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PRE-TRIAL CHAMBER I

Before: Judge Joyce Aluoch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács

**SITUATION IN THE REPUBLIC OF MALI
IN THE CASE OF
*THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI***

Public redacted

Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi

To be notified, in accordance with regulation 31 of the Regulations of the Court, to:

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Legal Representatives of the Victims

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**Unrepresented Applicants for
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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) hereby issues this decision pursuant to article 61(7) of the Rome Statute (the “Statute”) on the confirmation of the charges of a war crime against Ahmad Al Faqi Al Mahdi, also known as Abou Tourab, born in Agoune, Republic of Mali (“Mali”), and aged between thirty and forty years old, Tuareg of the Ansar tribe ([ICC-01/12-01/15-T-1-ENG](#)), currently detained at the seat of the Court.

1. The full text of the charge on which the Prosecutor seeks that Ahmad Al Faqi Al Mahdi be committed for trial is available in the “Charge brought by the Prosecution against Ahmad Al Faqi Al Mahdi”, filed by the Prosecutor on 17 December 2015 ([ICC-01/12-01/15-62](#); [ICC-01/12-01/15-63](#) and [-AnxA](#) (Arabic translation); [ICC-01/12-01/15-70](#) and [-AnxA-Corr](#) (English translation)).

2. In accordance with article 19 of the Statute, the Court shall satisfy itself that it has jurisdiction in any case brought before it. In this respect, the Chamber, having considered the allegations by the Prosecutor, observes that the crime with which Ahmad Al Faqi Al Mahdi is charged by the Prosecutor falls within the jurisdiction of the Court, as the Prosecutor alleges the commission of a war crime under article 8 of the Statute (jurisdiction *ratione materiae*) on the territory of Mali (jurisdiction *ratione loci*) between around 30 June 2012 and around 11 July 2012 (jurisdiction *ratione temporis*), and as the alleged crime falls within the parameters of the situation referred by Mali ([ICC-01/12-1-Anx](#)).

I. PROCEDURAL HISTORY

3. On 13 July 2012, Mali referred the situation which was on its territory since January 2012 (“*les crimes les plus graves commis depuis le mois de Janvier 2012 sur son territoire*”) to the Court.

4. On 18 September 2015, the Chamber, upon request by the Prosecutor, issued a warrant for the arrest of Ahmad Al Faqi Al Mahdi ([ICC-01/12-01/15-1-Red](#)).

5. Ahmad Al Faqi Al Mahdi was surrendered to the Court by the authorities of the Republic of Niger on 26 September 2015 and made his initial appearance before the Single Judge on 30 September 2015 ([ICC-01/12-01/15-T-1-ENG](#)).

6. In the subsequent period, the Prosecutor proceeded with disclosing evidence to the Defence. The Chamber also established procedural regimes for proceedings in the case at this and any subsequent stages, in particular as concerns: (i) exceptions to disclosure from the Prosecutor in the form of redaction of evidence ([ICC-01/12-01/15-9](#), 30 September 2015); and (ii) handling of confidential information during investigations and contact between party or participant and witnesses of the opposing party or of a participant ([ICC-01/12-01/15-40](#) and [-AnxA](#), 6 November 2015).

7. [REDACTED]

8. In advance of the confirmation of charges hearing, the Prosecutor, on 17 December 2015, filed the document containing the charge ([ICC-01/12-01/15-62](#), [ICC-01/12-01/15-63](#) and [-AnxA](#) (Arabic translation), [ICC-01/12-01/15-70](#) and [-AnxA-Corr](#) (English translation)). On 18 December 2015, the Prosecutor filed written submissions concerning the charge pursuant to rule 121(9) of the Rules of Procedure and Evidence (the "Rules") ([ICC-01/12-01/15-66-Conf](#) and,

in redacted form, [ICC-01/12-01/15-66-Red](#) with annexes) and a list of evidence ([ICC-01/12-01/15-67](#) and -Conf-AnxA).

9. The Defence did not disclose any evidence or file a list of evidence.

10. On 29 January 2016, the Prosecutor filed an “*Addendum au « Dépôt de l’inventaire des preuves que l’Accusation entend produire à l’audience de confirmation des charges », 18 décembre 2015 (ICC-01/12-01/15-67)*” (ICC-01/12-01/15-74-Conf and -Conf-AnxA).

11. [REDACTED]

12. The confirmation of charges hearing was held on 1 March 2016 (ICC-01/12-01/15-T-2-CONF-ENG and, in its redacted form, [T-2-Red-ENG](#)).

13. [REDACTED]

II. PRELIMINARY AND PROCEDURAL MATTERS

A. Nature and purpose of the present decision

14. In the present decision, the Chamber renders its determination under article 61(7) of the Statute as to whether there is sufficient evidence to establish substantial grounds to believe that Ahmad Al Faqi Al Mahdi committed the crime with which he is charged.

15. The purpose of the pre-trial proceedings, and specifically of the confirmation hearing, is to determine whether the case as presented by the

Prosecutor is sufficiently established to warrant a full trial. The Statute mandates that this is decided by answering the question whether there are substantial grounds to believe that the person committed the crimes charged. Therefore, it has been stated, the procedure of confirmation of charges protects the suspect from wrongful and unfounded accusations,¹ by ensuring that “only those persons against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought” are committed for trial.²

16. Other important procedural objectives of the procedure of confirmation of charges are settling the parameters of the case for trial in making sure that the charges are clear and not deficient in form, and resolving possible procedural issues and preventing that they taint the trial proceedings (cf. rule 122(3)-(6) of the Rules).³ In this regard, the Chamber observes that the Defence of Ahmad Al Faqi Al Mahdi, prior to the opening of the confirmation hearing

¹ Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the confirmation of charges”, 29 January 2007, [ICC-01/04-01/06-803-tEN](#) (“Lubanga Confirmation Decision”), para. 37; Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the confirmation of charges”, 30 September 2008, [ICC-01/04-01/07-717](#) (“Katanga and Ngudjolo Confirmation Decision”), para. 63; Pre-Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, 15 June 2009, [ICC-01/05-01/08-424](#) (“Bemba Confirmation Decision”), para. 28; Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda*, “Decision on the Confirmation of Charges”, 8 February 2010, [ICC-02/05-02/09-243-Red](#) (“Abu Garda Confirmation Decision”), para. 39; Pre-Trial Chamber I, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, “Corrigendum of the ‘Decision on the Confirmation of Charges’”, 7 March 2011, [ICC-02/05-03/09-121-Corr-Red](#) (“Banda and Jerbo Confirmation Decision”), para. 31; Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, “Decision on the confirmation of charges”, 16 December 2011, [ICC-01/04-01/10-465-Red](#) (“Mbarushimana Confirmation Decision”), para. 41; Pre-Trial Chamber II, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, [ICC-01/09-02/11-382-Red](#) (“Muthaura *et al.* Confirmation Decision”), para. 52.

² [Lubanga Confirmation Decision](#), para. 37; [Abu Garda Confirmation Decision](#), para. 39; [Banda and Jerbo Confirmation Decision](#), para. 31; [Mbarushimana Confirmation Decision](#), para. 41.

³ See also Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, “Decision on the date of the confirmation of charges hearing and proceedings leading thereto”, 14 December 2012, [ICC-02/11-01/11-325](#), para. 27.

on the merits, did not raise any issue regarding the form, completeness and clarity of the charge, while being informed that at no subsequent point, including at trial, it may raise any such issue (Transcript [T-2](#), p. 11).

17. In sum, the purpose of the pre-trial proceedings is to make sure that only charges which are sufficiently supported by the available evidence and which are clear and properly formulated, in their factual and legal aspects, be submitted to a Trial Chamber for its determination.

18. The evidentiary standard applicable at this stage of proceedings is lower than the one required at trial, and is met as soon as the Prosecutor offers “concrete and tangible proof demonstrating a clear line of reasoning underpinning [her] specific allegations”.⁴ The Appeals Chamber held that:

In determining whether to confirm charges under article 61 of the Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses. Any other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.⁵

⁴ [Lubanga Confirmation Decision](#), para. 39; [Katanga and Ngudjolo Confirmation Decision](#), para. 65; [Bemba Confirmation Decision](#), para. 29; [Abu Garda Confirmation Decision](#), para. 37; [Mbarushimana Confirmation Decision](#), para. 40; [Muthaura et al. Confirmation Decision](#), para. 52; Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, 9 June 2014, [ICC-01/04-02/06-309](#) (“Ntaganda Confirmation Decision”), para. 9; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, “Decision on the confirmation of charges against Laurent Gbagbo”, 12 June 2014, [ICC-02/11-01/11-656-Red](#) (“Gbagbo Confirmation Decision”), para. 19; Pre-Trial Chamber II, *The Prosecutor v. Jean Pierre-Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala and Narcisse Arido*, “Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 11 November 2014, [ICC-01/05-01/13-749](#) (“Bemba et al. Confirmation Decision”), para. 25; Pre-Trial Chamber I, *The Prosecutor v. Charles Blé Goudé*, “Decision on the confirmation of charges against Charles Blé Goudé”, 11 December 2014, [ICC-02/11-02/11-186](#) (“Blé Goudé Confirmation Decision”), para. 12; Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, “Decision on the confirmation of charges against Dominic Ongwen”, 23 March 2016, [ICC-02/04-01/15-422-Red](#) (“Ongwen Confirmation Decision”), para. 17.

⁵ Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision

19. At the same time, the Pre-Trial Chamber, by the very design of the pre-trial proceedings, is not in a position to conclusively determine issues of probative value of evidence, including with respect to credibility of witnesses, whose declarations are as a rule brought before it only in written form. Indeed, as indicated by the Appeals Chamber, “the Pre-Trial Chamber’s determinations will necessarily be presumptive”, and the Pre-Trial Chamber “should take great care in finding that a witness is or is not credible”.⁶ The Chamber considers that the credibility of witnesses can only be properly addressed at trial, where the witnesses will be called to testify and their evidence properly tested.⁷ Without the full airing of the evidence, the Chamber should refrain from seeking to resolve any apparent contradictions in the evidence. Accordingly, the Chamber does not address in this decision all issues with respect to credibility of witnesses or probative value of evidence, except where the answer is manifest.

20. Likewise, and also to avoid pre-determination of issues or pre-adjudication of probative value of evidence, the Chamber’s discussion in this decision is limited to what it considers necessary and sufficient for its determination on the charge⁸ – namely whether there is sufficient evidence to establish substantial grounds to believe that Ahmad Al Faqi Al Mahdi committed the crime charged and therefore the case as a whole brought by the Prosecutor warrants a trial.

on the confirmation of charges”, 30 May 2012, [ICC-01/04-01/10-514](#) (“Mbarushimana OA 4”), para. 46.

⁶ [Mbarushimana OA 4](#), para. 48.

⁷ See also [Gbagbo Confirmation Decision](#), para. 21; [Blé Goudé Confirmation Decision](#), para. 14; [Ongwen Confirmation Decision](#), para. 18.

⁸ See [Lubanga Confirmation Decision](#), para. 39; [Katanga and Ngudjolo Confirmation Decision](#), para. 69; [Abu Garda Confirmation Decision](#), para. 45; [Banda and Jerbo Confirmation Decision](#), para. 39; [Mbarushimana Confirmation Decision](#), para. 48; [Muthaura et al. Confirmation Decision](#), para. 60; [Gbagbo Confirmation Decision](#), para. 22; [Blé Goudé Confirmation Decision](#), paras 15-16; [Ongwen Confirmation Decision](#), para. 19.

B. Remarks on modes of liability

21. The charge brought against Ahmad Al Faqi Al Mahdi contains several alternative modes of liability. The Prosecutor requests the Chamber to confirm the charge as presented, thereby maintaining the proposed alternative modes of criminal responsibility, and ultimately permitting these alternatives to be presented to the Trial Chamber for its final determination.

22. The Chamber, consistently with the recent practice of Pre-Trial Chambers,⁹ is of the view that when the evidence is sufficient to sustain each of the alternative forms of responsibility for the same conduct presented by the Prosecutor, it is appropriate that the charges be confirmed with the various available alternatives, in order for the Trial Chamber to determine which, if any, is established to the applicable standard of proof at trial. Confirming the different applicable alternative legal characterisations on the basis of the same facts may also reduce future delays at trial and provides early notice to the defence of the different legal characterisations that may be considered by the trial judges.¹⁰

23. The alternative modes of liability with which the Prosecutor charges Ahmad Al Faqi Al Mahdi are article 25(3)(a) (co-perpetration), (b) (soliciting, inducing), (c) (aiding, abetting or otherwise assisting), and (d) (contributing in any other way) of the Statute. For a number of sites, the Prosecutor also charges Ahmad Al Faqi Al Mahdi under article 25(3)(a) (perpetration) of the Statute.

24. In general, co-perpetration (*i.e.* commission of a crime “jointly with another”) within the meaning of article 25(3)(a) of the Statute describes the

⁹ [Ntaganda Confirmation Decision](#), para. 100; [Gbagbo Confirmation Decision](#), para. 227; [Bemba *et al.* Confirmation Decision](#); [Blé Goudé Confirmation Decision](#), para. 133; Ongwen Confirmation Decision, para. 35.

¹⁰ See [Gbagbo Confirmation Decision](#), para. 228; Ongwen Confirmation Decision, para. 35.

situation in which two or more persons work together in the commission of the crime so that the sum of their co-ordinated individual contributions results in the realisation of the objective elements of a crime. As held by the Appeals Chamber, this requires an agreement, which led to the commission of one or more crimes, between the co-perpetrators (whether express or implied, previously arranged or materialising extemporaneously) which ties them together and justifies the reciprocal imputation of their respective acts.¹¹ In circumstances where a plurality of persons was involved in the commission of a crime within the jurisdiction of the Court, the most appropriate criterion to determine whether a person “committed” the crime jointly with others (rather than contributing to a crime committed by someone else) is “control over the crime”.¹² This requires an evaluation of whether the person had control over the crime by virtue of his or her essential contribution within the framework of the agreement with the co-perpetrators and the resulting power to frustrate their commission.¹³ If the answer is in the affirmative, then it can be concluded that the person committed his or her crime, and did not merely contribute to the crime of another.

25. The mode of liability under article 25(3)(b) of the Statute is designed essentially to capture the conduct of prompting another person to commit a crime within the jurisdiction of the Court.¹⁴

¹¹ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction”, 1 December 2014, [ICC-01/04-01/06-3121-Red](#) (“Lubanga Appeal Judgment”), para. 445.

¹² [Lubanga Appeal Judgment](#), para. 473; [Blé Goudé Confirmation Decision](#), para. 141; Ongwen Confirmation Decision, para. 38.

¹³ [Lubanga Appeal Judgment](#), para. 473; [Blé Goudé Confirmation Decision](#), para. 141; Ongwen Confirmation Decision, para. 38.

¹⁴ See [Ntaganda Confirmation Decision](#), para. 153; [Gbagbo Confirmation Decision](#), para. 243; [Bemba et al. Confirmation Decision](#), para. 34; [Blé Goudé Confirmation Decision](#), para. 159; Ongwen Confirmation Decision, para. 42.

26. Article 25(3)(c) of the Statute provides for individual criminal responsibility if a person, for the purpose of facilitating the commission of a crime within the jurisdiction of the Court, “aids, abets or otherwise assists in its commission or attempted commission, including providing the means for its commission”. As held by Pre-Trial Chamber I in a different case, “[i]n essence, what is required for this form of responsibility is that the person provides assistance to the commission of a crime and that, in engaging in this conduct, he or she intends to facilitate the commission of the crime”.¹⁵ It is not required that the assistance be “substantial” or anyhow qualified other than by the required specific intent to facilitate the commission of the crime (as opposed to a requirement of sharing the intent of the perpetrators).

27. Finally, article 25(3)(d) of the Statute criminalises contributing “in any other way” to the commission of a crime by a group of persons acting with a common purpose. It is therefore required that: (i) the crime is committed (*i.e.* realised in its objective elements) by a group of persons acting with a common purpose; and (ii) the person charged provides a contribution to the commission of such a crime. The Statute does not require that the contribution under article 25(3)(d) be “significant” or reach a certain minimum degree.¹⁶ With respect to the relevant mental element, this form of responsibility requires that the person meant to contribute to the commission of the crimes. In addition, it is required that the contribution be carried out either: (i) with the aim of furthering the purpose or the activity of the group in the case of a criminal common purpose or activity involving the commission of crimes

¹⁵ [Blé Goudé Confirmation Decision](#), para. 167. See also [Bemba *et al.* Confirmation Decision](#), para. 35; Ongwen Confirmation Decision, para. 43.

¹⁶ See Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, [ICC-01/09-01/11-373](#), paras 353-354. See also [Ntaganda Confirmation Decision](#), para. 158; [Blé Goudé Confirmation Decision](#), para. 172; Ongwen Confirmation Decision, para. 44.

within the jurisdiction of the Court; or (ii) in the knowledge of the intention of the group to commit the crimes.

III. FINDINGS

28. The Chamber considers it important to emphasise that the evidence submitted by the Prosecutor includes [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]; and that the Defence did not object to the charge, nor challenge the Prosecutor's evidence or present any evidence, while reserving its submissions as to the merits to a later stage in the proceedings.

29. Further, the evidence submitted by the Prosecutor supports the factual allegations made by the Prosecutor in the charge. At this stage, it is appropriate for the Chamber to succinctly refer to the nature and content of the evidence submitted, with a view to demonstrating how this evidence supports the allegations contained in the charge. The spelling of names corresponds to the spelling in the English translation of the charge, as clarified by the parties on 17 March 2016 in filing ICC-01/12-01/15-81.

A. Armed conflict in Mali and occupation of Timbuktu

30. The facts alleged in the charge took place in the town of Timbuktu between about 30 June 2012 and about 11 July 2012. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Evidence submitted by the Prosecutor, including documents issued by the Malian Ministry of Defence, as well as reports from the UN and media, also support the allegations that an armed conflict of a non-international

character broke out in Mali in January 2012 and that this armed conflict was still ongoing at the time of the facts referred to in the charge.

31. It is also [REDACTED] [REDACTED] apparent in light of other evidence including witness statements (P-65, P-66, P-111, P-114, P-125), documents issued by the Malian Ministry of Defence and video material, that between early April 2012 and January 2013 the town of Timbuktu was under the control of the armed groups Al-Qaeda in the Islamic Maghreb (“AQIM”) and Ansar Dine, a Tuareg movement associated with AQIM, and that these two groups jointly set up an administrative structure of the city. The administrative structure included, among others, the Islamic police, the Islamic tribunal, and the *Hisbah* or “*Brigade des mœurs*”, as well as a media commission.

32. This evidence [REDACTED] [REDACTED] leads the Chamber to be satisfied that an armed conflict not of an international character which broke out in Mali in January 2012 was still ongoing throughout the time relevant to the charge.

B. Destruction of and damage to buildings in Timbuktu

33. The most pertinent evidence submitted by the Prosecutor concerning the destruction of and damage to buildings (the “Buildings/Structures”) in Timbuktu between approximately 30 June 2012 and 11 July 2012 [REDACTED] [REDACTED] consists of: video footage during and after the destructions taking place; statements of witnesses with relevant knowledge concerning the events (P-65, P-66, P-114, P-125, P-151); images including satellite imagery of the Buildings/Structures before and after their (partial) destruction; documents originating from Malian authorities; expert analyses; media reports; and statements and reports emanating from international organisations including UNESCO.

34. The evidence shows that the targeted Buildings/Structures included:
- (i) the Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum;
 - (ii) the Sheikh Mohamed Mahmoud Al Arawani Mausoleum;
 - (iii) the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum;
 - (iv) the Alpha Moya Mausoleum;
 - (v) the Sheikh Mouhamad El Mikki Mausoleum;
 - (vi) the Sheikh Abdoul Kassim Attouaty Mausoleum;
 - (vii) the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum;
 - (viii) the door of the Sidi Yahia Mosque;
 - (ix) the Bahaber Babadié Mausoleum and
 - (x) the Ahmed Fulane Mausoleum, both adjoining the Djingareyber Mosque.

35. Seven of the mausoleums were situated in four sites, namely the Sidi Mahamoud, Sidi El Mokhtar, Alpha Moya, and *Trois Saints* cemeteries.

36. The Buildings/Structures were regarded and protected as a significant part of the cultural heritage of Timbuktu and of Mali. The community in Timbuktu was involved in their maintenance and used them for their religious practices. At the time of the destruction, all cemeteries in Timbuktu, including the Buildings/Structures within those cemeteries, were classified as world heritage and thus under the protection of UNESCO, and as many as 16 mausoleums situated in Timbuktu were also themselves protected sites pursuant to the 1972 Convention concerning the protection of the world cultural and natural heritage. Furthermore, as of 28 June 2012, the conflict in Mali as a whole and Timbuktu in particular led UNESCO, upon request of the Malian authorities, to include the city in its entirety on the list of world

heritage in danger. It is also apparent from the evidence that the Buildings/Structures did not constitute military objectives.

37. The material illustrates that the Buildings/Structures were destroyed by individuals, some armed with weapons, with a variety of tools, including pickaxes and iron bars.

38. As a consequence of these actions, all of the Buildings/Structures were either completely destroyed or severely damaged.

39. The unanimous outcry of the international community and individuals concerned substantiates the Prosecutor's allegation as to the seriousness of the acts. The evidence submitted by the Prosecutor confirms that the Buildings/Structures played an important role in the life of the inhabitants of Timbuktu and that their destruction was considered as a serious matter and regarded by the local population as an aggression towards their faith. Some of the Buildings/Structures have since been reconstructed, while in other instances something symbolic was built.

40. The crime proscribed by article 8(2)(e)(iv) of the Statute, as further elaborated in the Elements of Crimes, requires that the object of the attack be "one or more buildings dedicated to religion, [...] historic monuments, [...] which were not military objectives".

41. It is not in dispute that the Buildings/Structures were dedicated to religion and constituted historic monuments because of their origins and significance, and that none of them constituted a military objective.

42. Further, the evidence is univocal in showing that the Buildings/Structures were specifically identified, chosen and targeted by the perpetrators as objects of their attack, precisely in light and because of their religious and historical character.

43. The wording of the provision, which constitutes *lex specialis* to the war crime of intentionally attacking civilian objects, makes it clear that the prohibition attaches to the attack *per se*, irrespective of the fact that such attack may or may not result in the destruction, whether partial or total, of the targeted building. The Chamber is satisfied that acts of hostility such as those carried out against the Buildings/Structures, as described in the charge and supported by the evidence, were certainly adequate to result in destroying or at least severely damaging the targeted buildings. Accordingly, they constitute “attacks” within the meaning and for the purposes of article 8(2)(e)(iv) of the Statute also in respect of those acts which did not bring about the complete destruction of the targeted Building or Structure. There is also no need for the Chamber to further delve into the detail of the specific damage suffered by each one of the Buildings/Structures.

44. The Chamber is satisfied that the (partial or total) destruction of the Buildings/Structures as outlined above took place in the context of the non-international armed conflict, and, more specifically, in the context of, and in association with, the particular part of this conflict which constituted the occupation of the town of Timbuktu by AQIM and Ansar Dine, as described above. The Chamber is thus satisfied that the objective contextual and specific elements of the war crime of attacking protected objects under article 8(2)(e)(iv) of the Statute are met.

C. Ahmad Al Faqi Al Mahdi's role in the context of Timbuktu's occupation and the destruction of the Buildings/Structures

45. The role played by Ahmad Al Faqi Al Mahdi within the context of the administrative structures set up by the groups controlling Timbuktu during the occupation, as well as in the context of the (partial) destruction of the Buildings/Structures was described [REDACTED]

[REDACTED] In addition, from [REDACTED]

[REDACTED] witness statements (P-65, P-66, P-111, P-114, P-125) and other evidence including video footage, photographs, documents originating from the occupying groups, and media reports, it emerges that:

- (i) Ahmad Al Faqi Al Mahdi was an eminent scholar and expert of religious affairs; the most competent and prominent person in Timbuktu when it came to being knowledgeable in religious matters;
- (ii) Ahmad Al Faqi Al Mahdi acted in strict cooperation with the leadership of both occupying groups and played an active role within the context of the institutions established by them; [REDACTED]
[REDACTED]
[REDACTED]
- (iii) Ahmad Al Faqi Al Mahdi participated in meetings with the leadership of AQIM and Ansar Dine, and had direct relations with leaders of the armed groups including Abou Zeid, Yahia Abou Al Hammam, Abdallah Al Chinguetti, and Iyad Ag Ghaly; he appears to have belonged to the circle of individuals from the local population chosen by the leaders of the occupying groups to discuss pending matters;
- (iv) Ahmad Al Faqi Al Mahdi played a key role with regard to the *Hisbah*: he established the *Hisbah* himself at the beginning of April 2012, became its first head upon appointment by Abou Zeid, the governor of Timbuktu at the time of the occupation, and held this position until September 2012; he became a member of Ansar Dine at the moment he accepted to become head of the *Hisbah*;

(v) Ahmad Al Faqi Al Mahdi, because of his religious knowledge, was closely associated with the work of the Islamic tribunal, including by being consulted prior to its creation, by attending the court and participating in the enforcement of its decisions.

46. The mission of the *Hisbah* was to prevent apparent vice and to promote virtue as well as to carry out charitable tasks; it was an authority whose task made it “*parfois nécessaire que ceux qui sont chargés de surveiller les bonnes mœurs exercent une pression*” [REDACTED] to take decisions when it comes to minor incidents.

47. As such, it fell within the scope of the mission of the *Hisbah* to deliberate on the fate of the mausoleums which had been erected upon the tombs in Timbuktu, as well as the door at the Sidi Yahia Mosque: the prevention of anything that can be considered as worshipping the tombs, such as building the dome over the tomb fell within the scope of its competences. Ahmad Al Faqi Al Mahdi was the author of the sermon given on the Friday before the destruction of the Buildings/Structures started [REDACTED].

48. The evidence demonstrates that after initial attempts undertaken also by Ahmad Al Faqi Al Mahdi to discourage the population from following their established practices concerning the mausoleums, the decision to proceed with their destruction was taken by Iyad Ag Ghaly, in consultation with Abou Zeid, Abdallah Al Chinguetti and Yahia Abou Al Hammam.

49. The evidence also supports the allegation that Ahmad Al Faqi Al Mahdi, in his capacity as head of the *Hisbah*, played a crucial role in implementing the decision to destroy the Buildings/Structures. Ahmad Al Faqi Al Mahdi

publicly declared that the decision to destroy the Buildings/Structures was deliberately taken: “*nous agissons ainsi parce que nous voulons la démolition des dômes*”. He stated that the destruction of the domes had been ordered by “*le Messenger*” and not prohibited by the relevant texts consulted by him.

50. Once the occupying groups had determined that the destruction was necessary, it fell upon the *Hisbah* to decide the modalities in which the destruction of the Buildings/Structures would be carried out and to provide the financial and operational means which would be necessary to carry out this destruction. Ahmad Al Faqi Al Mahdi decided the order [REDACTED] [REDACTED] in which the Buildings/Structures were to be destroyed [REDACTED] [REDACTED].

51. In addition to the role played by Ahmad Al Faqi Al Mahdi in the administrative structures as detailed in paragraph 45 above, Ahmad Al Faqi Al Mahdi personally participated in or assisted to the material execution of the destruction of several of the Buildings/Structures. He participated in some instances using a pickaxe and was involved in the destructions at all four cemeteries concerned by supervising the work, giving advice, and “preparing drinks and supervising the work, as well as providing the tools [...] including the pickaxes”. He provided the means for the destruction of the door at the Sidi Yahia Mosque and contributed in pulling out the door, and finally approved of the destruction of the domes adjacent to the Djingareyber Mosque, in which he participated himself at the beginning using a pickaxe, and later approved the use of a bulldozer.

52. The evidence shows that Ahmad Al Faqi Al Mahdi was present at all relevant sites of destruction, namely the Sidi Mahamoud cemetery, the Sidi El Mokhtar cemetery, the Alpha Moya cemetery, the *Trois Saints* cemetery, the Sidi Yahia Mosque, and the Djingareyber Mosque.

53. Importantly, it also appears from the evidence that Ahmad Al Faqi Al Mahdi actively took part in the (partial) destruction of:

- (i) the Alpha Moya Mausoleum;
- (ii) the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum;
- (iii) the door of the Sidi Yahia Mosque;
- (iv) the Ahmed Fulane Mausoleum and
- (v) the Bahaber Babadié Mausoleum, both adjacent to the Djingareyber Mosque.

54. In addition, [REDACTED] Ahmad Al Faqi Al Mahdi talked to the media and illustrated the reasons for which the destruction of the Buildings/Structures was considered justified at a number of the site [REDACTED] [REDACTED]. The essence of the statements made by Ahmad Al Faqi Al Mahdi was also reflected in comments made by other members of the occupying groups.

55. In light of evidence outlined above, the Chamber is satisfied that Ahmad Al Faqi Al Mahdi is individually criminally responsible for the crime charged by the Prosecutor. Ahmad Al Faqi Al Mahdi was directly and personally involved in all stages of the (partial) destruction of the Buildings/Structures. He was part of the planning phase – as religious expert and prominent personality in the context of the occupation of Timbuktu – as well as of the preparatory and implementation phase – as head of the *Hisbah*.

56. Ahmad Al Faqi Al Mahdi's significant and manifold contribution to the destruction of the Buildings/Structures was supported by the requisite intent and knowledge. The evidence univocally shows his full awareness both of the factual circumstances establishing the existence of an armed conflict and of the relationship between this conflict and the destruction of the Buildings/

Structures. Further apparent from the evidence are Ahmad Al Faqi Al Mahdi's awareness of the historic and non-military nature of the Buildings/Structures, as well as of his prerogatives and powers as head of the *Hisbah* and of the role he played in this capacity in the context of the (partial) destruction. The deliberate nature of the actions undertaken by Ahmad Al Faqi Al Mahdi in the context of the (partial) destruction of the Buildings/Structures clearly emerges [REDACTED].

57. Ahmad Al Faqi Al Mahdi acted in full awareness of the protected status of the Buildings/Structures [REDACTED]

IV. CONCLUSION

58. In light of the above, the Chamber finds that there are substantial grounds to believe that Ahmad Al Faqi Al Mahdi committed the war crime of intentionally directing attacks against buildings dedicated to religion and historic monuments under article 8(2)(e)(iv) of the Statute, and therefore confirms the charge brought by the Prosecutor against Ahmad Al Faqi Al Mahdi as set out in the operative part of the present decision. The charge as confirmed is, in its entirety, as presented by the Prosecutor in the document containing the charge ([ICC-01/12-01/15-62](#), [ICC-01/12-01/15-63](#) and [-AnxA](#) (Arabic translation), [ICC-01/12-01/15-70](#) and [-AnxA-Corr](#) (English translation)).

FOR THESE REASONS, THE CHAMBER

CONFIRMS the charge against Ahmad Al Faqi Al Mahdi as follows:

1. Ahmad AL FAQI AL MAHDI ("AL MAHDI"), born in Agoune (Mali), and of between thirty and forty years old, is criminally responsible for having intentionally committed in Timbuktu between around 30 June 2012 and around 11 July 2012 the war crime of attacking buildings dedicated to religion and historic monuments, pursuant to, and prohibited by, article 8(2)(e)(iv) of the Rome Statute ("the Statute").

2. AL MAHDI is criminally responsible under the following modes of liability: as a direct co-perpetrator under article 25(3)(a) of the Statute; for soliciting and inducing the commission of such a crime under article 25(3)(b) of the Statute; for facilitating the commission of such a crime by aiding, abetting or otherwise assisting in its commission under article 25(3)(c) of the Statute; and for contributing in any other way to the commission of such a crime by a group of persons acting with a common purpose under article 25(3)(d) of the Statute.

3. AL MAHDI is also criminally responsible as a direct perpetrator under article 25(3)(a) of the Statute for physically taking part in the attack against at least half of the targeted buildings dedicated to religion and historic monuments.

A. Facts and circumstances of the case

4. From January 2012, a non-international armed conflict broke out in the territory of Mali, and led to different armed groups taking control of the north of the country. Thus, in early April 2012, the groups Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM) took control of Timbuktu. They occupied the city until mid-January 2013, when they fled in the face of the advance of the Malian Army supported by the French forces of Operation Serval.

5. During these approximately 10 months, the members of Ansar Dine and AQIM imposed their will in Timbuktu through a local government, which included an Islamic tribunal, a morality brigade (*Hisbah*), and an Islamic police force. These structures exercised control over the population and significantly restricted and violated the rights and freedoms of the people of Timbuktu.

6. AL MAHDI was one of the local members who joined in and supported the action of the armed groups in Timbuktu. He was

appointed to head the *Hisbah* in April 2012; he set up this structure and oversaw it until September 2012. The *Hisbah* was in charge of regulating the morality of the people of Timbuktu, and of suppressing and repressing anything perceived by the occupiers to constitute a visible vice.

7. In addition to his role as head of the *Hisbah*, AL MAHDI was very active in other structures set up by AQIM and Ansar Dine in Timbuktu, and in their operations. Indeed, he was viewed as an expert in matters of religion, and as such was involved in their activities, including within the Islamic tribunal.

8. AL MAHDI was also in direct contact with the leaders of Ansar Dine and AQIM (continuously or intermittently present in Timbuktu), such as Iyad AG GHALY (the leader of Ansar Dine), Abou ZEID (the "Governor" of Timbuktu under the armed groups), Yahia Abou AL HAMMAM (the future emir of AQIM for the Sahel), and Abdallah AL CHINGUETTI (a religious scholar within AQIM).

9. Prior to overseeing the attack in question against historic monuments and buildings dedicated to religion, AL MAHDI was consulted about their destruction. Subsequently, in about late June 2012, Iyad AG GHALY took the decision to destroy the mausoleums, in consultation with Abou ZEID, Yahia Abou AL HAMMAM, and Abdallah AL CHINGUETTI. Their common plan was to attack and destroy buildings dedicated to religion, which were also historic monuments.

10. AL MAHDI subscribed to this common plan, as did various other members of Ansar Dine and AQIM, and individuals associated with these groups, or acting under their control.

11. AL MAHDI and his co-perpetrators therefore directed their attack against nine mausoleums of Muslim saints and the door of a mosque. These buildings were cherished by the community, were used for religious practices, constituted an important part of the historical heritage of Timbuktu, and embodied the identity of the city, known as the "Pearl of the Desert" and the "City of 333 Saints".

12. The attackers, including in particular AL MAHDI, who oversaw their actions, carried out the attack between around 30 June 2012 and around 11 July 2012, going to the places they attacked with vehicles, weapons, and tools such as pickaxes and iron bars.

13. AL MAHDI and his co-perpetrators first attacked and destroyed:

- The Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum;
- The Sheikh Mohamed Mahmoud Al Arawani Mausoleum;
- The Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum;
- The Alpha Moya Mausoleum;
- The Sheikh Mouhamad El Micky Mausoleum;
- The Sheikh Abdoul Kassim Attouaty Mausoleum; and
- The Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum.

14. The implementation of the common plan then continued, in accordance with the original decision of late June 2012, to include the attack against:

- The door of the Sidi Yahia Mosque; and
- The two mausoleums adjoining the Djingareyber Mosque (the Ahamed Fulane Mausoleum and the Bahaber Babadié Mausoleum), which lasted until around 11 July 2012.

15. Within a period of about 10 days, 10 of the most important and well-known sites in Timbuktu, all located within the same perimeter, were attacked by the participants in the common plan, all of whom were driven by the same objective, acted with the same intention, and utilised the same pretexts and arguments.

16. These sites were buildings dedicated to religion and historic monuments, and did not constitute military objectives. Some had been designated as part of the national cultural heritage and, as such, were protected under Malian legislation. With the exception of the Sheikh Mohamed Mahmoud Al Arawani Mausoleum, these buildings were all protected World Heritage Sites.

17. The attack against these buildings/monuments took place within the geographic and temporal context of the non-international armed conflict in Mali. The attack was closely connected with the conflict.

18. AL MAHDI was involved in all phases of the common plan: the planning phase, the preparatory phase, and the execution phase. The

attackers considered the historic monuments and buildings dedicated to religion that were attacked to be a visible vice. Their destruction therefore fell under the competence of the *Hisbah*. AL MAHDI, who was the head of the *Hisbah*, freely oversaw the attack against the buildings dedicated to religion and historic monuments.

19. First, AL MAHDI personally participated in the campaign against the religious use of the mausoleums. He identified and monitored the cemeteries visited by residents. He met local religious leaders and others with the goal of dissuading the community from conducting religious practices on site at the mausoleums; he also used the radio for this purpose. Furthermore, he conducted research on their destruction. Then he himself wrote the sermon on the destruction of the mausoleums which was read at the Friday prayer, on the eve of the launch of the attack. He also personally determined the sequence in which the buildings/monuments were to be attacked.

20. AL MAHDI then acted together with other individuals, who adhered to the common plan, to which he contributed in the following ways:

- (i) He oversaw the attack;
- (ii) He used his men from the *Hisbah* and supervised the other attackers who came to participate in the operations; he occasionally requested reinforcements to carry out the attack;
- (iii) He managed the financial and material (e.g., tools) aspects in order to successfully carry out the attack and decided what means of destruction to employ based on the location;
- (iv) He was present at all of the sites that were attacked, providing moral support to the attackers, to whom he gave instructions;
- (v) He participated personally in the destruction of at least five sites: the Alpha Moya Mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, the door of the Sidi Yahia Mosque, and two mausoleums — the Ahamed Fulane Mausoleum and the Bahaber Babadié Mausoleum — adjoining the Djingareyber Mosque;
- (vi) He was responsible for providing a response to journalists which explained and justified the attack, thus encouraging the attackers and reassuring them with the idea that the attack was well-founded and justified.

21. AL MAHDI had the requisite intent. Indeed, he deliberately engaged in the conduct in question, namely the attack on buildings dedicated to religion and historic monuments in Timbuktu, together with the other participants in the common plan. His intention was to attack and destroy the targeted buildings dedicated to religion and historic monuments. He also intended to contribute to the commission of the crime by the co-perpetrators.

22. Furthermore, AL MAHDI acted with the requisite degree of knowledge. He knew that the buildings targeted were dedicated to religion and had a historic character and did not constitute military objectives. He was aware of the key characteristics of the co-perpetrators and entities that were involved in the attack, and of the circumstances that allowed him to exercise, together with other participants in the common plan, control over the attack in question. AL MAHDI also understood the factual circumstances that established the existence of an armed conflict, and knew that his criminal conduct took place within the context of an armed conflict, and was associated with it. AL MAHDI contributed to the commission of the attack in full knowledge of the intention of the other persons taking part in it. He also knew that his acts would bring about, or contribute to, the commission of the crime of which he is accused.

B. Charge

23. In view of the facts and circumstances set out *supra*, AL MAHDI is criminally responsible for the war crime of directing an attack, as set out in article 8(2)(e)(iv) of the Statute. In Timbuktu, between approximately 30 June 2012 and 11 July 2012, he intentionally directed an attack against buildings dedicated to religion and historic monuments which were not military objectives, as follows: the Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum, the Sheikh Mohamed Mahmoud Al Arawani Mausoleum, the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum, the Alpha Moya Mausoleum, the Sheikh Mouhamad El Micky Mausoleum, the Sheikh Abdoul Kassim Attouaty Mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, the Sidi Yahia Mosque (the door), and the Bahaber Babadié Mausoleum and the Ahamed Fulane Mausoleum, both adjoining the Djingareyber Mosque. He is criminally responsible under article 25(3)(a) (as a direct co-perpetrator), article 25(3)(b) (for soliciting and inducing the commission of the crime), article 25(3)(c) (for facilitating the commission of such a crime by aiding, abetting or otherwise assisting), and article 25(3)(d) (for contributing in any other

way to the commission of such a crime by a group of persons acting with a common purpose).

24. AL MAHDI is also criminally responsible under article 25(3)(a) as a direct perpetrator for his physical participation in the attack intentionally directed against the Alpha Moya Mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, the door of the Sidi Yahia Mosque, and the Ahamed Fulane Mausoleum and the Bahaber Babadié Mausoleum.

and

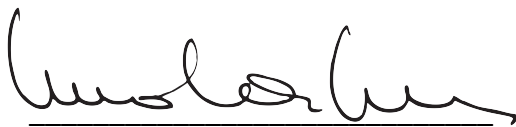
COMMITTS Ahmad Al Faqi Al Mahdi to a Trial Chamber for trial on the charge as confirmed.

Judge Péter Kovács will append in due course a separate opinion.

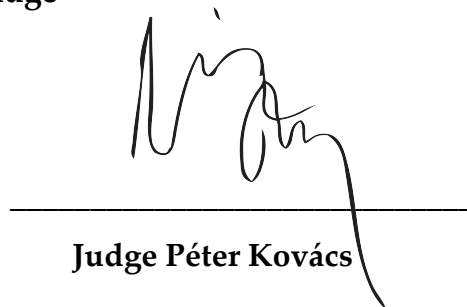
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch
Presiding Judge



Judge Cuno Tarfusser



Judge Péter Kovács

Dated this 24 March 2016

At The Hague, The Netherlands