

**Cour
Pénale
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**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**

Date: **18 September 2024**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Miatta Maria Samba
Judge Erdenebalsuren Damdin

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD**

Public

Defence Notice of Appeal against the Trial Judgment

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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

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I. **INTRODUCTION**

1. The Defence for Mr Al Hassan hereby sets out its Notice and Grounds of Appeals concerning the Trial Judgment ('Judgment' or 'Trial Judgment'), issued by Trial Chamber X on 26 June 2024.¹
2. The Defence seeks to appeal the Trial Judgment pursuant to Article 81(1)(b) of the Statute on the four grounds of appeal enumerated below:
 - **Ground 1** asserts that Mr Al Hassan was convicted on the basis of a manifestly unfair trial process, which undermined the fairness, reliability and integrity of the convictions;
 - **Ground 2** asserts that Mr Al Hassan was convicted on the basis of a legally flawed evidentiary framework implemented by the Trial Chamber, which resulted in findings that are fundamentally unsafe;
 - **Ground 3** asserts that due to errors of fact and law, Mr Al Hassan was convicted on the basis of conduct that did not fulfil the requisite elements of the crimes under the Rome Statute; and
 - **Ground 4** asserts that the Trial Chamber wrongly attributed individual responsibility to Mr Al Hassan, based on flawed factual and legal findings.
3. For each Ground, the Defence has articulated the ground and sub-grounds, as well as the nature of the errors and impact on the Trial Judgment.
4. Unless otherwise specified below, the above grounds are directed against the Trial Judgment as a whole. The Defence seeks the reversal of all convictions and Mr Al Hassan's immediate release.
5. The Defence reserves the right to introduce a request to vary or supplement these grounds upon receipt of a full translation of the Trial Judgment in Arabic.

¹ Trial Judgment, [ICC-01/12-01/18-2594-Red](#).

II. SUBMISSIONS

Ground 1: Mr Al Hassan was convicted on the basis of a manifestly unfair trial process, which undermined the fairness, reliability and integrity of the convictions.

Commentary to Ground 1

6. Ground 1 asserts that Mr Al Hassan was convicted pursuant to a flawed trial process and evidential record that manifestly failed to respect the fundamental fair trial and due process protections set out in Rome Statute.
7. The **first** sub-ground relates to the Pre-Trial Chamber and Trial Chamber’s failure to provide adequate remedies regarding the Prosecution’s collection of torture-tainted evidence from Mr Al Hassan and others,² and each Chamber’s ensuing reliance upon such material. The sub-ground encompasses **procedural** errors related to the manner in which the Trial Chamber resolved Defence applications concerning Mr Al Hassan’s torture; **factual** errors concerning the Chamber’s inadequate assessment as to whether certain evidence was ‘torture tainted’; and **legal** errors concerning the standards used to resolve Defence applications, including the request to terminate the proceedings and subsequent Article 69(7) applications to exclude torture-tainted evidence, including Mr Al Hassan’s statements.
8. These errors impacted critical procedural decisions issued by each Chamber, including the decision on the confirmation of the charges and the Trial Judgment itself. The standard of deference afforded to the Trial Chamber as concerns procedural decisions is significantly circumscribed by the obligation to conduct effective investigations regarding allegations of torture, and the corollary prohibition as concerns the use of torture-tainted evidence.³ Moreover, no deference is afforded to a Trial Chamber in circumstances where its discretion was exercised pursuant to an incorrect application of the law.⁴ Mr Al Hassan’s convictions were underpinned by a substantive reliance on his statements, as well as evidence from P-0582 and P-0626.⁵ In line with

² These include P-0582 and P-0626.

³ *Onwgen* Appeals Judgment, [ICC-02/04-01/15-2022-Red](#), para. 87 (citing with approval that “the degree of discretion afforded to a Chamber may depend upon the nature of the decision in question”).

⁴ *Onwgen*, Judgment on Defence Motion Alleging Defects in the Confirmation Decision, [ICC-02/04-01/15-1562](#), para. 46.

⁵ The [Trial Judgment](#) cites to Mr Al Hassan’s statements at least **502** times; to P-0582 about **343** times; and to P-0626 no less than **153** times.

internationally recognised human rights standards, the use of such evidence taints the record in its entirety.⁶ The appropriate remedy is a full reversal of the convictions and immediate release.

9. The **second** sub-ground relates to violations of Mr Al Hassan's fundamental rights under Article 67(1) of the Statute, which led to unfair and unreliable convictions. The Defence was denied adequate time, opportunity, and assistance to challenge incriminating evidence and to proffer exculpatory evidence,⁷ which would have controverted critical findings underpinning Mr Al Hassan's convictions. The exceptional difficulties arising from the security situation in Mali and COVID-19 restrictions were further aggravated by first: delayed disclosure,⁸ resulting from the specific disclosure regime adopted by the Trial Chamber in this case;⁹ and second, the Trial Chamber's failure to allow for adequate preparation time for the Defence to counteract such difficulties. A violation of the right to adequate time and facilities to present the party's case constitutes a clear procedural error.¹⁰ These violations, individually and cumulatively, undermined the fairness and reliability of the convictions.
10. The **third** sub-ground seeks the reversal of Mr Al Hassan's convictions, arising from improperly pleaded charges. The Trial Chamber erred in procedure and law in entering convictions premised on (i) unacceptably vague charges;¹¹ (ii) charges that unfairly and prejudicially deviated from the factual matrix set out in the document containing the charges;¹² (iii) a charged allegation that had been expressly rejected by the Pre-Trial

⁶ ECHR, *Ibrahim & Others v United Kingdom*, [50541/08, 50571/08, 50573/08 and 40351/09](#), para. 254.

⁷ This occurred both at the investigative stage and trial phase, including unfair and arbitrary restraints on questions put to witnesses who testified; unfair and arbitrary restraints on the number of witnesses who could appear by video-link from Timbuktu; and the unfair and unreasonable deadline applied to the Rule 68 certification of D-0219.

⁸ See e.g. [ICC-01/12-01/18-948-Red2](#), concerning the delayed disclosure of P-0603.

⁹ This includes the Single Judge's determination that it was not necessary for her to review underlying Rule 77 and Article 67(2) materials, prior to authorising non-disclosure ([ICC-01/12-01/18-546](#), para. 17) and further, the determination that the Prosecutor could disclosure summaries, in lieu of redacted originals: [ICC-01/12-01/18-777-Red](#), para. 11.

¹⁰ *Ngudjolo* Appeals Judgment, [ICC-01/04-02/12-271-Corr](#), para. 257.

¹¹ Examples include the criminality falling within the alleged common purpose, the flogging of Foma, the two individuals flogged on 8 July, the basis for Count 5, and Count 6 charges related to Islamic Court Judgments, where the details set out in the judgments impeded any meaningful analysis, investigation or defence.

¹² This includes the number of flogs of the two individuals flogged on 8 July 2012 (expanded from 40 each to 80) and the contents of Islamic Court Judgments.

Chamber;¹³ and (iv) material facts and incidents not set out in the confirmed charges.¹⁴ These errors are compounded by the Trial Chamber's refusal to rule on Defence challenges to defects in the charges, based on an erroneous conclusion that the Defence had not raised such issues in a timely fashion.¹⁵

11. The **fourth** sub-ground asserts that the Trial Judgment, which encompasses three separate and contradicting Opinions, fails to secure Mr Al Hassan's right to a coherent and reasoned opinion issued by a competent Trial Chamber, as required by Articles 66, 67(1), 74(1)-(5) of the Statute and internationally recognised human rights law. There are several critical contradictions throughout the Judgment, which undermine the clarity of the ultimate findings. Exculpatory findings concerning Mr Al Hassan's lack of knowledge and intent are not incorporated into subsequent findings concerning his responsibility for counts 1, 2, 3, 4, 5, 6, 13 and 14. Convictions were entered, notwithstanding the absence of a majority opinion that Mr Al Hassan was criminally responsible in connection with the charged material facts.¹⁶ The lack of clear majority findings on critical legal and factual conclusions concerning the elements of the crimes and individual responsibility means that Mr Al Hassan was not convicted by a majority of Trial Chamber judges to the requisite standard of beyond reasonable doubt.

Content of Ground 1

1.1 The Trial Judgment, and the fairness, independence and impartiality of the trial process, were irrevocably vitiated through the Pre-Trial Chamber and Trial Chamber's use and reliance on evidence and information obtained through torture and/or cruel, inhumane and degrading treatment ('CIDT').¹⁷

¹³ Incident concerning P-1707, rejected in [ICC-01/12-01/18-767-Corr-Red-tENG](#), para. 57, and relied upon in the [Trial Judgment](#), para. 1073, and fns 5111, 5128, 5129, 5162 (as concerns allegations of use of threats during an interrogation).

¹⁴ For example, the Trial Chamber relied on allegations concerning Mr Al Hassan's conduct in relation to both the execution of Musa and the women's march, neither of which were confirmed incidents. The material facts concerning his conduct were also not set out in the confirmed charges. The Trial Chamber also relied on unpleaded material facts in connection with its findings that the thresholds of counts 1, 2, 3, 4 and 5 were met. This includes for example, the finding that the flogging of P-0557 was severe/degrading/humiliating because he was flogged with an instrument also used on animals and also because of rumours concerning the circumstances under which the case was brought to the attention of the groups.

¹⁵ [Trial Judgment](#), para. 17. Cf. ICC-01/12-01/18-939-Conf; ICC-01/12-01/18-882-Conf; [ICC-01/12-01/18-870-Red2](#), para. 14.

¹⁶ For example, Mr Al Hassan's conviction under Count 6 for flogging two individuals on 8 July 2012.

¹⁷ This ground encompasses all errors under Article 81(b) of the Statute.

1.1.1 The Trial Chamber erred in law and procedure, exercising its discretion unfairly and erroneously, by failing to take steps to ensure that Mr Al Hassan's allegations of torture were independently and impartially investigated;

1.1.2 The Trial Chamber erred in law and procedure by failing to make the necessary accommodations to facilitate Mr Al Hassan's right to effectively participate in the proceedings, including by way of providing *viva voce* evidence in his defence;

1.1.3 The Trial Chamber erred in law, procedure, and fact by concluding that the Prosecution's collection and reliance on information and evidence collected from detainees held in arbitrary detention and/or subjected to various forms of torture/CIDT did not amount to an abuse of process, justifying an unconditional stay of the proceedings;

1.1.4 The Trial Chamber erred in law, procedure, and fact in its assessment that the exclusionary rule did not apply to evidence collected from DGSE detainees, including, Mr Al Hassan, P-0582, and P-0626;

1.1.5 The Pre-Trial Chamber and Trial Chamber erred in law and procedure through their reliance on torture-tainted evidence to reach findings of fact in the decisions on the arrest warrant and confirmation of charges, procedural decisions, and the Trial Judgment.

1.2 The Trial Chamber erred in law and procedure by convicting Mr Al Hassan in relation to allegations against which the Defence was not afforded adequate time and facilities to present its case, in contravention of Article 67(1) of the Statute.

1.3 The Trial Chamber erred in law and procedure by convicting Mr Al Hassan on the basis of incidents pleaded with insufficient specificity, mutated charges,¹⁸ charges requalified under Regulation 55 without the attendant due process protections,¹⁹ and material facts falling outside the scope of the confirmed charges.

1.4 The Trial Judgment fails to provide a coherent and reasoned foundation as to the basis for Mr Al Hassan's convictions, by a competent Chamber, to the standard of beyond reasonable doubt, as required by Articles 21(3), 66(3), 67(1) and 74 of the Statute.

¹⁸ This includes the following convictions, *inter alia*: Count 6: i) case 43/1433-2012; ii) case 46/1433-2012.

¹⁹ Count 14 (mutilation).

Ground 2: Mr Al Hassan was convicted on the basis of a legally flawed evidentiary framework implemented by the Trial Chamber

Commentary to Ground 2

12. Ground 2 concerns the Chamber's adoption of incorrect legal standards and/or a misapplication of correct legal standards in evaluating and relying upon core categories of evidence. For the purposes of this Notice, these categories include, but are not limited to: Rule 68(2) and testimonial evidence introduced through Article 69(4); the testimony of insider witnesses and victim-witnesses (including witnesses who were married to each other); modified digital evidence; and uncorroborated documentary evidence.
13. In this ground, the Defence will demonstrate the Trial Chamber's systematic failure to apply legal principles or misapplication of legal standards concerning the submission and use of evidence. These standards must be applied to the treatment and weight of the above evidential categories, in order to respect the burden and standard of proof, principle of orality, and the requirements of a reasoned Trial Judgment.²⁰ The Trial Chamber's errors of law and procedure in failing to apply or misapplying such standards, resulted in factual findings that are legally flawed and fundamentally unsafe, due to the absence of a reliable evidential foundation.²¹
14. The Trial Chamber's errors of law and procedure undermine the reliability of critical findings underpinning Mr Al Hassan's conviction, including:
 - i) the existence of contextual elements related to the existence of a non-international armed conflict and a widespread or systematic attack against the civilian population;
 - ii) the existence of an organisational policy and common plan between Ansar

²⁰ See *e.g.* *Ntaganda* Appeals Judgment, [ICC-01/04-02/06-2666-Red](#), paras 12 (impermissible shifting of burden of proof when comparing OTP and Defence evidence), 16 (the use of Rule 68(2) evidence), 18 (standards for corroboration); *Bemba et al.* Appeals Judgment, [ICC-01/05-01/13-2275-Red](#), paras 869-871 (standards for inferential reasoning); *Bemba* Appeals Judgment, [ICC-01/05-01/08-3636-Red](#), paras 51-55 (absence of reasoning concerning reliance or non-reliance on evidence); *Ongwen* Appeals Judgment, [ICC-02/04-01/15-2022-Red](#), para. 507 (obligation to provide a reasoned opinion concerning reliance on evidence that was subject to objections from opposing party).

²¹ Many of these patterns of errors are evident in the Trial Chamber's treatment of the evidence of P-0150. The extent of the impact of such errors is illustrated by the Trial Chamber's citation of P-0150's evidence, over **1500** times. The Trial Chamber also cited his evidence approximately **517** times as the sole evidentiary basis identified in footnotes linked to specific findings. P-0582, a Rule 68(2)(c) insider, was cited approximately **29** times as the sole evidentiary basis in footnotes linked to specific findings.

Dine and AQIM, as formulated by the Prosecution;

- iii) the evidential foundation for linking the commission of specific incidents to the common plan and/or organisational policy;
 - iv) the role of the Islamic Police and Mr Al Hassan's role within the Islamic Police and/or Ansar Dine and AQIM;
 - v) the facts underpinning the crimes for which Mr Al Hassan was convicted; and
 - vi) Mr Al Hassan's knowledge and role in the commission of the crimes for which he was convicted.
15. The Defence therefore seeks the reversal of Mr Al Hassan's convictions under all counts, pursuant to this ground of appeal.

Content of Ground 2

2. The Trial Chamber erred in law and procedure as concerns the standards and application of standards used to assess relevance, credibility, reliability and weight of evidence. This resulted in critical findings of fact predicated on an erroneous burden or standard of proof. These standards relate, inter alia, to the treatment of circumstantial evidence; the obligation to provide a coherent and reasoned opinion on disputed evidential issues; and the usage and degree of corroboration required for certain types of documentary/digital, Rule 68(2) and testimonial evidence (including in particular, the evidence of co-operating, insider witnesses and related victim-witnesses).

Ground 3: Mr Al Hassan was convicted on the basis of conduct that did not fulfil the elements of the charged offences under the Rome Statute²²

Commentary to Ground 3

16. Ground 3 concerns errors of law and fact, which invalidate the Trial Chamber's findings that the elements of the offences were satisfied for the crimes for which Mr Al Hassan was convicted.
17. Concerning errors of fact, even if the Trial Chamber did not commit reversible errors of law and procedure (as alleged in Ground Two), no reasonable finder of fact could have concluded that there was a sufficient factual foundation to satisfy the elements of

²² This in the event that the Appeals Chamber rejects Ground 2.

the offences, for the crimes for which Mr Al Hassan was convicted.

18. The Trial Chamber further erred in law by misapplying or misinterpreting the elements of the offences. This includes the test for assessing the existence of a non-international armed conflict and critical contextual elements, such as the nexus element for war crimes, and specific elements of the offences.
19. As a result, Mr Al Hassan was convicted in relation to insufficiently proven facts and facts, which should not have incurred individual criminal responsibility under the Rome Statute.
20. The Chamber's factual and legal errors concerning contextual elements invalidate all the counts for which Mr Al Hassan was convicted. The Defence has additionally identified errors of fact and law, which invalidate the convictions under Counts 1, 2, 3, 4, 5, 6, and 13.

Content of Ground 3

3.1 The Trial Chamber erred in fact and law in its findings concerning the contextual elements related to the existence of a non-international armed conflict.

3.1.1 Trial Chamber erred in fact and law in finding beyond a reasonable doubt that a non-international armed conflict existed at the time the crimes were committed;

3.1.2 The Trial Chamber erred in fact and law in finding that the nexus element for each war crime incident, for which Mr Al Hassan was convicted, was satisfied beyond reasonable doubt.

3.2 The Trial Chamber erred in fact and law in finding the contextual elements of crimes against humanity were satisfied.

3.2.1 The Trial Chamber erred in fact and law as concerns its findings that the contextual elements for crimes against humanity were satisfied beyond reasonable doubt;

3.2.2 For findings requiring the Chamber to conduct a quantitative or qualitative assessment (such as the existence of a widespread or systematic attack), the Chamber erred in law by failing to provide a reasoned opinion as concerns the standard that was applied and how this standard was met.

3.3 The Trial Chamber erred in fact and law in finding that the elements of Count 6 (Article 8(2)(c)(iv)) were fulfilled.

3.4 The Trial Chamber erred in fact and law in finding that the elements of Count 1 (Article 7(1)(f)) and Count 3 (Article 8(2)(c)(i)) were fulfilled.

3.4.1 The Trial Chamber erred in fact and law in finding that the elements of the crime of torture under Article 7(1)(f) of the Statute were satisfied beyond reasonable doubt;

3.4.2 The Trial Chamber erred in fact and law in finding that the elements of the crime of torture under Article 8(2)(c)(i) of the Statute were satisfied beyond reasonable doubt;

3.4.3 The Trial Chamber erred in law by finding that the lawful sanctions exception does not apply to Article 8(2)(c)(i), through operation of applicable sources of law under Article 21 of the Statute.

3.5 The Trial Chamber erred in fact and law in concluding that the elements of Count 2 (Article 7(1)(k)) and Count 4 (Article 8(2)(c)(i)) were fulfilled.

3.5.1 The Trial Chamber erred in law in concluding that the “lawful sanctions exception” does not apply to the charges of other inhuman acts under Article 7(1)(k) of the Statute and the war crime of inhumane treatment under Article 8(2)(c)(i) of the Statute, through operation of applicable sources of law under Article 21 of the Statute;

3.5.2 The Trial Chamber erred in fact and law in concluding that the elements of Counts 2 and 4 were satisfied, beyond reasonable doubt.

3.6 The Trial Chamber erred in fact and law in concluding that the elements of Count 5 (Article 8(2)(c)(ii)) were fulfilled.

3.6.1 The Trial Chamber erred in law in concluding that the “lawful sanctions exception” does not apply to Article 8(2)(c)(ii), through operation of applicable sources of law under Article 21 of the Statute;

3.6.2 The Trial Chamber erred in fact and law in concluding that the elements of Count 5 were satisfied, beyond reasonable doubt.

3.7 *The Trial Chamber erred in fact and law in finding that the elements of Count 13 (Article 7(1)(h)) were satisfied.*

3.7.1 The Trial Chamber erred in fact and law in concluding that the elements of Count 13 were satisfied, beyond reasonable doubt.

Ground 4: The Trial Chamber wrongly attributed individual responsibility to Mr Al Hassan based on flawed evidential and legal findings

Commentary to Ground 4

21. Ground 4 concerns errors of fact and law in relation to the Trial Chamber's conclusion that Mr Al Hassan's intent, knowledge and conduct satisfied the requirements of Articles 25(3)(a), (c) and (d).
22. The Trial Chamber also erroneously concluded that certain specific knowledge requirements set out in the Elements of Crimes were fulfilled²³ or failed to apply such requirements to either the perpetrators or Mr Al Hassan, as required by the Elements of Crimes and Article 30 of the Statute.²⁴ These errors undermine the entirety of the convictions entered against Mr Al Hassan.
23. Even if there was a proper factual and legal foundation for attributing individual criminal responsibility to Mr Al Hassan, the Trial Chamber erred in fact and law by excluding defences of superior orders, duress by circumstances and mistake of law, which were established through a proper evidential foundation. The defence of superior orders, applied correctly, requires Mr Al Hassan's acquittal of all war crime charges. The defences of duress and/or mistake of law operate to exempt Mr Al Hassan from responsibility of all charges and convictions. The defence of mistake of fact also operates in tandem to secure Mr Al Hassan's acquittal through superior orders/mistake of law/duress.

²³ This includes, but is not limited to, contextual elements concerning the existence of an armed conflict or widespread or systematic attack, the civilian status of victims, the additional knowledge element set out in paragraph 5 of Article 8(2)(c)(iv) of the Elements of Crimes, the requirement under Article 7(1)(f) that the pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions, and the fact that victims were severely deprived of rights, contrary to international law, for the purpose of Count 13 (persecution).

²⁴ This includes the Trial Chamber's erroneous reliance on standards of constructive knowledge rather than actual knowledge See [Trial Judgment](#), para. 1280 ("the Chamber also finds that the perpetrators must have been aware [...]").

Content of Ground 4

4.1 The Trial Chamber erred in fact and law as concerns its conclusion that the mens rea elements of the crimes were satisfied.

4.1.1 The Trial Chamber erred in fact and law in finding that the perpetrators satisfied the *mens rea* requirements of Counts 1, 2, 3, 4, 5, 6, 13 and 14;

4.1.2 The Trial Chamber erred in fact and law in convicting Mr Al Hassan for Counts 1, 2, 3, 4, 5, 6, 13 and 14, notwithstanding the absence of evidence that he possessed the requisite *mens rea* for these crimes;

4.1.3 In relation to torture, inhumane acts, cruel treatment and offences against dignity (Counts 1, 2, 3, 4 and 5), the Trial Chamber erred in fact and law by relying on particular circumstances or acts, for the purpose of satisfying itself that the elements or threshold of severity was met, even though there was no finding that Mr Al Hassan was aware of such circumstances or that such acts had occurred, or that Mr Al Hassan knew that such acts and circumstances would occur, as a virtually certain consequence of the implementation of the common purpose.²⁵

4.2 The Trial Chamber erred in fact and law as concerns its conclusion that Mr Al Hassan was responsible under Article 25(3)(c).

4.2.1 The Trial Chamber erred in fact and law in finding, for the purpose of Article 25(3)(c), that Mr Al Hassan acted for the purpose of facilitating the commission of the crimes concerning P-0557, P-0565, and the six individuals flogged in November 2012;

4.2.2 The Trial Chamber erred in fact and law in finding, for the purpose of Article 25(3)(c), that Mr Al Hassan possessed intent in relation to the crimes related to P-0557, P-0565, and the six individuals flogged in November 2012, and that he was aware that such crimes would occur in the ordinary course of events;

4.2.3 The Trial Chamber erred in fact and law in finding that the evidence concerning Mr Al Hassan's general role in the Islamic Police and his alleged presence at the floggings of P-0557, P-0565, and the six individuals flogged in November 2012 was sufficient to

²⁵ This includes for example, findings concerning the detention conditions of the victims or the imposition of marriage.

establish that he aided, abetted or assisted the commission of the crimes related to these individuals, under Counts 1, 3, and 5.

4.3 The Trial Chamber erred in fact and law as concerns its conclusion that Mr Al Hassan was responsible under Article 25(3)(d).

4.3.1 The Trial Chamber failed to specify or provide a reasoned opinion as to whether Mr Al Hassan was convicted under Article 25(3)(d)(i) or (ii);

4.3.2 The Trial Chamber erred in fact and law as concerns its finding that the crimes for which Mr Al Hassan was convicted were committed by a group of persons acting with a common purpose, which included the commission of the crimes in question;

4.3.3 The Trial Chamber erred in fact and law in finding that Mr Al Hassan acted with the aim of furthering the criminal purpose or criminal activity of the group (Article 25(3)(d)(i)) or otherwise knew of the intention of the group to commit the crimes for which he was convicted (Article 25(3)(d)(ii));

4.3.4 The Trial Chamber erred in fact and law in finding that Mr Al Hassan's contributions satisfied, to the standard of beyond reasonable doubt, the threshold for individual criminal responsibility in connection with the convictions entered under Counts 1, 2, 3, 4, 5, 6, 13 and 14.

4.4 The Trial Chamber erred in fact and law in excluding the defence of superior orders.

4.4.1 The Trial Chamber erred in law in finding that the defence of superior orders does not apply to conduct, which can be qualified as a war crime or a crime against humanity;

4.4.2 The Trial Chamber erred in law in finding that the defence of superior orders can only apply to acts charged under Article 25(3)(a) of the Statute;

4.4.3 The Trial Chamber erred in law in finding that the issue as to whether an order is manifestly unlawful is a purely objective standard, or otherwise abused its discretion by failing to consider the operation of a mistake of fact or law to this factor;

4.4.4 The Trial Chamber erred in fact and law in concluding that Mr Al Hassan was not acting pursuant to superior orders in relation to the contributions he made to the crimes for which he was convicted.

4.5 The Majority erred in fact and law as concerns the standards and conclusions applied in relation to the positive defence of duress by circumstances.

4.5.1 The Trial Chamber erred in law in finding that the defence of necessity does not inform the proper interpretation and application of duress caused by other circumstances;

4.5.2 The Trial Chamber erred in fact and law in finding that a reasonable person in Mr Al Hassan's circumstances would not have apprehended the existence of an objective and present continuing risk of serious harm to Mr Al Hassan and his family at the time the crimes occurred;

4.5.3 The Trial Chamber erred in fact and law in concluding that Mr Al Hassan's decision to work for Ansar Dine and to implement their orders during the relevant time-period, was voluntary and informed, and further, that it excluded the operation of this defence.

4.6 The Trial Chamber erred in fact and law by rejecting the defence of mistake of fact/law.

4.6.1 The Majority erred in fact and law in finding that the element of intent was not negated where the accused's circumstances were such that they reasonably entertained the belief that they were not acting unlawfully, and where knowledge of unlawful conduct is either related to an element of the offence, as is the case with Article 8(2)(c)(iv), Article 7(1)(f)), Article 7(1)(h) or in case the accused is acting pursuant to superior orders;

4.6.2 The Trial Chamber erred in fact and law in disregarding evidence that Mr Al Hassan was operating under a mistake of fact and/or law in relation to the existence of a previous judgment issued by a regularly constituted court²⁶ or as concerns the obligation to follow superior orders and the consequences of non-compliance.



Melinda Taylor
Lead Counsel for Mr Al Hassan

Dated this 18th day of September 2024
At The Hague, The Netherlands

²⁶ See [Trial Judgment](#), fn. 2333.