 inestimable cultural heritage for the benefit of future generations.

10 Following the Operation Serval and the liberation of Timbuktu, a report was forwarded to  
11 UNESCO on the state of the conservation of the property. This report was submitted by  
12 Mali in January 2013 based on information collected from resource persons who had  
13 remained in the area in spite of the conflict. The report provides an overview of the  
14 situation of the various monuments that were part of the protected heritage. The report  
15 outlines the destruction by armed groups of the Ahamed Fulane and Bahaber Babadié  
16 mausoleums as well as of the sacred door of the Sidi Yahia mosque. The report further  
17 describes the complete destruction of 9 of the 16 mausoleums between May and July 2012.  
18 This report also deals with the destruction and the prejudice, the serious prejudice arising  
19 therefrom to the authenticity and integrity of these items that appear on the World  
20 Heritage List since 1988.

21 Mr President, so much may have been done for the conservation and preservation of  
22 Timbuktu and it has been thanks to the intrinsic value of these monuments as well as their  
23 substantial quality, not only traditional but also spiritual.

24 Mr Judge, your Honours, Timbuktu is not only a mass of stones and tombs for the 333  
25 saints and other mausoleums, it is indeed an incarnation of the grandeur of African

1 civilisation. Timbuktu is an incarnation of African Islamic intelligence. It represents  
2 scientific, philosophical and spiritual research which unfolded in that city. The  
3 destruction of Timbuktu should not override its construction in the collective memory.  
4 Suffering has arisen from these broken beliefs and this remains present on the minds of  
5 the people. An incomplete restoration will not remedy the situation.  
6 Therefore, Mr President, your Honours, Timbuktu is a city which the entire world knows  
7 as a mythical and mystical city, one of the very first African sites to have been entered on  
8 the World Heritage List. When the nomination of this area was ongoing it is particularly  
9 the historical and intellectual as well as spiritual aspects that were highlighted. The  
10 3 major mosques and the 16 mausoleums of the main sense were recognized as an entity  
11 of elements that participated essentially to the spread of Islam in Africa at a very  
12 significant time which testifies to the golden age of this intellectual and spiritual capital of  
13 the last days of the Askia dynasty.  
14 Mr President, your Honours, the African continent has always sought to protect the listed  
15 cultural entities and has already meted out punishment for various breaches of this  
16 principle. The mausoleums in Timbuktu also are a great symbol of the identity of a  
17 people. When a symbol is attacked and destroyed and broken, this, Mr President, is  
18 something that denies Timbuktu of its golden age and deprives it of its myth, and its  
19 victims deserve to be compensated.  
20 Timbuktu for Africa is like the tour Eiffel for France and the pyramids in Egypt. All  
21 tourists tend to go there. The reconstruction of the mausoleums undertaken by UNESCO  
22 did not sufficiently remedy the prejudice suffered by the victims.  
23 For all the victims whom I represent, the reconstruction of the monuments did not  
24 reconnect them spiritually with the saints through this link that existed. Therefore, the  
25 reconstruction and safeguarding of the Malian cultural heritage did not repair the spirit of

1 the people.

2 During that reconstruction exercise, Madam Bokova again travelled to Timbuktu and paid  
3 homage to the local communities, without whom that reconstruction would not have been  
4 possible. The general director particularly saluted the work of the masons in Timbuktu  
5 whose know-how was most important in the reconstruction of some of the ransacked  
6 buildings and monuments.

7 I quote the director general when she said, "Your courage is a lesson in tolerance, dialogue  
8 and peace and an answer to all extremists." She said, "Your action to safeguard the  
9 essential elements of your history is proof that Mali is picking up herself and is coming  
10 together with renewed confidence."

11 Yes, Mr President, it is true that Mali is picking itself up, but unfortunately and in spite of  
12 the efforts undertaken, these broken links are still in place and, according to the victims  
13 whom I represent, amount to an irreparable prejudice.

14 The link between those who are alive and the saints is through the keys of the  
15 mausoleums who are handed over -- which are handed over to their guardians, and that  
16 link is broken today. All the physical persons whom I today represent before you did  
17 indeed have a key, a symbolic key which is the link between the living and the spirits.

18 This key is a relay, a link between one generation which leads on to another and all of that  
19 is linked to the existence of the mausoleums.

20 Your Honours, we must understand that these keys represent a more or less palpable link  
21 between a physical person and the sacred monuments. A relationship with God may be  
22 represented symbolically by this key, the key whereby those who receive it have today  
23 become victims, so to speak, as they remain guardians of spiritual and ancestral values  
24 that have been handed down from generation to generation. That is why, Mr President,  
25 the victims felt that the destruction of these mausoleums were an attack on the dead and

1 the victims felt that attacking the dead, Mr Al Mahdi and his group actually attacked the  
2 living.

3 Mr President, when the myth in a child's mind collapses, his entire universe collapses.  
4 And rebuilding confidence in such circumstances is extremely difficult.

5 The victims whom I represent today all have the same saints in their belief systems and  
6 their worship systems, the same sanctified ancestors who today have been demystified.

7 Mr President, your Honours, it is this sentiment that the victims whom I represent want to  
8 bring to your attention, to the attention of this Chamber, the sentiment that things are  
9 irreparable, the sentiment of suffering that has brought them to shout and to cry rather  
10 than to pray.

11 When a child sees his father stripped naked, his hero, his model collapses in his mind.  
12 The child will no longer see his father as a supernatural hero, but as a fallible human  
13 being.

14 The victims of Timbuktu ordinarily would admire their saints as a child would admire his  
15 father, but again, like a child, they stood helpless as their myth was being destroyed.

16 Mr President, the purpose of this crime, namely the destruction of historical monuments,  
17 is a philosophical and revisionist purpose. It is a worst-case scenario and a politicisation  
18 of the crime that was implemented by armed bandits. It is a well-planned crime -- it was  
19 a well-planned crime which sought not only to destroy people's spirits and souls, but also  
20 to demystify their spirits.

21 In general terms, the purpose was to attack a culture, to attack the heritage of the people  
22 and to wipe out the people's soul and their roots, to wipe out their memory and to clear all  
23 their bearings and values.

24 The perpetrators of such a crime are not acting against a specific individual, but against an  
25 entire community.

1 I would like to briefly quote Steven Rapp, former chief prosecutor at the International  
2 Criminal Tribunal for Rwanda and at the Special Tribunal for Sierra Leone, who is a  
3 specialist in war crimes. Mr Steven Rapp said the following:

4 "The destruction of religious, cultural or historical objects, as well as heritage, is another  
5 way of destroying a civilisation, of destroying a religion, such things on which societies  
6 are built."

7 These crimes have not yet been prosecuted. The demolition of holy places in Timbuktu  
8 by Mr Al Mahdi and his people is in fact not an accident, but, rather, a demonstration of a  
9 true will to destroy. According to Mr Al Mahdi and his group, they believe that these  
10 mausoleums are idols which are banished under the Sharia law. What they sought to do  
11 was to destroy items which they believed were heretical and forbidden according to a  
12 fundamentalist interpretation of the Quran. Ansar Dine therefore sought to eradicate the  
13 past of the people of Timbuktu and its identity.

14 The issue here was not just a matter of collateral damage arising from traditional warfare,  
15 but rather the annihilation of heritage as a weapon of war. Therefore, the victims in  
16 Timbuktu suffer morally in the same way as others suffer similarly across the world.  
17 That is why Timbuktu has become a reflection of common suffering, particularly in  
18 relation to its recognition as world cultural heritage.

19 Mr President, your Honours, let me quote from Raphael Lemkin who already in 1933  
20 spoke about the necessity to include acts of vandalism in the various categories of most  
21 serious international crimes.

22 According to that lawyer, an attack against a collectivity can also be carried out through  
23 the destruction of various items which testify to its soul and to its genius or creativity.

24 Mr President, the purpose of this statement is that culture constitutes immensely to world  
25 cultural heritage and therefore is wealth for humanity in its totality. Therefore, when

1 cultural heritage, art and what have you are destroyed systematically this must be  
2 considered to be an act of vandalism against world culture. The perpetrator of such a  
3 crime causes irreparable damage, not only to the owner of the destroyed items, but also to  
4 the collectivity to which the item belongs, as well as to the entire humanity.  
5 Clearly the criminal intent of the perpetrator of such a crime according to this lawyer,  
6 Mr Lemkin, was contrary to culture and to the progress of humanity.  
7 Since 1933 things have not changed. The jurisprudence of the International Tribunal for  
8 the Former Yugoslavia recognized war crimes for the destruction of cultural and historical  
9 heritage as a crime destroying memory and souls. The 2004 judgment is the relevant  
10 precedence whereby an accused found guilty of such a crime led the Chamber to consider  
11 that the bombing of Dubrovnik town, that appeared on the World Heritage List since  
12 1974, amounted to an attack not only on the history and heritage of the area but also on  
13 the cultural heritage of humanity. It is a crime.  
14 The Chamber in that case further held that attacks against civilian buildings amount to  
15 serious violations of international humanitarian law, and more so when such attacks  
16 target specifically protected sites.  
17 Mr President, this judgment shows that such crimes are irreparable crimes similar to the  
18 crime which your Chamber must consider today, and such is not mitigated by a guilty  
19 plea even if all parties agree thereto.  
20 Mr Al Mahdi through his crimes -- Mr Al Mahdi, rather, has in fact acknowledged guilt  
21 for his crime. Mindful of the evidence provided by the opposition, it was difficult for  
22 Mr Al Mahdi to proceed otherwise. And today he attempts to convince the Court that by  
23 entering a guilty plea in unconditional and open circumstances he has expressed his  
24 remorse for the acts that were committed.  
25 However, the true question that must be addressed, Mr President, is the following: Is

1 this guilty plea sincere and does it flow from a genuine desire to repair the prejudice  
2 arising from the crimes?

3 Let us not be misled. Words alone are not sufficient. In parenthesis, the request for  
4 forgiveness could have been uttered at the pre-trial level, but it was never uttered.

5 We must bear in mind that the modus operandi of Ansar Dine, as illustrated in its various  
6 propaganda videos that were displayed by the Prosecutor, point to the deliberate nature  
7 and the well-planned and thought-out systems of the attack on the historic and religious  
8 monuments. Mr Al Mahdi supported all of this and provided all possible assistance to  
9 these acts by participating himself in the destruction of the mausoleums and collaborating  
10 with others. Worse still, he used his knowledge and know-how, not for the promotion of  
11 diversity and respect, but to sow seeds of ignorance and intolerance. He played a unique  
12 and central role in preparing -- by conducting research and expressing opinions that  
13 justified the atrocities and crimes committed.

14 Mr Al Mahdi was the key in this propaganda and in the actions of the armed groups.  
15 This support from Mr Al Mahdi was essential in providing the wisdom that would guide  
16 these unacceptable acts when he supported the Ansar Dine strategy and the media  
17 coverage that went with it.

18 Your Honours, this case is one that deals with a crime against cultural heritage. So there  
19 is no more proof that such a crime only contributes to obscure the minds of people, it is  
20 prejudice and damage that goes beyond the simple and dramatic destruction of material  
21 monuments, to the destruction of the minds which, therefore, must be understood to be  
22 crimes that fall within the jurisdiction of this Court. And it is for this reason that the  
23 victims question the sincerity of the guilty plea and the remorse expressed by the accused  
24 person.

25 The victims do not accept Mr Al Mahdi's confession. Some even argue that this guilty

1 plea only serve to address matters of liability. I can talk about this because I am just  
2 returning from Timbuktu. The victims say that forgiveness has been asked for at the  
3 wrong place. Why is he doing it only here in the Court? Why is that guilty plea being  
4 entered so late when the trial is already ongoing?

5 Mr President, for all these reasons, the victims appear respectfully before your Court to  
6 ask for the conservation and protection of cultural heritage and that any crimes in that  
7 regard should be severely punished. The issue they say is not only to reconstruct the  
8 heritage, but that a clear signal must be given to the world that such crimes cannot go  
9 unpunished.

10 Your Honours, the exemplary sanction that you will provide will usher in a new era for  
11 the protection of protected sites. The time has come for severe sanctions to be meted out  
12 against those who contribute to such destruction; in Mali, in Afghanistan, in Syria and in  
13 Iraq such must be the case.

14 This trial must be historical to the extent that it upholds the fight against impunity and the  
15 fight against the destruction of mankind's common heritage. The victims whom I  
16 represent consider this to be a historic crime, a historic crime, one of the most serious  
17 crimes, which is the reason for which a permanent International Criminal Court was  
18 created. The destruction of sacred and historical monuments is something that must be  
19 punished severely. They expect that the -- that your judgment will be an exemplary  
20 sanction, both for the past and for the future.

21 Mr President, your Honours, the victims whom I represent thank your Chamber for the  
22 time that you granted them and I thank you.

23 PRESIDING JUDGE PANGALANGAN: [11:08:25] Thank you. Thank you very much,  
24 Mr Kassongo.

25 Judge Mindua would like to ask you some questions, Mr Kassongo.

1 JUDGE MINDUA: [11:08:42] (Interpretation) Counsel, I have two questions for you.  
2 My first question is this: Exactly which victims do you represent, the ones who filled out  
3 the victims forms, or are you representing the entire community?  
4 MR KASSONGO: [11:09:07] (Interpretation) Thank you, your Honour. I represent  
5 the victims who were authorised by this Chamber to take part in these proceedings.  
6 JUDGE MINDUA: [11:09:18] (Interpretation) Perfect. Very well. Thank you.  
7 Now, my second question: I'd like us to return to the issue of harm done to these victims.  
8 Of course now you said that Timbuktu is not just a city made up of stone, by destroying  
9 the mausoleums the attackers did not just tear down stone buildings, they did harm to the  
10 people of Timbuktu and to the entire international community, thus irreparable harm was  
11 done to the local inhabitants and to all of humanity, but I'd like us to go back to the  
12 mausoleums themselves.  
13 In Romano-Germanic law which you have studied, reparations for material harm is  
14 governed by the principle of integral reparations of harm done and thus compensation  
15 must cover the loss suffered by the victim and of *lucrum cessans*, what has been lost.  
16 Now, the families that were the guardians or custodians of the mausoleums, should they  
17 receive -- you mentioned income derived from tourism and I am still somewhat at a loss.  
18 Did the families receive any sort of income derived from tourism? Thank you.  
19 MR KASSONGO: [11:11:38] (Interpretation) Thank you very much, your Honour. If  
20 I could specify one particular point. I am speaking on behalf of the victims and I asked,  
21 and this was not an easy endeavour, law can be very technical in nature and since we  
22 have a mixture of various legal systems here at the Court, it is not necessarily easy for the  
23 victims in the field to understand all of the legal issues at stake. To my mind I had to  
24 strike the right balance between the loss of income and I did not spend a great deal of time  
25 on that particular issue because I wanted to avoid --

1 THE INTERPRETER: [11:12:34] Inaudible.

2 MR KASSONGO: [11:12:38] (Interpretation) The western concept of income is one  
3 thing, but there is a local meaning as well. Beside the mausoleums, you see, people live  
4 their lives, conducted their businesses and when tourists would visit, your Honour, the  
5 people who were in the area who were adjacent to the mausoleum would earn or gain  
6 some meagre income, very meagre, small amounts, but I would not say that this money  
7 was income in a western sense or in a technical sense. But obviously without the  
8 mausoleums these earnings have dropped. And what is more there are fewer and fewer  
9 tourists coming to the city. Also the fact that the city is perceived as a less safe place, so  
10 less tourism. We can speak of income, but perhaps we should speak of the money that  
11 can be earned by way of any sort of transaction relating to tourism.

12 Up until now, these people who have responsibility for the mausoleums do derive a little  
13 bit of money, very, very meagre amounts, but because tourists are far and -- are few and  
14 far between, these people are only earning a few cents here and there, so I really don't  
15 think we can talk about the loss of a certain amount of income. I think your Chamber  
16 will have to make the appropriate determination.

17 But the meaning that we attach to the words "material harm" or "prejudice" in our legal  
18 systems must be adjusted to take into account the local realities. I mean, tourists do not  
19 necessarily bring in a lot of money. I can only speak to a general -- in a general sense to  
20 what the people have lost.

21 JUDGE MINDUA: [11:15:35] (Interpretation) Thank you very much for your  
22 explanations, Counsel.

23 PRESIDING JUDGE PANGALANGAN: [11:15:41] Judge Schmitt?

24 No questions from Judge Schmitt. None from me as well.

25 We thank the Legal Representative for Victims for his submission before this Chamber.

1 We will now take -- we will now take a break, a 30-minute break and we will resume at  
2 11.50 for the Defence, yes.

3 THE COURT USHER: [11:16:09] All rise.

4 (Recess taken at 11.16 a.m.)

5 (Upon resuming in open session at 11.52 a.m.)

6 THE COURT USHER: [11:52:45] All rise.

7 Please be seated.

8 PRESIDING JUDGE PANGALANGAN: [11:53:00] We will now proceed to the  
9 submissions by the Defence.

10 Just in order to make sure everyone is aware of the schedule, we will stick to our original  
11 plan to break at 1.30 for lunch, which means that this session will last for an hour 40  
12 minutes.

13 I see the LRV rising. Please.

14 MR ABDOU: [11:53:33] Indeed, Mr President. Sorry for the interruption, just a short  
15 submission on behalf of the OPCV. I believe, it's my understanding that our  
16 appointment was limited to the time during which counsel was not present. We are  
17 happy and glad that finally Mr Kassongo is here and able to be representing in person the  
18 interest of the victims. I believe that as OPCV we have accomplished our mandate and  
19 now it comes to an end. I just respectfully request your Honours to be excused from the  
20 Court, if this does not pose a problem to the Chamber, to your Honours.

21 PRESIDING JUDGE PANGALANGAN: [11:54:18] Thank you very much. No, it does  
22 not pose any problem to the Chamber. Mr Kassongo is here to represent the victims.  
23 And thank you so much to your office for making yourselves available to be present here  
24 on very short notice. Thank you and you are excused.

25 MR ABDOU: [11:54:37] Thank you very much. And it has been a pleasure to work on

1 this case. Thank you.

2 PRESIDING JUDGE PANGALANGAN: [11:54:40] You're most welcome.

3 Mr Aouini.

4 MR AOUINI: [11:54:54] (Interpretation) Thank you, Mr President.

5 Mr President, your Honours, it is a great honour for me to stand here before you to defend

6 my client, Mr Ahmad Al Faqi Al Mahdi, in a unique case and in a unique and

7 unprecedented procedure which takes place for the first time in the history of the ICC.

8 I say unique because Mr Al Mahdi pleaded guilty, he acknowledged the charges brought

9 against him.

10 This recognition of guilt, as you are aware, your Honours, was part of the agreement

11 concluded between the two parties to the case. The agreement contains the details of

12 arrangements reached in relation to this case and the charges brought against

13 Mr Al Mahdi.

14 As such, your Honours, my initial submission today will not include any different

15 presentation of what was presented to us by the Prosecution. However, we will be

16 presenting an explanation, an interpretation of these events and putting them in a context

17 through which the august Chamber will be able to consider all personal and

18 circumstantial issues surrounding Mr Al Mahdi's actions when the Chamber should make

19 a decision or a ruling.

20 The events presented to you reflect the truth, the truth as was unearthed by the

21 investigations of the Office of the Prosecutor. However, they also reflect the actions of

22 Mr Al Mahdi in terms of cooperation, submissions, acknowledgement and the effects of

23 his actions and presented a true reflection of the charges brought against him.

24 Mr Al Mahdi, through his testimony, his submissions from the early stages of

25 investigation provided with conviction, with sincerity from day one, without any

1 hesitation, without any pressure or threats, provided a true and sincere submission in  
2 spite of the difficulties, the risks and in spite of the obstacles he had to face.  
3 Therefore, we would like to ask this august Chamber to take all these elements into  
4 consideration, and there will be an element related to this aspect that will be dealt with by  
5 my colleague Maître Gilissen at a later stage.

6 Your Honours, it is of paramount importance that we have the hearings in these few days,  
7 in fact this is a record time for a hearing of this nature, and this did not come out of void,  
8 the outcome was a result as a sustained effort by both parties to the case and first and  
9 foremost has to do with the role of Mr Ahmad Al Faqi Al Mahdi, who insisted from the  
10 beginning and was steadfast in his position that he should continue to acknowledge his  
11 guilt, give testimony and to cooperate with the Court without delay, without trying to  
12 bargain a position. Because he acknowledged his remorse, acknowledged his regret for  
13 his actions. And the fact that he has asked the people of Timbuktu, the people of Mali  
14 and the international community for such forgiveness is very important.

15 Therefore, it is important to look at evidence, at testimonies as we heard them in the past  
16 few days, is the outcome of the seriousness with which Mr Al Mahdi cooperated with this  
17 Court and his desire to realise justice even though that justice would be against his own  
18 interest. Therefore, your Honours, this position is an embodiment of how sincere he was  
19 and is of acknowledging his guilt.

20 It should be no surprise to those who follow this case, to the public at the brevity of the  
21 duration of this hearing compared to other cases, other cases that were dealt with by the  
22 ICC. This case was an example of how these hearings can be simplified whereby  
23 agreement can be reached without taking anything out of the difficulties and the  
24 complexities of the nature of this case.

25 Therefore, it was very important that we deal with the risks and the threats that could

1 endanger the life of Mr Al Mahdi, his family, his next of kin. It is also important that we  
2 take all these elements on board. We should bear in mind that we need to avoid casting  
3 doubt on the sincerity of Mr Al Mahdi who was truthful to this Court. This is exactly  
4 what Mr Al Mahdi did when he stood before you and told the whole truth. We know  
5 that other hearings, other cases went on for longer, much longer periods, not only in this  
6 Court, but in other courts, and we know that in spite of the time taken to hear these cases  
7 the truth was not reached. And if the truth was reached and justice was not realised, we  
8 know that achieving justice and finding the truth is not an easy path that we can take.  
9 And that's what Mr Al Mahdi was aiming to achieve when he spoke openly and frankly  
10 and sincerely before you from day one.

11 President, your Honours, what I would like to put to you today would be an explanation,  
12 a clarification of two important elements whereby we can put elements into context and  
13 consider a legal framework which would give you a means of assessing the situation and  
14 bringing the facts in association with what we want to achieve.

15 The two important elements I made reference to: Who is Mr Ahmad Al Faqi Al Mahdi?  
16 The second element, what are we talking about? What mausoleums we're talking about  
17 and what lies behind the destruction of these mausoleums?

18 The Defence is of the view that these two issues are important for the Chamber to consider  
19 in determining the punishment to be meted out to Mr Al Mahdi. I think there are  
20 elements that relate to the person of Mr Al Mahdi and the view taken by the public so that  
21 Mr Al Mahdi would not be perceived as an individual completely different to what he is.  
22 And we also want to make sure that his intentions would not be interpreted differently,  
23 without of course underestimating what he did, or over-exaggerating the magnitude of  
24 his acts or actions. It is important that the Chamber would understand the personal  
25 situation of Mr Al Mahdi at the time when he made the error and the misjudgment to

1 which he had confessed.

2 Mr Al Mahdi has the hope that his erroneous actions would be a lesson to all those who  
3 would think of committing the same crimes or similar crimes, and that's the reason why  
4 he had sought the forgiveness of his country and his community.

5 The first issue I want to deal with relates to Mr Al Mahdi himself. Contrary to the notion  
6 that had found currency in public circles, Mr Al Mahdi is not a soldier, is not a fighter.

7 He's a civilian from a white Tuareg tribe, lived in Timbuktu for 11 years before armed  
8 groups arrived at the city.

9 Mr Al Mahdi found employment at the Askia Daoud school, a school meant for black  
10 Tuareg, and he worked voluntary for six years from 2001 to 2006. Most of the students  
11 enrolled in that school are from the Songhay tribe from Timbuktu, which means that this  
12 person, this individual was well-known to this segment of the Timbuktu community.

13 And from 2007 to 2010, he worked as a vice-president of the Islamic Youth Association,  
14 which included the crème de la crème of Timbuktu. And during that time, Mr Al Mahdi  
15 moved from one mosque to the other to preach to the various sects of Islam upon the  
16 request of these mosques, and he did that voluntarily without any remuneration, that is to  
17 say that Mr Al Mahdi was an integral part of the community in Timbuktu without any  
18 deference to this sect or the other.

19 At a later stage he joined the education institute. And over a period of four years his  
20 record speaks for his ability, for his exemplary behaviour, his relationship with the  
21 headmaster of the institute and the other teachers was exemplary also.

22 Equally, Mr Al Mahdi was a member of the reconciliation council, which looked into  
23 disputes between the tribes, and he was able to settle several disputes between the  
24 Muslim community to show tolerance antics at each other, he also was one of the founders  
25 of the Quranic education centre, and with other scholars from senior tribes in the

1 Kal Inoukandar tribe, a well-known tribe in the region, and this can only show that  
2 Mr Al Mahdi played a positive role and won the respect of segments of the community.  
3 I am using these examples to show what he has contributed to the community. Of  
4 course, these are only examples and there are other examples I can give, but they are too  
5 long to cite here. And again we are looking at the period of 11 years prior to the arrival  
6 of the armed groups.

7 The citations I have made shows that Mr Al Mahdi was part of the Malian people, part of  
8 the Timbuktu community and was able to accommodate all the different views, sects,  
9 ethnicities and ways of thinking.

10 If we were to look at this history before the arrival of the armed groups, there is clear  
11 evidence that Mr Al Mahdi had no grudges, had no hatreds, had no ill feelings towards  
12 any members of the community. That's how he lived his life in that community. He  
13 was an integral part. He contributed to the social and academic life of Timbuktu. That's  
14 the reason why he was well-known within the community. He won the trust of the  
15 community, and it was one of the reasons why the armed groups tried to lure him into  
16 their ranks once they descended on the city.

17 President, your Honours, it does not make any sense that Mr Al Mahdi overnight can  
18 become the enemy of his own community, someone who wants to destroy that  
19 community without external factors, without external elements related to the sequence of  
20 events that ensued in 2012 which led him to commit the crime that he was charged with.  
21 These circumstances, Mr President, your Honours, these influences were numerous, were  
22 polarising and this leads us to believe that the Al-Qaeda in North Africa had deliberately  
23 targeted Mr Al Mahdi and tried to draw him into their ranks from 2006.

24 They realised how important his role was within the community, how much trust the  
25 community had put in him and the trust his tribe and other tribes have put in him and the

1 impact he'd had on large segments of the community. They were, the Al-Qaeda was  
2 impressed with his knowledge, with his understanding of the Quran, the interpretation of  
3 the verses of the Quran. That is why this group started looking into his background, into  
4 his financial situation, the family burden that he was shouldering.  
5 They presented themselves to him as a local group trying to implement the Sharia and the  
6 jurisprudence of Islam, and that's why they call themselves Ansar Dine. They started  
7 lavishing him with presents, a mobile computer, a coloured printer, boxes of CDs with  
8 religious ideas and views. And, your Honours, they went as far as offering him more  
9 than €40,000 as a form of assistance to help him pay off his debts and improve his  
10 financial situation. That's how Mr Al Mahdi voluntarily, without any coercion, joined  
11 that group.

12 In view of the circumstances and the influences that I made reference to, Mr Al Mahdi, out  
13 of his own volition, joined that group and as a result the Ansar Dine decided to promote  
14 him. He was charged with the task of inspecting the military groups from the Tuareg  
15 which joined Ansar Dine. Then he was promoted further, further by making him head of  
16 Hisbah as a morality enforcement group or force. That's how he found himself in the  
17 midst of Ansar Dine.

18 Mr President, your Honours, in this environment and in these circumstances,  
19 Mr Al Mahdi decided to get involved in the process of destroying these mausoleums and  
20 based on the religious interpretation he was led to believe to be right.

21 And this leads me to the issue of the mausoleums and the schools of thought in Islam that  
22 dealt with interpretations relating to such mausoleums. And I believe this explanation  
23 will help this august Chamber to understand the mentality with which Mr Al Mahdi  
24 operated in getting involved in the process of this destruction.

25 This issue is important. It may take us hours to try and to delve into these

1 interpretations, however, I will try to be very brief in shedding more light on the notion of  
2 mausoleums in Islamic countries.

3 In some Muslim countries, especially the Muslim countries of the Maghreb, including  
4 Mali, Niger and other countries, the notion of mausoleums stems from the fact that when  
5 a human being find themselves in a position of weakness, weakness financially or  
6 morally, and the inability to find solutions to these problems themselves, then they look  
7 up to those, the saints or the people who are perceived to be close to God, so that they can  
8 help them get out of these difficulties.

9 That's why citizens, Muslims go to these mausoleums and plead with the saint or with the  
10 person believed to be close to God to hope for something. A woman who cannot have  
11 children will go to a mausoleum and try to seek solace there or pray to the saint to may  
12 God help her have children. And those who face financial difficulties go and plead their  
13 case in a mausoleum.

14 That's why Muslims in these countries look up to the preachers, the scholars of Islam  
15 where they have places to visit, and mausoleums or shrines that are built for that purpose  
16 will be a destination for these people to go to and seek help. That's how things were with  
17 the inception of Islam in Africa, with the introduction of Islam into Africa, and that's why  
18 these shrines, these mausoleums became what they became, they became, and that's why  
19 Timbuktu became the City of 333 Saints over a period of Islamic presence.

20 And if we were to visit North African or Maghrebin cities, we will see several shrines,  
21 several mausoleums strewn all over the place. That's why the notion of seeking the help  
22 of those saints and the plethora of these saints and the mausoleums has become an issue  
23 that led to important debate within Islam about whether this allowed or not allowed, and  
24 the building of shrines, the building of tombs become an issue to be debated strongly.

25 And there was an attempt to try and interpret the Quran and interpret the sayings of

1 Prophet Mohamed. And this led to the creation of -- the creation of different schools like  
2 the Hanafi and what led to the creation most recently of the Wahhabi sect. And each sect,  
3 each school of thought interpreted these notions, these principles in a different way.  
4 If we were to look at the Maliki sect, which is prominent in North Africa and some  
5 sub-Saharan regions like Niger, Mali, the Maliki sect allowed for Sufism to find a place for  
6 it whereby the saints are idolised, they are referred to.  
7 On the other hand, diametrically opposed to that is the Wahhabi sect, which is common in  
8 Saudi Arabia. This sect prohibited such practices and condemned and went as far as  
9 punishing those who adhere to these notions.  
10 In the 18th century -- correction, in the 13th century, Ibn Taymiyyah was the first to call  
11 for the prohibition for Sufism and called for the destruction of all tombs. He went as far  
12 as calling for the removal of a tomb of Prophet Mohamed and his daughter. And these  
13 views were further strengthened, further elaborated on by Muhammad Abd al-Wahhab,  
14 the spiritual leader of the sect. Muhammad Ibn Abd al-Wahhab totally forbade people  
15 from building tombs.  
16 Ansar Dine when they came to Timbuktu considered that they were following the  
17 Wahhabi school, which is against all mausoleums as I have explained. They have  
18 considered that building shrines and mausoleums are forbidden by Islamic law and  
19 should be dismantled where they exist.  
20 And to summarise, not to be long on you, I will say that Mr Ahmad Al Faqi Al Mahdi was  
21 consulted on the topic of destroying the mausoleums in the city of Timbuktu and he  
22 answered. His answer was based on his conviction that from a religious viewpoint we  
23 have to destroy them. But I have told you there are different schools of belief. And  
24 according to his interpretation and the school of belief he considers appropriate, he said  
25 that it is possible to destroy the mausoleums according to the doctrine which forbids

1 building mausoleums on tombs.

2 And despite his conviction of this doctrine which allows the destruction of mausoleums,  
3 he did not accept this idea of destruction and he refused the destruction. And he  
4 answered before the Shura Council of Ansar Dine on that point and he said that if we  
5 destroy them, this may give rise to popular protests and lead to negative effects that are  
6 worse than keeping the mausoleums on the tombs. And that was his opinion when he  
7 was consulted.

8 But the emir had a different opinion. He took his decision to destroy. And the members  
9 amongst the leaders, the chief of the Hisbah, Mr Al Mahdi, had to follow through and  
10 they had to destroy. And as he was the chief of the Hisbah, Mr Al Mahdi had to organise  
11 the destruction.

12 The armed forces were to follow through and people had to respect the roles of loyalty  
13 and follow what the leader had said.

14 So it was done knowingly. We do not want to give excuses, but we want to say that he  
15 was well aware of what was done and he did it in full conscience and the destruction took  
16 place. And he wrote the preach of Friday in which he presented the legality of the  
17 destruction of the mausoleums. And on many occasions he presented to the press the  
18 legal reasons for the destruction.

19 Your Honour, your Honours, this is a short summary of the events and the fact and the  
20 reality of what Mr Al Mahdi did and what he went through.

21 Your Honour, your Honours, Mr Al Mahdi is standing before you today admitting  
22 honestly and in detail the crime that he is accused of. He expresses strong remorse for  
23 the result of his actions. He's asking for your pardon. He is asking for the pardon of the  
24 victims, those that have suffered, the children and grandchildren of the saints. He asked  
25 for the pardon of the population of Timbuktu, the city of Timbuktu and the Mali people.

1 He's asking for pardon from humanity as a whole. And he is asking from all Muslims in  
2 the world pardon and he gives them this following advice: Do not undertake such  
3 actions that will be extremely grave and that cannot be corrected.

4 And he has collaborated with the Court and is ready to pursue his collaboration with the  
5 Court in order to allow justice to arise. And he wants to participate in creating the  
6 reconciliation and peace in his country, Mali. And he lastly asks you to be clement,  
7 lenient and make proof of mercy when you take your decision.

8 Thank you.

9 And my colleague Mr Jean-Louis Gilissen will now take the floor for the second part of  
10 our pleadings. Thank you, sir.

11 PRESIDING JUDGE PANGALANGAN: [12:31:06] Thank you. Thank you so much,  
12 Mr Aouini.

13 We will now proceed to the presentation by Mr Gilissen. And before you do that,  
14 Mr Gilissen, at the start of the hearing today you asked the Court to receive two witness  
15 statements. The Defence had also filed a written motion to that same effect. And since  
16 those two witness statements have already been received by the Court, the matter has  
17 been resolved and that that is -- and the written motion is thus mooted and this should  
18 resolve that pending written motion.

19 Also, in terms of the schedule of the Court, may I ask you, Mr Gilissen, how long you  
20 propose to speak?

21 MR GILISSEN: [12:32:08] (Interpretation) Your Honour, I think that however I try I  
22 wouldn't be able to get under an hour in all cases. I think that it will be approximately  
23 one hour 30 minutes, even if I try to avoid repetition.

24 (Trial Chamber confers)

25 PRESIDING JUDGE PANGALANGAN: [12:32:49] Yes, Mr Gilissen, please proceed

1 with your submission.

2 MR GILISSEN: [12:32:55] (Interpretation) Thank you very much, your Honour. I  
3 will perhaps use my first 30 seconds just to get the logistics right here and then I will start  
4 with my intervention. Thank you very much.

5 Your Honour, your Honours, Prosecutor, ladies and gentlemen, Legal Representative of  
6 Victims, Maître Aouini and myself wish to present to the Chamber the arguments of the  
7 Defence.

8 The subject has already widely been addressed with regard to what Mr Aouini has said  
9 and indeed we wish after studying the case, after all that we have been able to read, after  
10 the interviews that we've been able to have, we would wish to put forward the arguments  
11 of the Defence by putting things clearly right from the outset. We do not want to be and  
12 we are not defenders of a programme or system of a religion, of an ideology, of a doctrine  
13 or a party. We defend a man and a certain image that we have of what the human being  
14 is.

15 The Defence, your Honour, your Honours, and I am persuaded by this, that it is a very  
16 complex exercise, an extremely sensitive exercise, almost as difficult as the fact of having  
17 to try and rule on a sentence, but your Honour, your Honours, we have a privilege in this  
18 difficulty, we have a privilege with regards to everybody here in this courtroom. And I  
19 say that respectfully, even with regard to the three Judges here, and that is that we have  
20 met on many occasions with Mr Al Mahdi. We have met him, we have been able to talk  
21 to him and discuss matters with him. We've been able not only to find out what his  
22 beliefs are, which are firmly rooted, but also find out what doubts he has, also the  
23 questions that this man had that he put, questions that he has which we are not witnesses  
24 to, but what we have seen is his dealings with these questions, the fact that he has done  
25 wrong.

1 And dealing with that, your Honours, I can tell you that we have been able to measure  
2 both the process of challenging this man and during this process the regret and remorse  
3 that he has. That's not the same thing. And each of his words show the importance  
4 given to that, because behind each of his words there is a universe, and behind each of his  
5 words there is reflection, and there is a man behind that, a man who is committed  
6 independently of a duty to appear before you for these crimes.

7 He is prepared to look at himself in the mirror. And we see that he doesn't like what he  
8 sees in that mirror. He no longer likes what he sees there.

9 This is a man with his culture. We are in a case dealing with culture, Maître Kassongo  
10 said that admirably earlier, a man with his representations. He did not choose his culture  
11 or the consequences thereof. As you and I, as all of us are here, we are all the result of the  
12 culture in which we have grown up, the culture in which we were educated, in which for  
13 those of us who had the chance, those of us who were able to carry out studies. That's his  
14 case. This is a man who has a concept of his civilisation, the Arab Muslim civilisation,  
15 that's not mine, unlike Counsel Aouini, perhaps it's not yours, not exactly yours. I don't  
16 know, and that's not at issue here.

17 But what is sure is that it's impossible to as far as I'm concerned, and this is what I would  
18 respectfully put to your Court, a case such as this in order to be tried, we have to be able  
19 to understand the world perception of Mr Al Mahdi, the type of understanding and  
20 awareness of the world, because when he eats, when he breathes, when he gets up in the  
21 morning, or when he kneels on the prayer mat, when he goes to bed in the evening, he  
22 lives the same thing as you and I, but not in the same way.

23 Your Honours, this is a question which isn't calling for an answer. But on this side of the  
24 Bench we are very humble. Do we experience the same thing? Do we live the same  
25 thing? Do we feel the same thing? Do we reflect in the same way? This, I think, is an

1 important factor where culture has an essential role in this case, and preliminary reflection  
2 needs to be made in that regard, everybody doing so in their particular way.

3 When we look at this case, what we know, we think that we would all be in agreement,  
4 and when I look at the Prosecutor, we have all understood. Well, this is a man who is  
5 committed by his culture, he lives with an intensity. It's at his very backbone, this culture  
6 is in his very backbone, the religion, and he is not an imam or a religious figure as such.  
7 He is a man of science, a brilliant intellectual we are told, and I think that the case shows  
8 that amply. Nobody would challenge that. He is a man who knows this culture, which  
9 embodies his very being, his way of thinking and his way of reacting.

10 And it would seem to me that this is of a vital importance to understand in this case,  
11 because the first reflection that I wish to make is what is this case? We are all part of this  
12 human community. And I think that here we are not in a majority, but we are all  
13 concerned that we belong to the international community, because the international  
14 community over a certain number of years is not just limited to states. Individuals have  
15 rights that are recognized, but they need to be implemented. And for Mr Al Mahdi in  
16 this case, you have this difficult and painful and delicate task of two different legal orders,  
17 a meeting between the two, which at a certain point will clash. And we, Mr Aouini and  
18 myself, we think as members of our community that cultural property must be protected  
19 with criminal sanctions, with specific sanctions, and that there are no exceptions thereto.

20 And you will judge a man because he belongs until the very limits to his being to a  
21 particular culture, his culture. He can say yes, and I would say perhaps wrongly because  
22 I come from another side of the river to another -- I come from another legal order to say  
23 to him no, when a property, even if it's cultural, even if it's historical, even if it's religious,  
24 it is a crime against religion or it's against religion, then yes, you have to put an end to  
25 that. And it's this judgment there, not that you're going to carry out that, your role is to

1 make it possible for international law to be respected and to say how this particular  
2 culture, how you can interpret a particular culture, but how that is not an argument in  
3 itself. And you will have understood the pleas of Mr Al Mahdi go in this sense.  
4 This is a man who is capable, despite everything, to take the path and to say: I  
5 understand, I understand that I did the wrong thing. I went on the wrong path. I didn't  
6 just make a mistake, but I devalorised myself.  
7 And you indeed have in the document of the interviews, this is a very important  
8 document, right at the end, if we just look at one of the last interviews or the last hearings  
9 with the witness, I will quote the number because it is of great importance,  
10 MLI-OTP-0037-1104, you have in paragraph -- on the line 741, you have the question by  
11 the investigator -- or I could read it in English if you don't mind my English accent:  
12 (Speaks English) "But ... and I just -- I just ... I want to ask you if you ... having gone  
13 through this whole process and understood what, what our interests was if you have,  
14 mmm, first of all, anything that you think should be added to this, to this context of  
15 information."  
16 (Interpretation) In French in the text Mr Al Mahdi -- well, now that we've finished  
17 he -- whether he was asked if he had anything more to say, he replied, and this is of  
18 considerable interest.  
19 (Speaks English) "I just wanted to let you know and to inform you that this investigation  
20 has helped me, helped me a lot to understand many things, even for my own benefit."  
21 (Interpretation) There you have indeed in this statement, which was not ordered, there's  
22 no play going on there, you have a man who says I had had time to reflect.  
23 And we know that from the first transcript of the hearing he wants to plea. It is not a  
24 calculated matter, it is not a circumstantial plea with -- and, your Honour, this is  
25 something that has to be said, Prosecutor, with the help of the investigators of the Office

1 of the Prosecutor, this man continues upon this path that is his, and this is a difficult path  
2 for a Muslim, to speak about a path of the cross, but this is difficult, which is to review  
3 what happened, to review the errors that were made, to look at the faults that were  
4 committed and the crimes that were committed.

5 And so, your Honour, your Honours, I think that we should not or we cannot ignore this  
6 first reflection because that would be a mistake with regard to the crime, that would be a  
7 mistake with regards to the guilt. And if we make such a mistake, if you come, and I'll  
8 say this with the greatest possible respect in the world in the most respectful way that I  
9 possibly can, if you decide, despite this guilt or this criminality, then I think we all would  
10 have the risk that an inadequate sentence would be taken, and because the exercise here  
11 consists of evaluating the sentence of coming up with a sentence, which is a complex and  
12 sensitive exercise and I think from all angles is difficult, and extremely difficult, it is a  
13 work of reflection, of measuring and, Maître Kassongo, of restraint, restraint.

14 Indeed, your Honour, your Honours, Prosecutor, dear colleagues, what sets the just  
15 sentence, the correct sentence, a good sentence? We know that excessively low or  
16 excessively lenient sentences don't meet the necessity of justice. Just in the same way we  
17 know that sentences that are excessively harsh or severe also do not meet the  
18 requirements of justice and its *raison d'être* when it comes to determining sentences, a  
19 balance must be struck, and this is not easy, this is a complex task. A solution has to be  
20 found. I am sure you will find it in the need for the sentence and the usefulness of the  
21 sentence. There will be -- a sentence has meaning if it is necessary and useful. I'm not  
22 going to recall the provisions that were mentioned by the speakers with regard to the  
23 Statute and the Rules. I won't remind you that these Rules in the Statute have received  
24 application in the Lubanga case, Katanga, Bemba cases as well. We all know that what is  
25 essentially aimed at can almost be summed up as proportional, one word, proportionality,

1 that's what's aimed at. And international law is about common sense. There is a place  
2 to apply principle and that is the search of an appropriate sentence.  
3 Judges of the International Criminal Court have insisted on the facts that this approach  
4 itself is insufficient and it has to be added to by taking into account all the different  
5 relevant considerations, factors that must be taken into account in measuring or  
6 evaluating the sentence to be handed down.  
7 And a second principle comes out in the decisions which have been issued, this is about  
8 the grading of the sentence or graduating thereof the highest sentences for the most guilty,  
9 the most responsible, and lesser sentences for those who are less responsible with a scale  
10 therein.  
11 If we remember that contrary to what I have heard in what we call the media,  
12 Mr Al Mahdi is not one of the -- he's not a leader, he's not a member of the presidency, he  
13 is not one of the three people who constitute the presidency government. Furthermore,  
14 he is not, and this is something that needs to be said, he is neither -- is not the  
15 decision-maker to carry out the action against the cultural property.  
16 You read, you hear things which are horrifying about people, maybe malintentioned or  
17 misinformed. And I read in a paper that I thought was meant to be serious that he was  
18 the intellectual designer of the Ansar Dine movement. It was created six months prior to  
19 him. He wasn't necessary for it to be created, whereas it said because at a particular time  
20 they have to come back to the reality of the crime.  
21 There is no blood that's been shown. The tombs have not been attacked. You know.  
22 Everybody says it, that he took care to take care of that. The domes were attacked. And  
23 if we have to say this, and this is something that comes up in the case at a certain time,  
24 that we haven't seen naked saints either, but if we look at the page 0037-0491, what does it  
25 say there? At a particular time it says "I take up contact and I get information from the

1 media and I'm horrified." He says "horrified." And he says that we destroy the shrines,  
2 but this is more than a crime, this is an attack on religion to destroy a tomb. This is  
3 something that he explains.

4 And I effectively want to correct this media discourse. Well, what I'm not doing here is  
5 saying that there were good reasons for destroying mausoleums. Absolutely not. I say  
6 you mustn't confuse -- there's good news this morning for the victims of Timbuktu and  
7 I'm very pleased about that. If somebody suffers from the fact that he wanted to attack  
8 his persons, then he never attacked their family. You will have seen that there was never  
9 an intention to attack their saints, nor the people of Timbuktu.

10 There was an intention, and this does not reduce the significance of the crime. There was  
11 a crime, the crime of stones, which is not to reduce the importance of the crime in any way,  
12 but it -- dead people were not killed. The saints were not killed. The tombs were not  
13 opened. This was not the case. And I'm in agreement with the Prosecutor with this. If  
14 anybody disagrees with that, then they should interrupt. But this is the reality of the  
15 case. We are in something different. When you say you mustn't make a mistake with  
16 regards to the nature of the crime, this is something that is already sad.

17 Now, we have to know where we are going and what you have is a levelling or different  
18 levels of sentence or different grades of a sentence as a tailor would do, made to measure.  
19 Of course you will try this person, but one mustn't make a mistake unless we have the  
20 people responsible within the presidency. This person was not a decision-maker,  
21 everybody knows that, so we mustn't confuse things here. That would be unfortunate if  
22 justice wasn't rendered in this regard because what he did was very specific with regard  
23 to the gravity of the crime.

24 In this case, the gravity of the crime is real. Here we are not contesting that, nor are we  
25 ignoring it, nor even trying to minimise its importance. Not only is the local community,

1 national or international community victims thereof, but men and women, there are men  
2 and women who are suffering behind that. And so Mr Aouini and myself we wish to  
3 acknowledge the victims as I acknowledged Mr Kassongo. We'd like to acknowledge  
4 these victims as members of the human community. And we'd like to demonstrate our  
5 commitment to the interests protected by UNESCO, values guaranteed, values guaranteed  
6 by international law. And they explain the reason why we defend Mr Al Mahdi when I  
7 say that this is the conception of a man.  
8 We wish indeed to participate in a just recognition of the crimes committed; therefore, we  
9 are talking about defining and determining this gravity without going into excess, not too  
10 harsh, not too lenient. It's about quantifying the gravity of each crime and putting it on a  
11 scale of gravity which is common to each crime. This is essential. One offence isn't  
12 another. It would be harmful to confuse crimes, to amalgamate them when there was a  
13 difference between them and -- or to make them the same in terms of their gravity. That  
14 would also not be just with regards to victims to ignore their specificity.  
15 And if we look at the jurisprudence of the international community, it's very clear in this  
16 regard. And they look at the degrees of gravity or seriousness. And you know  
17 yourselves, your Honour, the judgments that were handed down by different courts and  
18 each there are different levels of gravity: You have violations of international criminal  
19 law or humanitarian law; you have serious violations; you have even more grave,  
20 particularly serious violations; and you also have a fourth category which comes under  
21 the doctrine and jurisprudence, you have extremely serious violation.  
22 There is, therefore, a graduation within the gravity of crimes. And the International  
23 Criminal Tribunal for Yugoslavia has said nothing else on this in a particularly important  
24 case of interest to us. All parties and participants have referred to the so-called  
25 Dubrovnik case. And the International Criminal Tribunal for Yugoslavia rendered a

1 judgment, a sentencing judgment in the case The Prosecutor versus Miodrag Jokic in  
2 which the Trial Chamber describes an unlawful attack on civilians giving rise to deaths or  
3 injuries among them as an extremely serious violation, extremely serious violation of a  
4 fundamental principle of international humanitarian law.

5 And this same Chamber continued saying that, and this it described as particularly  
6 serious, the fact of having unlawful attacks which gave rise to the deaths of civilians and  
7 serious injuries of others that several buildings were destroyed which -- at a civilian  
8 nature in the old town of Dubrovnik as well as others having been damaged.

9 Now, in the Jokic case this is of great interest in our case today, your Honour. On  
10 6 December '91 the armed forces commanded by Mr Jokic, who for several months had  
11 been directing a military campaign which had launched against the territory of the  
12 municipality of Dubrovnik, these armed forces bombarded the old town of Dubrovnik,  
13 and this is listed and has been for a long time as a world cultural heritage. And under  
14 The Hague Convention of 1954 you have the protection of cultural property in armed  
15 conflict. And this was marked very distinctly in one sole day, just one day, hundreds of  
16 shells, and they speak of over a thousand were wilfully fired at the old town which was in  
17 absolutely no way a military objective. There were deaths, numerous people were  
18 injured and very many listed houses were destroyed and many more houses were  
19 seriously or unrepairably damaged. But in particular this terrible attack caused the  
20 deliberate destruction of many buildings dedicated to religion, to the arts and to sciences,  
21 historic monuments and works of art.

22 In brief, buildings which, like the domes of mausoleums of Timbuktu are subject to  
23 particular protection. This is the same protection with, however, one difference, and a  
24 considerable difference, a significant difference. If in Dubrovnik, as in Timbuktu, it was  
25 about attacks committed against elements of a protected heritage, in Dubrovnik numerous

1 civilians were located in the protected heritage, a significant number of civilians have  
2 been living there for generations and it's therefore logical that numerous civilians were  
3 injured, some for life. They were handicapped by the war forever. Others were killed.  
4 There were people who died. So here we're talking about a terrible precedent, but it has  
5 undeniable importance in our case. And this is a reference which cannot be put aside.  
6 And we have to be careful here. One case is not another. We have to be very careful  
7 when you start comparing decisions, but it is nevertheless the case that we have to take  
8 that into account. That is impartial justice. That is universal justice.

9 Less than a year later the Trial Chamber, Trial Chamber II of the International Criminal  
10 Tribunal for Yugoslavia rendered the decision concerning the Prosecutor against  
11 Pavle Strugar who was put on trial in turn for the same attack on 1 December 1991.  
12 Mr Strugar was the supreme commander of the forces of the Yugoslavian army, that is to  
13 say, the forces involved in the bombardment, the unlawful bombardment of the old town.  
14 He was therefore the hierarchical superior of Admiral Jokic that we just spoke about.  
15 And he was recognized as guilty of having committed two war crimes; namely, attacks  
16 against civilians in violation of the laws and customs of war. And I said there were many  
17 deaths. And also the destruction or wilful damage done to institutions dedicated to  
18 religion, charity, education, arts, science, historic monuments, works of art or works of a  
19 scientific nature, at least 52 bâtiments appear on the World Heritage List of UNESCO  
20 which were destroyed or definitively damaged, including places of worship.

21 And this is -- or, there is a second precedent that needs to be taken into account as in this  
22 case. There were attacks on culture, on religion, on what structures men and women and  
23 constitutes the roots. Maître Kassongo admirably spoke about this earlier and I utterly  
24 subscribe to the description that he gave. In both cases the gravity of crime is there, its  
25 specificity, and this was raised by the relevant Chamber.

1 But in the two cases which the ICTY saw, the criminal framework was much wider.  
2 There was also the number of international crimes that were committed. In these two  
3 cases, in addition to the crimes that you have to try today there were also attacks on life,  
4 on the physical integrity of innocent civilians and the destruction of civilian property  
5 which did not constitute a military objectives. In these two cases, the crimes for which  
6 the guilty were sentenced by the ICTY were heavier -- more numerous than in the present  
7 case.  
8 This in no way reduces the gravity of the crimes that you are trying today. This is a  
9 factual reality and a legal reality shown in a judgment which was definitively  
10 pronounced.  
11 In addition to the loss of the property and the damage thereto, of high religious value, like  
12 in this case, there were also victims. There were seriously injured people, handicapped  
13 for life. There were families mourning. There were widows and widowers. There  
14 were children who lost their parents. We don't have that in this case. Yes, the crimes  
15 are very serious, but I would call reason, common sense. And for measure, I had the  
16 impression a moment ago that I was dealing with the opening of a concentration camp.  
17 The crime is extremely serious, but please we must keep a degree of measure.  
18 You know as I do, do you not, we all know that Maître Aouini and myself are among  
19 those, and we are numerous, but we consider that a religious or cultural property in Mali  
20 has as much value as a building in former Yugoslavia, Bosnia, Croatia. We think that the  
21 loss or the harm caused to a cultural or religious property has the same value, whether it's  
22 in the former Yugoslavia or Mali. But we also think, and we would respectively put  
23 forward as a means of defence, we also think that -- and whether this is in Mali or the  
24 former Yugoslavia, we also think that when attacks are made on property which is  
25 cultural or religious, when in addition to that it -- and there are people injured, people

1 who are killed, widows, widowers, orphans, then yes, these attacks which are murderess  
2 are fundamentally more grave than what you are judging here. Because thereto there is a  
3 graduation or different levels in the values which are protected and of supreme value. Is  
4 there a need to be able to state it here? I think human life has the highest value. Is there  
5 a need to say it here? It has a value above all. That is a supreme value. Yes, there are  
6 superior values, but that does not reduce the value of the property which is protected, but  
7 we are there, we have to.

8 And I would like to thank Mr Kassongo for asking the fundamental and right questions,  
9 we have to go back to the fundamentals here. And at a particular time in the scale of  
10 values to be protected, human life is at the very top. And that's all the more true when  
11 deliberate attacks are carried out on human life which are done in a collective, multiple, a  
12 general or widespread way.

13 And the same goes for wilful attacks on physical integrity of persons. They are more  
14 grave. There is a time when these values must be represented, where the debate is no  
15 longer a debate of ideas but of reality.

16 Your Honour, of tears and blood, there is not -- there were no injured people in the attack  
17 that he organised, there was never the intention to injure anyone. That was not part of  
18 the plan. So I would say let's keep some measure, let's keep measure, or the suffering or  
19 the harm mustn't be confused. I repeat, that would not be to do justice to the victims. A  
20 genocide is not equivalent to massive and widespread murder. The execution of a policy  
21 of ethnic cleansing or murders or atrocities, that does not have the same value as lesser  
22 offensive.

23 In the two cases which I've spoken about there is an accumulation of crimes that we don't  
24 have here, neither in the weight of it or the meaning of the crime. We cannot say that the  
25 scale would be identical and we have a need, you have a need, and this is what we believe

1 with Maître Aouini, if evidence make it possible for you to judge the adequate sentence in  
2 this case. And there cannot be, as financial material, some kind of inflation between the  
3 start of 2000 of the decisions and today. Suddenly it hasn't become more grave or  
4 serious. We have to recall that the enlisting, deployment, use of children in armed  
5 conflict as combatants within armed groups is an horrific crime which has destroyed  
6 many lives and communities. This crime is of exceptional importance.

7 We know nobody can doubt that the acts committed on Timbuktu were committed and  
8 that they are of real gravity, they are serious violations of international law and they  
9 caused victims. We have to recognize all this and that harm has been suffered. But we  
10 have to see what harm has been caused, because when I heard the answer of Mr Kassongo  
11 to the question of the Chamber with regards to what was said, then one could ask a  
12 question about the link of causality between the harm and the fault committed. You have  
13 the cause of the -- what is the cause of the conflict in Mali, and you were told that was the  
14 answer. Since there was a conflict in Mali, there are no tourists. Well, and I don't want  
15 to minimise or underestimate the legitimate harm, but I would say at a particular time  
16 that is of particular interest. Justice cannot be vengeance. And nothing is established in  
17 this case to show that there was a will to destroy a culture or religion, or even the heritage  
18 in itself, you know, wrongly, wrongly.

19 This is a practice that was being attacked, it wasn't men or women. The culture, religion  
20 to which he belongs is where there is one God and there are no intermediaries. There are  
21 not saints as in the Catholic religion. You believe in it, you don't, that's not the issue.  
22 And at a particular time, putting in an intermediary, saints between divinity and men, is a  
23 crime. But in no case is it a matter of killing those who adore saints or who pray to them,  
24 who pray to the saints. And that must be stressed. So in this case where nobody was  
25 killed or injured during the commission of these crimes, I would say and I would repeat,

1 where there was never an intention to kill or to take the risk of killing. Even the idea of  
2 risking killing somebody was not there.

3 We have to keep reason and be measured. Knowing how to do so when you have to  
4 evaluate the gravity of matters and punish them in a merited and just way within the  
5 framework of an impartial court. And we have to remind ourselves that, for all of the  
6 crimes, Mr Jokic was convicted and sentenced to seven years for having destroyed  
7 approximately 50 buildings which were in the same heritage area, but also while killing  
8 people at the same time, while injuring people at the same time. Mr Strugar was  
9 sentenced to eight years. These are decisions for some which people haven't appealed,  
10 but it wasn't the Prosecutor who appealed that. The Prosecutor considered that in such a  
11 case it was the appropriate measure.

12 Your Honour, your Honours, it would seem, given the evidence, there is a comparison  
13 that can be made. But with Maître Aouini I would like to be completely honest and  
14 transparent, the mode of participation wasn't the same, both for Mr Jokic and for  
15 Mr Strugar. They were accomplices. And that is a big difference. But it has to be said  
16 they were prosecuted as accomplices in a multitude of crimes. I'm not going to repeat  
17 with deaths and people who were injured, that's something that you've understood. And  
18 if a comparison is to be made it is not easy. Here what we're dealing with, a  
19 co-perpetrator who has pleaded guilty, but at the same time he was not a decision-maker,  
20 he was an executor, the leaders are the decision makers.

21 So you know in his life Mr Al Mahdi, you -- this is something that has to be taken into  
22 account, he didn't say "Just go ahead, you can destroy it." No. He definitively was the  
23 only person who said "You shouldn't do it." And this is something that you have to take  
24 into account in a climate which is horrifying, is it not, we are in an armed group which is  
25 extremist? There it would be an affront to say "Well, I have the legal basis to do so." But

1 you will be able to read the extract, because I see that I'm taking too much time, but I think  
2 you have to be able to read it, you will say, "I don't have legal arguments to say that it is  
3 authorised to destroy it. I don't have legal arguments to say that it has to be destroyed."  
4 But there's a precedent. And we've come to find the prophet with regards to that and the  
5 prophet has sent, because this is something that was done in another town than where the  
6 prophet was, he sent his right arm. And after having listened to everybody that person  
7 decided that it was necessary to break. So he said, "Well, it's not a prophet, it doesn't  
8 have a force of law, but there is a precedent." And this is where I'm perhaps being too  
9 personal, I didn't have the intention to present myself with -- as being the soul of  
10 objectivity, we are partial and we are partisan, but this doesn't mean that you are  
11 dishonest. We all know that Mr Al Mahdi took up his -- he was courageous enough to  
12 say "Don't do it."

13 That is why we are here to talk about his commitment. And you can see that these things  
14 are complex. Yes, indeed, there are legal analysis of the matters. I love the law and I  
15 stand for the law, because I think that societies are built on the law and the respect thereof  
16 and the respect of the strength and power of the law.

17 However, if you take Mr Strugar and Mr Jokic and Mr Al Mahdi and compare those three  
18 you have before you a man who, as was said previously, who for about three months of  
19 his life lost it, so to speak, but before then he had an admirable track record, a man who  
20 has admitted that at some point he made a mistake, a man who felt that because the  
21 Sharia had to be implemented, he thought that the law was being implemented and,  
22 therefore, he ensured that he would provide the people who wanted to do something with  
23 the rules applicant thereto. And that is what led to his guilt.

24 Now, on the other hand, the other accomplices whom we have talked about, these were  
25 war professionals. From their very early age, they had been in the best war schools in the

1 world. They were not the commanding officers, but they were the leaders within the  
2 commanding officers. Therefore, your Honours, as you balance these issues against each  
3 other I am sure that you will render justice.

4 There are mitigating circumstances which I will conclude by mentioning them as quickly  
5 as possible. I know that you have not pressed me, Mr President, but I know that I have  
6 taken up a lot of time. There are mitigating circumstances and one can believe that in the  
7 context of this case there might be mitigating circumstances that point to a reduction of  
8 the sentence.

9 Now, let me talk about the victims. I am not talking about mitigating the gravity of the  
10 crime, to be very clear, for the purposes of the victims. For example, in Bamako, in  
11 Timbuktu and elsewhere, in Mali, I hope that this can be understood properly.

12 During this trial and in the conduct of this trial you may also want to take the manner in  
13 which the proceedings have unfolded as mitigating circumstances which have nothing to  
14 do with the crime itself. His transfer to the Court is also one factor. You know there is a  
15 procedure for that, there are legal implications and what have you pertaining thereto.  
16 Facilitating the interviews and his conduct during the proceedings we believe can also be  
17 considered as attenuating circumstances.

18 In any event, elements that taken independently may not amount to mitigating  
19 circumstances could, when taken together, be seen as mitigating circumstances.

20 Now, we also see two mitigating circumstances which we invite the Bench to take into  
21 consideration: First, and the Prosecutor alluded thereto, and I'm going to be brief about  
22 this, is that this man has no previous criminal record. He is an honest man. He has  
23 never attacked a bank or he has never been a bandit. He has no criminal record. He's a  
24 man with a clean record. And as you all know, we are in extraordinary times when  
25 bandits are ravaging our cities and, therefore, such a man must avail himself of a second

1 aspect, which is the respect that he has. He is a man born in a difficult -- in difficult  
2 circumstances in a country where things are difficult. We know that things are difficult  
3 all over, but in his circumstances he committed himself to study and he excelled in his  
4 studies. Lucky enough he happened to be a brilliant man and he did well in school.  
5 He worked to advise and provide counsel for his community. He was committed to the  
6 well-being of members of his community.

7 We have two witnesses who in their statements have talked about his setting up of some  
8 NGOs. Maître Aouini has also said that he created two NGOs and that he shared  
9 whatever came through those NGOs within the community. So this man did not seek  
10 personal wealth nor any personal benefits, be they financial or otherwise.

11 He is a man who took care of the youth. He is a man who took care of his family. He  
12 was committed to his community. And we know that he had a very positive influence in  
13 the relations between white and black Tuaregs. When there is nothing to share, there is  
14 misunderstanding.

15 But he was a man, and again we're not talking about paradise here, he was a generous  
16 man, a man who had concern for others. How then, how then must we ask did such a  
17 man come to where he found himself?

18 There are factors relating to the time when he joined the Ansar Dine that there might also  
19 have been some thinking that went through his mind that might amount to mitigation;  
20 namely, that he is a man who was mistaken. He was a man who was not trained in what  
21 he accepted to join. And I'm referring here to the jurisprudence of the ICTY and the  
22 jurisprudence of the Special Tribunal for Sierra Leone.

23 So there was an absence of preparation, an absence of training, an absence of  
24 preparedness for the functions for which he was hoisted. This young man thought rather  
25 naively that he was being a consultant. He was told that the Sharia law was going to be

1 implemented for the purpose of setting up Islamic institutions. But we have a problem  
2 because in war times we cannot do this clearly. And so that is the very crux of the matter  
3 in this case.

4 What does Mr Al Mahdi do? He effectively goes ahead to provide counsel, and people  
5 are satisfied with his counsel and then offer that he should be the judge of the Islamic  
6 tribunal. And he said no, he couldn't take up that position. It is then that he was told:  
7 Given that you have laid out a good programme for the creation of Hisbah, we would  
8 want you to be the head of the Hisbah.

9 So what is it that would have pushed this young man to become a policeman? Well,  
10 Mr President, your Honours, it is as if I was being asked to become an astronaut. And  
11 this is exactly what happened. A brilliant young man finally ends up becoming a  
12 policeman to do the job in his community. That is the fate of a policeman. But he in his  
13 case was not prepared for this, he had no mastery of this job and, again, we find in the  
14 case file decisions that he did not make himself.

15 So in a nutshell, this is a man who was lost. This is a man who under very exceptional  
16 circumstances in their historic context was swept off his feet by a history that wrote itself.  
17 But that is not his own writing. He is a committed spectator, so to speak, in a history or  
18 story that is independent of his will.

19 I believe, therefore, that as a Bench you will be considering the situation of these types of  
20 honest people who suddenly become criminals, criminals involved in international crimes  
21 which arise under exceptional and collective circumstances in extraordinary times.

22 I believe, therefore, that you as a Bench will consider all these elements as the explanation  
23 for the motivation behind Mr Al Mahdi's conduct. Mr Al Mahdi is not a gangster. He  
24 was not a man seeking personal fortune. He did not even have a salary as the case file  
25 points out. You are not dealing with a man looking for an undeserved and unhealthy

1 gain. And I believe that the law must seek to understand the motivation. I'm not  
2 talking about intent or mens rea in terms of the crime, but I'm talking about the  
3 motivation, the driving force behind a man. And these are difficult things.  
4 You see, Mr President, this is a man who has said that he made a mistake, that he wanted  
5 to build, he wanted to build something better, and who believed in it. He believed that  
6 he would improve things. But he now stands charged for destruction. Life is cruel.  
7 Life is tragic. History will forever hold it that this was a man who destroyed, particularly  
8 from a legal point of view. He was not politically committed.

9 THE INTERPRETER: [13:31:38] Overlapping speakers.

10 PRESIDING JUDGE PANGALANGAN: [13:31:39] Counsel, I'm really sorry to  
11 interrupt, but it is 1.30. Would you need considerable more time to conclude? We can  
12 resume at 3 o'clock if that is necessary. I really hate to have broken the momentum of  
13 your talk, but we have a schedule. Would you like to break now or do you think you can  
14 conclude soon?

15 MR GILISSEN: [13:32:15] (Interpretation) Mr President, my only fear is that I might  
16 tire the Court. But I think if I had a little more time I would defend this man. And I  
17 really thank you for that. And for that reason we can break now and resume this  
18 afternoon. Thank you.

19 PRESIDING JUDGE PANGALANGAN: [13:32:35] Thank you as well, Counsel.  
20 We will resume the hearing at 3 o'clock.

21 THE COURT USHER: [13:32:42] All rise.

22 (Recess taken at 1.32 p.m.)

23 (Upon resuming in open session at 3.01 p.m.)

24 THE COURT USHER: [15:01:44] All rise.

25 Please be seated.

1 PRESIDING JUDGE PANGALANGAN: [15:02:12] Welcome back. Welcome back,  
2 everyone, to the courtroom.

3 We will now proceed with the submissions by the Defence.

4 MR GILISSEN: [15:02:31] (Interpretation) Thank you very much, your Honour.  
5 Mr President, your Honours, learned friends, Mr Prosecutor, indeed the entire  
6 Prosecution team, I thank you for being so patient and I thank you for listening so  
7 attentively. My colleague and I have tried to do everything to cover all the bases, so to  
8 speak, we do not wish to have anything troubling our consciences and I really should  
9 have made that point, but I didn't.

10 Your Honours, I was endeavouring to flesh out one particular idea earlier today, the  
11 specific nature of the crime committed by Mr Al Mahdi. Let us be clear. The men and  
12 women who now suffer in Timbuktu, well, I heard mention made of shame, the shame  
13 that they feel regarding the damage done to their ancestral graves. That was never the  
14 intention. But we know that between the intentions of one and the impact upon another  
15 there can be quite a gap.

16 I have tried to bring together a number of elements in my notes and I have tried to speak  
17 to the mitigating circumstances before the events, during the events, when Mr Al Mahdi  
18 joined Ansar Dine, and I would now like to turn to another matter; namely, possible  
19 mitigating circumstances that you might consider at the time of the crime.

20 We must look at all the events taken together, the entire chain of events that ultimately led  
21 to the guilt of Mr Al Mahdi.

22 When he was asked to go to the locations and to provide an accounting -- or, rather, an  
23 explanation of why, what was done, he did and he did indeed explain what the expert  
24 witnesses of the Prosecution said themselves. Yes, the monuments were protected  
25 buildings and yes, those who went to pray legitimately at those shrines offering praise to

1 the saints would usually go with a certain amount of earth and ultimately the stability of  
2 the buildings was affected. And yes, yes the safety and preservation of the buildings was  
3 a very important issue and that point was brought out in a report.  
4 And then there was the legal consultation that I spoke of earlier. There's no reason to  
5 revisit that. If ever you wish to put a question on that issue that is just fine. We have  
6 come to an agreement. And there was the consultation with the emirs.  
7 Then there was the attitude of Mr Al Mahdi who advised against the destruction of the  
8 buildings and yet he ultimately did take part in the destruction of these buildings directly,  
9 with great energy.  
10 There is somewhat of a contradiction here, but I think it can be explained and I think the  
11 explanation is in actual fact a mitigating circumstance. You see, Mr Al Mahdi had joined  
12 an hierarchical organisation. I'm not defending what was done, but there was a  
13 hierarchy. And there is no case here for making an argument, a defence argument on the  
14 basis of hierarchy. What I am saying here is that Mr Al Mahdi had ultimately joined an  
15 armed group and this armed group, of course, had a hierarchy. There was authority and  
16 if an order was issued it was to be obeyed. A violator would be punished, if someone  
17 refused to carry out an order he would be punished. And if there was a deserter that  
18 person would be punished. That is part of the reality that you will have to assess.  
19 The question that we must look at, and my colleague and I did look at this issue, given  
20 this context, an armed group in circumstances that were -- well, our client would not  
21 have -- did not join this group to become the head of the Hisbah or anything like that, so  
22 what was the extent of free will, free volition here? I'm not saying that there was no  
23 longer any free will, what I am saying is that when you are part of an institution and you  
24 find yourself very much embedded within the organisation, what could be -- what is the  
25 impact upon one's free will, one's volition? One ends up being drawn into the armed

1 group, drawn into the movement.

2 I asked my learned colleague whether there was some kind of mitigating circumstance  
3 that should be considered. We also have to consider the intelligence, the culture and the  
4 education of the accused.

5 You realise, I'm sure, your Honours, that both jurisprudence and doctrine mention the  
6 level of education, the level of intelligence of a person found guilty, and yet -- and yet in  
7 this particular case if we look more closely at these considerations, I was saying that it was  
8 because of his intellectual background that our client looked further abroad and found  
9 himself in an increasingly dangerous situation. But do you think that someone with a  
10 limited education, with a coarse or rough character would have done something this?  
11 This is an intelligent man, a cultivated man, sensitive and thus, indeed, he was able to call  
12 his own actions into consideration and he did realise the strong ties between the people of  
13 Timbuktu and the buildings. That was seen in the report. But you see he  
14 underestimated the strength of these ties and he said he regretted what he had done. He  
15 said that he should not have done what he did. He said that it was more than a mistake.  
16 He said it was -- we should not have done what we did. We committed an evil act by  
17 doing what we did.

18 So what is the fate of the soul? This is cause for reflection. We find ourselves caught  
19 between virtue and vice, between good and evil. And you can imagine the situation or  
20 the state that my client found himself in.

21 There are five things that a sentence must do: First of all, there is retribution,  
22 punishment, society's fair and fitting response to the crime because of the harm done.  
23 Then you have deterrence, and this is the preventive or the aspect of the sentence. A  
24 sentence is supposed to deter others who might be tempted to do something similar.  
25 Then you have reparations. The amending. And then finally rehabilitation.

1 Sentencing is something that really leads us to reflect. And we must be humble when we  
2 do this. When a sentence is handed down, and I'm saying this in a very respectful way  
3 from this side of the Bar, this is an exercise that makes a person humble because  
4 ultimately what is the reason for handing down a sentence? What is the goal, the  
5 objective? And, above all, and above all perhaps, what are the effects of a sentence?  
6 What is the effective outcome of the sentence?

7 We must ask this question because I -- I tell you very openly that I have spent 33 years as a  
8 Defence attorney, before that I spent some time in Prosecution, not a particularly long  
9 period of time, but I have defended the accused people for many years, sometimes  
10 innocent, sometimes guilty, and we must ask ourselves what is the outcome going to be?  
11 All too often we see that the objectives of the sentence are not attained.

12 So this is an exercise of humility. Punishing a man is one thing. You have a wife, you  
13 have eight children and I do not want to take his children as hostages, so to speak, and  
14 have you shed tears, but I remind you of this reality, the family situation of the accused.  
15 One's family situation can be a mitigating circumstance and is to be taken into account  
16 according to jurisprudence and is a part of the case record.

17 We must consider his statements. And we have seen in the press articles from Mali that,  
18 yes, our client can do good, can assist with reconciliation. He has worked to put the  
19 country back on the road of reconciliation. And he, himself, has told us so. He said that  
20 he wanted to make a contribution to the rebuilding of -- to undo the wrong, the harm that  
21 he did.

22 He did not derive any personal gain from what he did. He immediately faced the cruel  
23 reality of his own guilt. And I think that you heard that, himself and from others, and  
24 from himself in his own appeal, which I believe was a sincere one. He called upon all  
25 Muslims to consider what he had done and not to follow his example.

1 We know that he betrayed. And there is a video on the Internet. We have seen that.  
2 And we have read the subtitle, "A Muslim does not betray his brother."  
3 So his remorse is sincere. We were not asked to negotiate as if we were haggling over a  
4 carpet in the market place. We were not asked to engage in horse trading. No. Plea  
5 bargaining is not part of our way of doing things. We attempted to negotiate an  
6 agreement that was fitting, that was suitable considering our client's position. There is  
7 nothing. We cannot say that his admissions were insincere or -- this man knows he has  
8 done wrong, he was not up to his task, he was not able to do what he had been brought to  
9 this earth to do.

10 So as for the sentencing it is a very difficult task. Retribution is necessary. All  
11 international justice courts acknowledge this, but we must think carefully about  
12 retribution. There is the dark side of retribution of course. And by adding to the evil  
13 already done, when one does harm to the accused, is this going to lead to a better  
14 outcome? Yes, this is a symbolic debate.

15 We also must consider the message to be sent, setting an example, for example. But,  
16 your Honours, doing justice to set an example, so to speak, is never justice, never, because  
17 you are not judging others, you are judging one man. And I think that the message here  
18 is rather here you have it, here we are before the International Criminal Court, what are  
19 we to make of this? Yes, yes, the worst criminals are still out there and we must allow for  
20 some ray of hope. If there is no hope there is only despair. We must help discover the  
21 truth. Yes, there is space or a forum for remorse, for -- and I believe this is a case in  
22 which we need a very reasonable sentence.

23 Furthermore, I believe that retribution must be quite measured because by its very nature  
24 it will undermine the possibility of rehabilitation. No matter what the gravity of the  
25 crime, we must remember that we are dealing with a man who has a true opportunity for

1 rehabilitation. He took a particular course of action and he ultimately became a pariah in  
2 the eyes of his former colleagues.

3 Under these conditions I think that re-socialisation is possible. Your sentence will  
4 perhaps allow us to manage the future, not only in Mali but also individually and this in a  
5 positive manner.

6 I am amongst those, some say I am a great romantic, but I am one of those people who  
7 believes that the best sentence is one that is accepted ultimately for what it is, a  
8 comprehensive sentence. That is why grounds are provided. A sentence that one can  
9 accept and one can say, yes, I deserve that, and a sentence that takes into account the  
10 circumstances, a sentence that is not exaggerated.

11 Just in a nutshell I would say this: This is a man who has said "Don't do what I did." I  
12 think by saying that he's really said everything. I do not think that we should consider  
13 the possibility of re-offending either. I do not think that would happen.

14 So there you have it, your Honours. The issue of the sincerity of my client and -- and I  
15 thank my learned friends, it was Judge Mindua raised the issue on the very first day, and,  
16 yes, this is a fundamental issue because yes, Mr Kassongo, my learned friend put the  
17 question again, he questioned my client's sincerity. Was the admission sincere, was the  
18 remorse sincere? And I think my learned friend expressed himself well.

19 I have tried to do the same as best I could, but I would like to add one further argument,  
20 and I would only want one thing: The benefit of the implementation of the law.

21 We must consider circumstances and probability.

22 Probability. Unlike the aggravating circumstances. And the most probable thing when  
23 one looks at all the information that we have is that, yes, it is probable, it is quite probable,  
24 quite likely that his admissions, which took the form of active and useful cooperation with  
25 the Prosecution -- just a week ago new information was provided, even in a climate of

1 danger. And I'm very sorry to have to put it this way: I think he is entitled to benefit  
2 from a presumption of sincerity when we look at the Rules that apply.  
3 There you have it, your Honours. This is what we wished to say. I took quite a bit of  
4 time and I apologise for that. The question is this, it can be put in just a few words:  
5 What is more serious, what should we consider the more serious thing? What criteria of  
6 seriousness will you favour? What is more serious, to pull down walls or to destroy  
7 lives? Blow up buildings or shoot down people? We trust the Bench and we deliver up  
8 to you the man we have provided support to for several months and we do so knowing  
9 that we are entrusting our client to you and he will be in good hands.

10 I thank you.

11 PRESIDING JUDGE PANGALANGAN: [15:26:19] Thank you. Thank you so much,  
12 Mr Gilissen.

13 I take it, Mr Aouini, that that closes the submissions by the Defence?

14 MR AOUINI: [15:26:34] (Interpretation) Yes, Mr President.

15 And I would like to thank you, your Honours, for your patience, for your indulgence for  
16 giving us the time to make our lengthy submission.

17 PRESIDING JUDGE PANGALANGAN: [15:26:51] Thank you as well, Mr Aouini.

18 Well, ladies and gentlemen, this now brings us to the end of these hearings.

19 The Chamber will now retire and prepare its judgment.

20 As the Chamber has previously indicated, the judgment and sentence will be pronounced  
21 simultaneously in the event of conviction.

22 After consulting with my colleagues, it is also for me to announce that the Chamber's  
23 decision will be delivered on 27 September 2016, a Tuesday, a time to be provided in due  
24 course.

25 On behalf of the Chamber, I thank the participants, the legal teams for their diligence and

1 attention during the trial, and I send these thanks to the counsel for the Prosecution, for  
2 the Defence, for the Legal Representative of Victims and for the OPCV.

3 I also thank on behalf of the Chamber, I thank the Registry for their tireless efforts for  
4 making these hearings possible. I also wish to express the Chamber's thanks to the  
5 interpreters for their patience for the marathon schedule that the Chamber has chosen.

6 On that point we close these hearings. Thank you.

7 THE COURT USHER: [15:28:23] All rise.

8 (The hearing ends in open session at 3.28 p.m.)