

Sentencing Hearing

(Open Session)

ICC-01/12-01/18

1 International Criminal Court
2 Trial Chamber X
3 Situation: Republic of Mali
4 In the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag
5 Mahmoud - ICC-01/12-01/18
6 Presiding Judge Kimberly Prost, Judge Tomoko Akane and
7 Judge Keebong Paek
8 Sentencing Hearing - Courtroom 3
9 Wednesday, 4 September 2024
10 (The hearing starts in open session at 9.33 a.m.)
11 THE COURT USHER: [9:33:43] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE PROST: [9:34:10] Good morning, everyone.
15 Court officer, could you call the case, please.
16 THE COURT OFFICER: [9:34:15] Good morning, Madam President. Good
17 morning, your Honours.
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus
19 Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference
20 ICC-01/12-01/18.
21 And for the record, we are in open session.
22 PRESIDING JUDGE PROST: [9:34:35] Thank you very much.
23 If I could have the appearances, please.
24 Mr Deputy Prosecutor.
25 MR NIANG: [9:34:41](Interpretation) Good morning, Madam President,

1 your Honours.

2 The Office of the Prosecutor is represented today by myself, Deputy Prosecutor
3 Mame Niang, and next to me, Gilles Dutertre, senior trial lawyer. Behind me -- or,
4 next to me, Madam Dianne Luping. And behind me, Mr Lucio Garcia, Madam
5 Marie-Jeanne Sardachti. We also have the trial lawyer Yamaguchi, Mousa Allafi,
6 Sandra Schoeters. And then we also have the trial lawyer Paola Sacchi. Thank you
7 very much.

8 PRESIDING JUDGE PROST: [9:35:35] Thank you very much, Deputy Prosecutor.

9 May I hear from the Defence, please.

10 Ms Taylor.

11 MS TAYLOR: [9:35:44] Good morning, Madam President. Good morning,
12 your Honours. Good morning to our colleagues, the Deputy Prosecutor, and good
13 morning to all our colleagues in and around the courtroom.

14 The Defence for Mr Al Hassan is represented today by, to my left, we have
15 Maître Aika Pradhan, Ms Felicity Gerry, KC, Ms Havneet Sethi,
16 Maître Mélissa Beaulieu Lussier. Ms Yuqing Liu is here. We have Kelsey Ryan,
17 Mr Maouloud Al-Ansary, Ms Myriam Whaibe, Ms Diletta Marchesi, Ms Quinn Farr
18 and Ms Claudia Barrera. Thank you very much.

19 PRESIDING JUDGE PROST: [9:36:21] Thank you, Ms Taylor.

20 The legal representative of the victims, please.

21 MR LUVENGIKA: [9:36:28](Interpretation) Good morning, your Honour,
22 Presiding Judge, your Honours.

23 The team of the Legal Representatives of Victims is composed of, at this hearing, on
24 my right, Julie Goffin. And on the bench just behind, Biyéké Dipanga Prisque,
25 Andrés Morales. And the remainder of the team shall be participating in the hearing

1 but at a distance. We have on the screen, as is written, Seydou Doumbia, who will
2 be speaking from Bamako. And our field assistant, Mr Boubacar Maïga. And there
3 is Maître Kassongo who normally would also be at a distance, but it would seem that
4 there are certain IT issues that need to be resolved, so we hope that by the time we are
5 called to speak that this problem will be resolved. And I hope that I have forgotten
6 nobody. And of course myself, Maître Fidel Nsita Luvengika.

7 PRESIDING JUDGE PROST: [9:37:49] Thank you very much, Counsel.

8 Well, welcome to everyone here in the courtroom, and as well joining us in the gallery
9 or online.

10 This is the hearing on sentencing under Article 76 of the Statute in this case.

11 I note, for the record, Mr Al Hassan is also present.

12 In light of the fact that there has been no live evidence requested, this hearing is
13 limited to receiving oral submissions of the parties and participants on sentencing.

14 The parties and participants have also filed written submissions on 26 August in
15 advance of the hearing.

16 And as the Chamber has indicated, after this hearing no further submissions will be
17 authorised.

18 We have a schedule set with two sessions of 1.5 hours this morning and a final session
19 of 2 hours. We're commencing with the normal time frames applicable, so we'll be
20 ending this session for a break at 11 a.m. And I am noting that the oral presentations
21 have strict time constraints and I'm expecting that those will -- of course will be
22 respected by the parties and the participants and I will be vigilant in that respect.

23 We'll begin with the Prosecution, then the Legal Representative of Victims and, finally,
24 the Defence.

25 The Chamber may then ask questions and there will be an opportunity for any replies,

1 subject to the Chamber's authorisation.

2 As previously notified, 1 hour 45 minutes and everyone should be ready to
3 commence as soon as the other has finished. The publicity, this is going to be an
4 open hearing throughout, as is appropriate for these types of presentations.

5 So, therefore, without anything further, I give the floor to you, Mr Deputy Prosecutor.
6 You're of course free to distribute the presentations amongst the Prosecution team as
7 is appropriate. Thank you very much.

8 MR NIANG: [9:40:03](Interpretation) Thank you, Madam President, your Honour,
9 your Honours, and thank you for this flexibility. And I will take advantage of it,
10 because Gilles Dutertre, who has with his team led throughout this trial, he is
11 certainly qualified to carry out these proceedings to its end. But, with my presence, I
12 would like to show the difference that there is when it comes to
13 the Office of the Prosecutor's position to that of the Chamber. And I shall present
14 the regrets of the chief Prosecutor, Karim Khan, who would have wished to be here at
15 this hearing for the same reasons as I have just mentioned, to express the differences
16 with the Court. But due to his functions, it hasn't been possible for him and he is not
17 in The Hague.

18 Your Honour, Judges, before giving the floor to Mr Dutertre, I would first of all, and
19 very briefly, like to remind you of the context of this case, a context which is
20 particularly relevant for the assessment of the sentence which is the most appropriate
21 to be put on Mr Al Hassan, whose guilt has been decided on in the charges and -- has
22 been expressed in the charges.

23 And, your Honours, you -- I have said here that it was in the month of May last year
24 when I addressed you within the framework of our final submissions and I said that
25 this trial was not a trial against Islam.

1 I would once again like to take this opportunity to reiterate this assertion and I want
2 to do so with all the more force, given that it was the Timbuktu population, who are
3 essentially Muslim, who are the victims of the crimes perpetrated. And this trial, as
4 the one that preceded it in the previous situation where there was an arrest in
5 the same situation, this is a trial against men, people, and against one man in this case,
6 a man who on -- due to an inflexible vision joined an enterprise harming
7 the population of Timbuktu.

8 Now, what does Timbuktu actually represent? Timbuktu is a mythical town, it is
9 one of the oldest in Africa, the flower of Mali, since the 13th century. Timbuktu is
10 the crossroads of the Niger River and the Sahara River and a place where gold and
11 salt sales take place. And for my generation born in Africa, Timbuktu was a town
12 whose history, we learnt about it, was in all history manuals and this town brings
13 knowledge of geometries and the -- behind the Saharan dunes, it was the junction
14 with the entire north Africa.

15 Timbuktu was the town which, through commerce and other aspects, it embraced
16 Islam. Timbuktu is the town of Mansa Musa, who built his first mosque from
17 the beginning of the 14th century.

18 Madam, your Honours, it is up to the inhabitants of this town, the precursor of Islam
19 in West Africa, a town where theology was very much at the heart of things right
20 from the 15th century in the prestigious university. It was also a town in which
21 Islam never drove out the animist practices.

22 Ladies and gentlemen, it is for the inhabitants of this cosmopolitan town and their
23 traditions, which have been fed by centuries of history and mixing, and it is among
24 these inhabitants that these groups had the pretension to teach them of a new way of
25 living their religion.

1 And when you go back through the different aspects, Al Hassan took pace in
2 a negation of a culture, of a disdain for a culture, and the pedagogical aspects of this
3 group was violence. A pedagogy of humiliation.
4 Your Honours, the religious and ideological labels that often give rise to a moral
5 justification of that the perpetrator of the crimes against humanity or war crimes, they
6 have no compassion or commiseration. They are so convinced by their acts,
7 the harm that they're doing, that they leave nothing for their victims. And the case
8 file that we have against Al Hassan which you will judge today follows exactly this
9 pathway.
10 And it is the entire population of Timbuktu which was persecuted, terrorised.
11 Women, girls particularly suffered in their hearts and in their dignity. And within
12 the framework of Al Hassan to present certain individual characteristics it is an
13 aggravating singularity, one that aggravates the crimes when it comes to
14 the commission of crimes that he was associated with.
15 Al Hassan was not a foreigner, a stranger to the Timbuktu community. He was not
16 a stranger from elsewhere who brought the so-called good word. Al Hassan was
17 a child of Timbuktu. So, taking into account the reality and the customs of his
18 community and, nevertheless, he chose to put himself against them.
19 Your Honours, the occupation of Timbuktu did not last for a long time, but
20 the passage of this group and the stigma is very much embedded in the hearts of this
21 population. These groups that Al Hassan joined were not forced, but voluntarily,
22 zealously, indeed. These groups did not finish making today a good part of
23 West Africa, from Mali to Niger, going through Burkina Faso, without forgetting,
24 perhaps, the other areas going to Côte d'Ivoire, Benin. So what I was saying was that
25 all these parties of Africa, West Africa, have been plunged into insecurity.

1 That is to say, ladies and gentlemen, your Honours, that your verdict is highly
2 awaited. It is very much awaited in Africa. And, furthermore, it is all the more
3 awaited in this West Africa, where there has been such killing. And I have to tell
4 you, your Honours, that in this part of Africa, where the judicial systems which have
5 suffered from decades of instability, they are still fragile.

6 And, here, I'm going to weigh my words. When it comes to the view, when it comes
7 to the regard of everyone, it is all turned towards the ICC and I am
8 a hundred per cent sure that you will meet the challenge in this respect.

9 And now I would hand over to my colleague Gilles Dutertre, who will speak further
10 about the aggravating circumstances and specific circumstances.

11 MR DUTERTRE: [9:51:10](Interpretation) Excuse me, I just needed a moment.

12 Good morning, your Honours. Good morning, Presiding Judge.

13 The Prosecution today is seeking a minimum of 22 years in prison in the case of Mr Al
14 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud.

15 Now, I will speak with some gravity this morning. This Chamber convicted
16 Mr Al Hassan of certain crimes on 26 June 2024 and those crimes were of the most
17 grave nature.

18 Allow me to list them: Torture as a war crime and crime against humanity,
19 mutilation, cruel treatment, inhumane acts --

20 THE INTERPRETER: [9:52:23] Or, interpreter corrects: Not inhumane acts, but,
21 rather, assaults on the dignity of the individual.

22 MR DUTERTRE: [9:52:32](Interpretation) Convictions pronounced by an irregularly
23 constituted court.

24 And, in general, persecution for religious means or grounds.

25 Now, I shall now go through these various offences without -- and then move on to

1 the totality of what is requested.

2 In our submissions we have made this clear to you, they are available to the again
3 public also.

4 So the Prosecution is requesting 22 years for the crime of persecution, 20 years for
5 the crime of torture, 15 years for the crime of mutilation, 20 years for crimes against
6 the dignity of an individual, eight to nine years for other inhumane acts and cruel
7 treatment, and 20 years for convictions handed down by an irregularly constituted
8 court.

9 And I shall explain that the Prosecution is requested a minimum of 22 years in prison
10 and insists upon the fact that this is absolutely necessary.

11 The entire population of the city of Timbuktu and the surrounding region,
12 a population in its entirety and defenceless, comprising women and children also,
13 were subjected to brutal oppression by armed groups, al-Qaeda in the Islamic
14 Maghreb and Ansar Dine.

15 Timbuktu is occupied. It was defigured. It was persecuted over the course of
16 a long brutal and methodological series of oppression. In a word, Timbuktu was
17 persecuted from April 2012 to January 2013 by two armed groups made up primarily
18 of non-Timbuktu natives. And this with the good will and cooperation of certain
19 persons who resided in the city and, in particular, with the assistance and proactive
20 participation and continuous participation of Mr Al Hassan, who was a son of
21 the region, as the Deputy Prosecutor has just underlined.

22 Furthermore, an image comes to mind, as do many others, your Honours, and that
23 image is of Mr Al Hassan, who is beating wildly on two men. It's approximately
24 8 July 2012, in a public place in the centre of Timbuktu, close to the Malian Bank of
25 Solidarity. Everybody is present, including children. You yourselves have viewed

1 video recordings of that event. What happened is absolutely clear.
2 The two victims were bound. Al Hassan had the keys to those handcuffs and he's
3 holding a whip in his hand. Here, Al Hassan is not just simply following orders, no,
4 he's clearly here in the role of a leader and he is supervising the punishments being
5 meted out by his colleague Abou Zhar.
6 And I would quote from the judgment here, paragraph 763, Mr Abou Zhar and
7 Mr Al Hassan were both involved in the conduct of this execution.
8 So, Al Hassan gives the keys to Abou Zhar, who removes the handcuffs and then,
9 turn by turn, Al Hassan and Abou Zhar subject the individual to many lashings. On
10 the video we see two individuals who are writhing in agony. Al Hassan is
11 particularly het up with the meting out of whippings. You hear -- we hear
12 the whip lash with a certain -- with a regularity of the whipping of his own wrist,
13 much like a metronome.
14 And I would remind you that the Chamber counted approximately 80 lashes for each
15 victim, 80, of which at least 34 were meted out by Al Hassan on the first victim and at
16 least 37 given by Mr Al Hassan when it came to the second victim.
17 What crime could these two defenceless individuals have committed to be beaten so
18 violently and humiliated in public? Quite simply, they had not adhered to the latest
19 rules and prohibited rules which had been put in place by al-Qaeda in the Islamic
20 Maghreb and by Ansar Dine.
21 All that we can say is that it is horrific to see what we saw on that recording, suffering,
22 humiliation, terrorisation. But that was daily life in Timbuktu under al-Qaeda in the
23 Islamic Maghreb and Ansar Dine and Al Hassan participated voluntarily and
24 willingly in all of this.
25 So all his good and loyal diligent service and all these appalling tasks that he carried

1 out in the service of al-Qaeda in the Islamic Maghreb and for Ansar Dine, this was all
2 done by Al Hassan and he rose to become the head of the Islamic police. And, very
3 clearly, he benefitted from this regime of persecution to make a good career for
4 himself and to fulfil his own personal ambitions. And I'll say more about that later.
5 Now, briefly, how did one come to this, that Al Hassan was -- became involved in
6 such a faithful way in this organised and methodological system of violence, torture
7 and mutilation, which also involved cruel treatment of this innocent population who
8 had no one to step up for them?

9 I think it's important to say something about this in order to be able to judge, indeed
10 to assess the behaviour of Al Hassan and to understand the gravity of the crimes
11 which he -- with which he has been -- or, of which he has been found guilty and to
12 better understand the impact, which was immense, on the very numerous victims
13 which he had.

14 It's also important to understand the aggravating circumstances, which were multiple
15 and which were the backdrop to these, the commission of these crimes, as well as the
16 discriminatory nature and the zealous attitude of Al Hassan.

17 But let's step back a bit.

18 So, al-Qaeda in the Islamic State were in Mali since 1998.

19 Paragraph 432 of the judgment. Al-Qaeda in the Islamic State is biding its time to
20 create a state in the image of its ideology. Ansar Dine, for its part, is created by
21 Iyad Ag Ghaly at the end of 2011. So, during a preaching recording in 2012, he
22 proclaimed, and I quote: "We share everything with Al-Qaeda [...] we share
23 everything [...]". And, indeed, Ansar Dine is used by al-Qaeda in the Islamic
24 Maghreb as a local front to achieve its objectives.

25 History will give these groups the opportunity to launch a lightning offensive in

1 northern Mali. Al-Qaeda in the Islamic Maghreb, and other armed groups such as
2 MUJAO and MNLA, took control of the entire north of Mali in less than three months.
3 The first attack took place in mid-January 2012. Timbuktu fell on 1 April 2012 after
4 the Malian army had to flee the town.
5 On that day, a militia and then the MNLA entered Timbuktu. They started looting.
6 The militia quickly left the area.
7 For their part, Ansar Dine and al-Qaeda in the Maghreb were clearly close by and on
8 the lookout. These two groups, armed to the teeth, entered Timbuktu the very next
9 day, 2 April 2012.
10 They drove out the MNLA and they now had exclusive and total control over their
11 prey, the legendary city of Timbuktu.
12 After deliberately causing chaos and the departure of the Malian authorities from
13 northern Mali, and creating an institutional vacuum, Ansar Dine and al-Qaeda in the
14 Islamic Maghreb pretend, and I would like to say pretend to be the saviours and
15 restorers of order. It's the old fire and brimstone trick.
16 From then on, they would reign supreme in Timbuktu and the surrounding region,
17 causing suffering to the local population. They made it -- this town a sad laboratory
18 and media showcase for the application of their personal religious vision, using
19 violence and fear. And this was done with the agreement of Al Hassan, who was an
20 opportunist and a careerist.
21 It's in this context, and you have already ruled on this, that Al Hassan personally
22 committed, assisted or contributed to the commission of various crimes perpetrated
23 in the relentless implementation of a religious vision of al-Qaeda in the Islamic
24 Maghreb and Ansar Dine.
25 So that is the general background.

1 If we now delve a little deeper into the implacable mechanics of this system, a
2 persecution put in place by al-Qaeda in the Islamic Maghreb and Ansar Dine with
3 whom Al Hassan deliberately collaborated.

4 The Deputy Prosecutor has already mentioned that Timbuktu, the city of 333 saints, is
5 a major historical, spiritual and intellectual centre of great importance in Africa. It is
6 a heterogeneous city comprising a variety of ethnic groups.

7 A town which, before 2012, people were free to practice all kinds of religious
8 traditions as they wished, for example, praying at the mausoleum sites. A city
9 where the inhabitants could exercise their freedoms.

10 In other words, and I'm just quoting the Chamber here, Timbuktu was a city where
11 the social life was a patchwork of varied behaviours governed by different social
12 norms depending on the community.

13 But things changed dramatically with the arrival of Ansar Dine and al-Qaeda in the
14 Islamic Maghreb.

15 Your Chamber itself concluded, it indicated that the members of the population felt
16 that everything had changed and described the atmosphere in the city as terror
17 everywhere and confinement. They describe the city itself as a dead city and a ghost
18 town. That's in paragraphs 36 and 738 of the judgment.

19 The town was in fact subject to regulations and subject to many bans and prohibitions
20 and, in order to achieve their aims, Al-Qaeda and Ansar Dine ensured that they
21 included locals like Al Hassan into their ranks, who knew the town, they knew its
22 inhabitants, the languages and the local ways as well. Al Hassan was indeed one of
23 these inhabitants of Timbuktu who joined Ansar Dine and Al-Qaeda from the outset
24 during the occupation and whose role was key in being an interface with the local
25 inhabitants.

1 The Chamber noted this. The testimony of Defence Witness D-0211 demonstrates
2 that Al Hassan joined Ansar Dine voluntarily. The Chamber also found that
3 Al Hassan worked with Ansar Dine and al-Qaeda in the Islamic Maghreb from
4 the end of 2012. This was therefore in the very earliest hours of the occupation.
5 In fact, on the ground, Al Hassan was an important cog in the wheel. He was at the
6 heart of the functioning of the police. His role was pivotal in the relentless
7 repression of the population by Ansar Dine and al-Qaeda in the Islamic Maghreb.
8 Al Hassan wasn't just an important cog, he was a constant permanent cog throughout
9 the entire occupation. And we shall soon see, on the basis of your Chamber's
10 findings.
11 Things went very fast from the very start and the inhabitants were very quickly
12 deprived of their most fundamental rights.
13 There was an avalanche of new rules and prohibitions in all areas of people's lives.
14 It is all listed in the judgment. I will avoid giving you an extensive and exhaustive
15 list, but here are a few examples:
16 Women could no longer go out without a veil; women were no longer allowed to
17 walk with a man unless he was a relative; dancing and music were prohibited, and
18 festivals, or partying was also prohibited.
19 And all these rules were implemented with corporal punishment, with severe
20 corporal punishment. There was a whole raft of punishments. As we've seen with
21 Al Hassan, who was striking the two men in July 2012.
22 Al Hassan himself admits that the punishments in the case of breaching the new rules
23 were unheard of in Timbuktu. He declared to investigators from
24 the Office of the Prosecutor, and here I quote: "these punishments [the inhabitants]
25 didn't know about them. It was the first time that they saw them. Everyone was

1 afraid, everyone was afraid of the word 'jihadist' [...]. They feared punishment."

2 From the very outset, Al Hassan showed a high degree of knowledge and intent that
3 justifies a heavy sentence. Almost everything is said in this extract. Well, not quite,
4 because Ansar Dine and al-Qaeda in the Islamic Maghreb do not hesitate to use
5 torture to extract confessions from Timbuktu residents arrested on one pretext or
6 another and then to punish them.

7 In practical terms, how does this work on a day-to-day basis and what exactly is
8 Al Hassan's role in all of this?

9 The new roles are announced publicly at meetings and surveillance and repression
10 continued day and night. Transgressors are hunted down and punished.

11 During the first weeks of April it was Abou Talha and his security battalion who was
12 the main armed wing of Ansar Dine and Al-Qaeda, but already from this stage
13 Al Hassan was already actively working with Abou Talha.

14 Then, from the end of April 2012, beginning of May 2012, Ansar Dine and al-Qaeda in
15 the Islamic Maghreb created dedicated bodies to help them impose their new diktats
16 by force and to work together to subjugate the inhabitants, starting with women.

17 These include morality brigade, the Islamic court and, above all, the Islamic police, in
18 which Al Hassan played a significant role.

19 In -- the penalties severe: in the case that the police or morality brigade were involved,
20 which you -- the Chamber said had no independence or impartiality, or when they
21 directly inflicted sanctions themselves without going through a tribunal.

22 As I said, Al Hassan was at the heart of this police system of surveillance and
23 punishment.

24 Not only was Al Hassan a member of the police force which was one of the major
25 repressive bodies responsible for forcing the population to adhere to the religion

1 promoted by Ansar Dine and Al-Qaeda, but, once again, he was an important
2 member of the Islamic police. He was never a small fish. He's a big fish, an
3 important fish.

4 The Defence has always sought to portray the police as a secondary body. However,
5 as your chamber pointed out, the police are the most visible of the institutions set up
6 by -- they implement the rules and prohibitions introduced by Ansar Dine and
7 Al-Qaeda. The police had a fundamental job, imprisonment and punishment, they
8 were their fundamental functions, as the Chamber has said.

9 So, in practice, the police were hunting down anyone who broke the new rules, was
10 patrolling, and it was referring cases to the tribunal and executing the sanctions.

11 In total, the judgment in paragraphs 586 and 1673:

12 (Speaks English) "the Islamic Police was not an accessory organ. The Islamic Police,
13 which was involved in the arrest, the detention, as well as the punishment of
14 individuals found in breach of the rules and prohibitions, was brought to intervene at
15 all relevant stages of the enforcement of the rules imposed by Ansar Dine ..."

16 It adds: "... before, during and after the victims were arrested, and/or sentenced,
17 and/or punished. As such, the Islamic Police played a pivotal role in the system of
18 repression at the heart of which lies notably the commission of the crimes of torture,
19 other inhumane acts, cruel treatment, outrages upon personal dignity, and
20 mutilation."

21 (Interpretation) And in all of this, Al Hassan, member of the police, played a role with
22 far-reaching consequences. He had a key role. And here I'm referring to the
23 judgment, paragraphs 1056 to 1086, and in particular 1063 to 1065. And,
24 furthermore, Al Hassan was a vital member of the police. It's not the Prosecution
25 that says a vital, it's the word used by the Chamber in its judgment of 26 June. For

1 example, in paragraph 1594 and 1600. "Vital" is a word that carries a lot of meaning.
2 Your Chamber found that Al Hassan began working with the Islamic police around
3 May 2012.

4 What is clear, that he completely assumed his role in the police and participation in
5 this body. If you remember a video taken on 7 November 2012, it was recorded at
6 the *gouvernorat* in Timbuktu, on the premises of the police. Al Hassan is seated at
7 the mission of the Islamic police. He looks perfectly relaxed. He's at ease, in his
8 element. And I quote his words here, translated from Arabic into English:

9 (Speaks English)

10 "[w]e do have a lot of work, [...] it involves patrols within the town, and correcting
11 objectionable acts: any type of reprehensible act which has been forbidden [...] we
12 correct, such as drinking alcohol, smoking, and a woman adorning herself, and other
13 such acts [...] In Timbuktu, only one hand has been chopped off and only one
14 murderer has been executed. And then two or three perpetrators have been flogged
15 [...]"

16 (Interpretation) Al Hassan adds, and this is meaningful: (Speaks English) "We want
17 to be overworked." (Interpretation) End of quote. So this is contemporary evidence
18 from the time.

19 Now, several things emerge from Al Hassan's words. The adherence to the new
20 rules, including those concerning women, women adorning themselves, as well as
21 the adherence to violence and the trivialisation of the use, or banalisation, prominence
22 of the use of violent methods. And a bit further in the video Al Hassan concludes
23 his remarks by laughing with his interlocutor. It's clear. It's unabashed.

24 Al Hassan subscribes to the plans of Ansar Dine and AQIM to impose their religious
25 vision on the population.

1 So, it's hardly surprising then that Al Hassan's attitude has seen him rise through
2 the ranks of police. Soon after starting out as an interpreter, he started writing
3 reports, performing administrative duties and organising the work of the police, as
4 well as being subordinate to the first two successive chiefs of police, Adama and then
5 Khaled, Al Hassan had a leadership and supervisory role in police operations.
6 The Chamber says so in the judgment and it states, among others, in paragraph 553:
7 (Speaks English) "Both Mr Al Hassan and Abou Zhar were deputies of the emir of
8 the Police. At least at some point during the relevant period, Mr Al Hassan was
9 hierarchically superior to Abou Zhar."
10 (Interpretation) And you can see soon that the portfolio of Al Hassan in the police
11 could no longer vary and reflected his competence certainly, but in terms of
12 his assiduity and its application.
13 Now, in a general way it can be said that Al Hassan was involved in everything and
14 had certain authority. He decided on disputes. He could authorise journalistic
15 activity or give, as we have seen, interviews to the media.
16 But if you would allow me to recall some previous conclusions made by your
17 Chamber on the role of Al Hassan and the punishment of the inhabitants, and to
18 recall the words of Al Hassan himself to the investigators of
19 the Office of the Prosecutor or in 2012 when he was speaking officially to al-Qaeda in
20 the Islamic Maghreb.
21 So, Al Hassan had a high degree of participation and intent concerning
22 the commission of crimes for which he was convicted. It appears that Al Hassan
23 contributed significantly to the campaign carried out by al-Qaeda in the Islamic
24 Maghreb and Ansar Dine to target the population for religious reasons. And he did
25 this through his key role in the police and his involvement in the promotion of new

1 rules and in the system of police surveillance.

2 Firstly, Al Hassan organised patrols in accordance with the instructions of the head of
3 the Islamic police. He would tell police officers where to patrol. Paragraph 1069 of
4 the judgment.

5 With regards to patrols, Al Hassan himself told ICC investigators: "I wrote down
6 the names ... I mean the names of the men: every day, guard this or that one."

7 We know the role these patrols played in controlling, monitoring and arresting
8 residents.

9 Secondly, Al Hassan sometimes took part personally in patrols. And here I would
10 refer once again to paragraph 1069 of the judgment.

11 But you will also remember the interview given by Al Hassan on 5 October 2012 at
12 the *gouvernorat*. He mentions the beginning of the occupation. And what does he
13 say?

14 He says, and I quote: "If you had come in the first few days ... we only slept an hour
15 or two. And our cars ... we filled the car with petrol ... in the morning ... and in
16 the evening ... it was already empty."

17 Al Hassan, of course, was in the field.

18 Thirdly, Al Hassan was involved in the arrest of people accused of crimes by
19 Ansar Dine and al-Qaeda in the Islamic Maghreb. And here I refer you to the case of
20 Dédéou Maiga which I will refer to later.

21 Fourthly, Al Hassan took part in the investigations and interrogations.

22 Paragraph 1073 of the judgment.

23 Interrogations were sometimes harsh. This is something that was stressed. In cases
24 involving public property, Al Hassan acknowledged that if a person did not tell the
25 truth they could be tortured. Those are his own words.

1 He also told investigators from the Office of the Prosecutor that if a person refused to
2 confess, and here I quote: "you have [to get] the truth out of them", "you have to
3 threaten them", "normal as a threat; going to do this to you, [...] we're going to torture
4 you."

5 Al Hassan adds: "If he don't admit it by threat, we have to torture him", "beating
6 the person", "striking the person".

7 The Defence tries to play this down in paragraph 16 of its submission. Which it says
8 is inaccurate. Al Hassan himself personally threatened a suspect he was
9 interrogating at the time when the police started operating at the BMS. Al Hassan
10 pulled out a knife and he told his victim to put his hand on the table and he
11 threatened to cut it off if he did not tell the truth. This is also in paragraph 1073 of
12 the judgment.

13 He organised patrols, arrests, interrogations.

14 Fifth point, he also wrote and signed police reports which were then sent to
15 the Islamic court for judgment.

16 He signed such reports, and here I would remind you, your Honour, your Honours,
17 from 23 May to 4 December 2012. And in fact, all the police reports found by
18 the OTP are drafted and signed by Al Hassan himself. And I refer in particular to
19 paragraph 343 of the judgment of 26 June.

20 One example, a police report of 16 July 2012 in an alcohol case. In this report to
21 the tribunal, Al Hassan writes that the suspect was, and I quote, "interrogated and
22 tortured, but in vain". Footnote 3688 of the judgment.

23 In this regard, I would like to point out a slight misreading or an ambiguity in
24 the Defence brief. The Defence indicates in paragraph that the Chamber would have
25 found *que la victime* (Speaks English) "was tortured outside of the police".

1 (Interpretation) That's not exactly the case. The Chamber stated that the torture was
2 carried out (Speaks English) "at a location other than the Islamic police office".

3 (Interpretation) That's not the same thing. And in this sense I also refer to
4 the footnote. And here we have to say that a quick reading can give a distorted
5 picture of what the Chamber actually said.

6 Now still on this torture case, the Defence states, and this is paragraph 36, that he was
7 a simple interpreter. And here I would say that this doesn't fit with the facts. On
8 the one hand the Defence gives no source for what they say. And, furthermore, you
9 have the report of 23 May signed by Al Hassan as an investigator.

10 And I would like to stress that, because in the Defence this is an imprecision which is
11 in the Defence submission, and there are others.

12 And not only Al Hassan wrote -- did he write reports, but my sixth point is that he
13 also made recommendations for the tribunal and he signed a police report on 19
14 June 2012 concerning an incident of debts. And the report in question recommends
15 that the Islamic tribunal is harsh, *youchadidou* in Arabic. That's the word in
16 the report drafted by Al Hassan. And that's 001 -- 0001-7546.

17 And I wouldn't be astonished with the fact that the Defence states that the police were
18 essentially dealing with social cases. That has no importance. It's not a foundation
19 that the Chamber can base itself on and it has no importance. The importance is
20 Al Hassan's role in the facts and with regards to the crimes he is accused of. And
21 he's very much aware of everything that is sent to the tribunal. In an interview
22 given on 30 October in Timbuktu, Al Hassan is questioned with regards to the type of
23 cases sent. And he replies: "for example, in the case of the marabout, charlatans ...
24 we refer those directly to the tribunal ... thieves, fornicators ... people committing
25 major sins ... and alcohol drinkers".

1 No, he's not just dealing with social facts or social cases. Patrol, arrest, interrogation,
2 reports.

3 Al Hassan was also - and this is my seventh point - he would also escort the accused
4 to court, accompanied by a chief of police or subordinate soldiers. Or sometimes he
5 would send the accused along with police officers. All of this with the police report
6 which was given to Judge Houka Houka. And one witness said that the suspects
7 could be found guilty solely on the basis of the police report written by Al Hassan.
8 It's even happened that Al Hassan testified in court to shed light on his own report.
9 Paragraph 1076 of the judgment.

10 In passing, allow me to correct a small error in the Defence's submission,
11 paragraph 34, and this is incorrect when they say that Al Hassan was released from
12 count 6 of the penalty without a prior trial. And you can refer to the footnote 4642 of
13 the judgment.

14 Patrols, arrest, interrogations, drafting reports, transporting the accused to court, it
15 doesn't stop there. Al Hassan would take the accused in and out of the courtroom.
16 And also, at the end of the day, Al Hassan or another policeman would return to
17 escort the defendants.

18 And then Al Hassan kept a very close eye on things. He would ask whether
19 the judgments had indeed been handed down. As he told
20 the Office of the Prosecutor, and here I quote: "[...] I always ask whether
21 such-and-such a judgment has been handed down and when it will be executed".
22 "Always" is the word used by Al Hassan himself. This denotes at least a proactive
23 attitude.

24 And it doesn't stop there. Al Hassan would then escort those sentenced to death to
25 the place where the sentence was to be carried out, including in the case of a death

1 sentence. He accompanied the person with the last prayer and he had a Kalashnikov
2 slung over his shoulder.

3 And, generally, he was present where public -- where public penalties were being
4 meted out. And you have, for example, Al Hassan being present, making the area
5 safe, when there was the flogging in the Place Sankoré. And this was the flogging of
6 a couple who had a child out of wedlock. One of the victims was 14 years old at the
7 time. I will come back to that.

8 And sometimes it was Al Hassan himself who inflicted the sentence, as we saw at the
9 very start of my submissions.

10 Furthermore, in the cases where sanctions were -- where sometimes there would be
11 punishments without a trial by the court, without a decision of the court, and it would
12 be -- they would be inflicted directly by the police, Al Hassan was one of the leaders
13 present during such punishments, which consisted of beating people.

14 Paragraph 585.

15 Al Hassan himself says that this was a frequent occurrence. He said to the Office of
16 the Prosecutor that sentences of 10 to 20 lashes happened all the time at the police.
17 All the time. There's no better way of putting it. Al Hassan points out that there
18 was a list drawn up and "it's written on for example ... the smoker next to it ... 10
19 lashes". End of quote.

20 Witness P-0065, who's a well-informed witness, explained that, and here I quote:

21 (Speaks English) "in all activities if the Islamic police we would see [Al Hassan]
22 present and overseeing the activities". (Interpretation) Transcript 40.

23 Al Hassan was very occupied with that. He admitted that himself, that he was very
24 busy with that.

25 So, in total, your Honour, your Honours, you will have understood that the facts

1 speak for themselves: Al Hassan is present and active as a key member of the police at
2 every stage of the process of controlling, monitoring, investigating and punishing
3 the population. A process in which the police themselves had a pivotal role. He is
4 there at every stage of the chain of police repression, which this group set up,
5 Ansar Dine and AQIM.

6 And, above all, Al Hassan is very satisfied with all of that.

7 He proudly proclaims in a video taken at the *gouvernorat* in October 2012, and here I
8 quote: "now with the rules that we have imposed ... a lot of sins have been reduced ...
9 such as adultery, [...] and other ... major sins. Things have definitely improved."

10 And he marks his high degree of satisfaction. In total, the high degree of
11 participation of Al Hassan is particularly clear in his various comments that he makes
12 which shows his agreement with and his support for the position of al-Qaeda in the
13 Islamic Maghreb and Ansar Dine, a policy following according to which that
14 the religious vision must be repressed. And he speaks positively in support of
15 the objectives of these groups and he clearly mentions his personal support and his
16 active participation in the activities of these groups.

17 At this stage a certain number of comments should be made with regards to
18 the gravity and the dozens of aggravating -- personal and aggravating circumstances
19 surrounding the crimes attributed to him.

20 Firstly, in numerical terms, the entire population of Timbuktu was targeted and
21 found itself victim. And when we say the whole population, we mean men and
22 women, old and young, adults and children.

23 Secondly, at the geographical level, the fact that it was the only town of Timbuktu --
24 the facts go beyond the town of Timbuktu, they extend to the region of Timbuktu
25 itself.

1 The Chamber noted that the police operate in the Timbuktu region, sometimes
2 leaving the city of Timbuktu to go on missions and to arrest people, for example.
3 The Chamber saw a police report written and signed by Al Hassan about a case in
4 Goundam, there's another case in Léré. That's in paragraph 71 of the judgment.
5 Thirdly, in terms of time, taking into account only the period during which Al Hassan
6 was active with Ansar Dine and al-Qaeda in the Islamic Maghreb, he was found
7 guilty, this corresponds to eight months.
8 And it's true, this is short in terms of general history of the town of Timbuktu, which
9 has existed for hundreds of thousands of years, but it has always suffered repression
10 of AQMI. If you look at the time it suffered, then this is a long time. It's
11 a significant amount of time.
12 We're not speaking about crimes committed over a few days, we are talking about an
13 entire population subjugated for a long period with no foreseeable end, no horizon,
14 no perceptible hope. During that time, Al Hassan was in the police from May 2012
15 to July 2013.
16 Fourthly, in material terms, what we have seen is that the entire way of life of
17 the Timbuktu people or aspects of their daily life, cultural, social and religious were
18 affected: Festivals, music, dance, traditional dress, traditional and religious practices,
19 and relationships between each other.
20 And here I'm referring to paragraphs 1 and 1540 of the judgment.
21 In other words, the individual and collective lives of the people of Timbuktu, the way
22 they lived together, their identity, their soul, their history, their traditions. And even
23 the town's economy, all those were severely affected.
24 And the police reports signed by Al Hassan reflect this. They touch on all these
25 aspects, possession of amulets, male/female relationships and smoking. And

1 paragraph 991, for example, in the judgment.

2 Now, if you would allow me to address a particular point with regard to women, in
3 paragraph 1570 of the judgment the Chamber writes: (Speaks English) ""specific rules
4 and prohibitions imposed on women and their enforcement had a significant impact
5 on all aspects of the life of women in Timbuktu [...]"

6 (Interpretation) Fifthly, so the facts themselves were serious. I will not be exhaustive.
7 Torture is one of the most serious crimes. Mutilation is obviously serious.
8 Persecution is serious. That goes without saying.

9 Sixthly, population of Timbuktu is defenceless. That's an aggravating circumstance.
10 They were at the mercy of Ansar Dine and AQIM.

11 Members of Ansar Dine and AQIM were showing off their weapons, I mean weapons
12 of war. Members of the Islamic police in particular were usually armed with
13 Kalashnikovs. Al Hassan sometimes himself carried a Kalashnikov, and you saw it
14 during a video.

15 For his part the -- for their population, the population had nothing but empty hands.
16 The Chamber found that the local population felt that members of Ansar Dine and
17 AQIM could do whatever they wanted to show their power and that they the
18 inhabitants had no choice but to bow to their religious vision imposed on them by
19 the force of arms.

20 Al Hassan, we are perfectly aware of this, he said, and here I quote -- and he's
21 referring to the inhabitants here. Open quote: "It's stronger than they are. There
22 was nothing they could do."

23 So, certainly, Al Hassan sometimes did favours for such-and-such people.
24 The Defence will dwell on that. But on closer inspection, these were people they
25 knew, as in the case of Witness D-0544 and his wife or for members of his tribe or

1 family. In any case it shows that Al Hassan had power. And here I'm referring to
2 our final written submissions. I'm not going to go further into those, but what is
3 certain is that Mr Al Hassan did not help all the poor victims of violence, some of
4 whom have come to testify before you. He didn't help them. He in fact was their
5 torturer.

6 If you take the women's demonstration on 6 October 2012. The women of Timbuktu
7 were protesting against multiple bans imposed on them. As a result, the Islamic
8 police fired into the care, gunfire. They were simply women marching, armed only
9 with their courage. They threw themselves to the ground. The Chamber found
10 that at least one woman was physically injured on that day. Several were taken to
11 the *gouvernorat*. Al Hassan was also there. When they were allowed to leave,
12 Al Hassan told them if they wanted to take part in another march they would be
13 punished. Did Al Hassan help the women? No, he didn't help the women.
14 So, victims were without defence. And this is my seventh point.

15 They were particularly -- some of the victims were particularly vulnerable.

16 This is, for example, the case of P-0565 who was flogged in public with a hundred
17 lashes in front of everyone on 5 June. I've already referred to her. She was only 14
18 at the time. You have to imagine the violence this represents for an adolescent girl.
19 Yes, she was particularly vulnerable.

20 And where was Al Hassan at that time? He was right there, a few metres away.

21 He was participating in securing the area and while quietly making a phone call.

22 You can see that in the video.

23 Now, Al Hassan claims that he was there on the orders of the chief of police. There's
24 nothing to prove the existence of such orders, apart from his self-serving statements.

25 Above all, Al Hassan voluntarily chose to work with Ansar Dine and al-Qaeda in the

1 Islamic Maghreb. He cannot then complain about taking orders. In any event,
2 the Chamber rejected the Defence of an order from a superior officer. And here I
3 refer to paragraphs 1782 to 1784 of the judgment.

4 Eighthly, the abuse inflicted was often extremely cruel.

5 And here I refer, among other cases, to that of Madou Traoré in January 2013, who
6 was flogged until he bled. And traces of it can be seen on his T-shirt. And, despite
7 that, he had an extreme amount of dignity, despite the lashes that were inflicted upon
8 him.

9 And there was also cruel treatment for P-0554, flogged, screaming in pain, collapsing
10 to the ground, where she continues to be beaten without any pity. So, her dress slips
11 off, exposing her chest. There's no further comment needed. The witness P-0641
12 said that this disgusted everyone and broke his heart.

13 So you have the scope, territory, victims who are particularly vulnerable, the fact that
14 there was great cruelty.

15 Ninth, another aggravating factor is the long-term effect of the trauma and the impact
16 of the acts he committed, both individually and collectively.

17 Firstly, with regards to the impact on the individual, the Chamber, for example, noted
18 the lasting painful scars on P-0554 following his flogging.

19 P-0557 described how his own public flogging had affected his relationship with his
20 friends and family and that it was very difficult.

21 But in terms of the collective impact, the Chamber noted that the population of
22 Timbuktu suffered greatly during the control of the city by Ansar Dine and al-Qaeda
23 in the Islamic Maghreb and that the physical and psychological scars of the acts
24 committed against the local population continue to this day. Indeed, we cannot
25 pretend that these particularly serious acts did not happen or had no impact.

1 So you have victims without defence, particularly vulnerable, cruelty, lasting impact.
2 My tenth point, the acts were committed with a discriminatory motive, namely
3 discrimination on religious grounds. The Timbuktu people were considered by
4 Ansar Dine and al-Qaeda in the Islamic Maghreb as bad Muslims.
5 I'm not going to repeat what the Deputy Prosecutor has already said in a perfectly
6 precise and relevant way, and a clear way, as well. For his part, Al Hassan was
7 perfectly aware of the religious motive guiding the action of Ansar Dine and al-Qaeda
8 in the Islamic Maghreb in their entire campaign against the inhabitants of Timbuktu.
9 He's comfortable with that. He even claims it.
10 In an interview dated 30 October 2012 with the *gouvernorat*, an interview that he gives,
11 Al Hassan criticises people who grew up with a secular upbringing, he calls them
12 enemies of Islam. He also states: "The law of the miscreants has been rampant in
13 Mali for 120 years. Now these 120 years are over we must here apply Islamic law
14 and defend Islamic law to the death." Obviously, when Al Hassan speaks about
15 Islamic law we have to understand that he is in fact talking about the particular
16 religious vision adopted by Ansar Dine and Al-Qaeda. Apart from that, what he
17 says speaks for itself without any context and it demonstrates his knowledge of
18 the discriminatory motives in the system in which he would navigate and participate.
19 And he participates in that in a way - and is my eleventh point - Al Hassan was
20 showing evident zeal and zealotry and this is an aggravating circumstance as well.
21 The Chamber found that Al Hassan was appreciated for his seriousness in
22 implementing the prohibitions and bans. This is in paragraph 1066 of the judgment.
23 This is no mean feat.
24 And I refer to the recital of your judgment and it's best to cite the source than
25 paraphrase it. And here I quote: (Speaks English) "Mr Al Hassan was diligent in his

1 duties and praised by his superiors and other leaders of Ansar Dine/AQIM, including
2 Abou Zeid. Members of the armed groups also praised Mr Al Hassan for being
3 tough and enforcing prohibitions. Mr Al Hassan was considered to be 'more
4 effective in putting an end [to] wrongdoing' than Al Mahdi, the then head of
5 the *Hesbah*, who was seen by some of the other members of the armed groups as too
6 lenient when addressing 'wrongdoing'."

7 (Interpretation) And like all diligent work deserves a reward, Al Hassan did so much
8 so well that he ended up, as I've already said, at the head of the police: he became
9 a commissioner, head of the police force around the time of the battle of Konna.
10 That's in paragraph 552.

11 All this doesn't square with the Defence's assertions according to which Al Hassan
12 was merely following orders that forced him to do so.

13 All of these personal factors and aggravating circumstances, based on facts and
14 testimony and your -- the conclusions of your Chamber are clear.

15 Your Honour, your Honours, I see that it's -- there's approximately nine minutes to
16 the break. Perhaps this would be a good time to stop my submissions. I can
17 continue, of course, for another nine minutes or we can take a break now.

18 PRESIDING JUDGE PROST: [10:52:19] One moment, Mr Dutertre.

19 (Trial Chamber confers)

20 PRESIDING JUDGE PROST: [10:52:31] Thank you, Mr Dutertre.

21 Given that it's an appropriate moment for a break, as you say, we'll -- we can take
22 the break at this point and we'll return at twenty past 11.

23 MR DUTERTRE: [10:52:44](Interpretation) Thank you very much, your Honour.

24 THE COURT USHER: [10:52:46] All rise.

25 (Recess taken at 10.52 a.m.)

1 (Upon resuming in open session at 11.24 a.m.)

2 THE COURT USHER: [11:24:55] All rise.

3 Please be seated.

4 PRESIDING JUDGE PROST: [11:25:14] Prosecution, I understand you're continuing.

5 I'm not sure who's speaking at this point, though. *Monsieur* Duterte?

6 MR DUTERTRE: [11:25:25](Interpretation) Yes, I shall continue on, your Honour.

7 PRESIDING JUDGE PROST: [11:25:28] Just to remind you that you have
8 approximately 30 minutes remaining at this point to finish your submissions. Thank
9 you.

10 MR DUTERTRE: [11:25:40](Interpretation) Thank you, your Honour.

11 I shall strive to meet that timing.

12 Presiding Judge, your Honours, I have sketched out in detail Al Hassan's role and his
13 different -- the different functions which he fulfilled over the course of AQIM and
14 Ansar Dine's occupation of Timbuktu.

15 I also dealt in some detail with the gravity of the offences committed and I also
16 characterised the circumstances, the aggravating circumstances to those acts, and, to
17 be very clear at this stage and to summarise things, the Prosecution has identified five
18 different circumstances: the *zèle*, the number of victims, the vulnerability, lack of
19 defence of these individuals, the particular cruelty of the acts perpetrated and to the
20 discrimination brought to bear. So the major of what I have to say deals with the
21 gravity of the issues and therefore there will be no counting in double of anything.

22 And I noticed that the Defence very kindly provided three annexes to us at one past 9
23 this morning. I would request that these be removed from the file. We are
24 supposed to be making or offering oral submissions today and not written
25 submissions; whereas, these documents have been provided at the absolute last

1 minute by way of ambush, and also it has consequences regarding the time allotted to
2 the two parties to provide their final submissions. We had clearly an allotted period
3 of time and these annexes are on top of that.

4 So I would now like to address a number of factors and circumstances which the
5 Defence will be addressing as regards attenuating circumstances.

6 Now, I would like to ensure the Chamber that I will not be exhaustive and I will only
7 spend the necessary amount of time on these matters.

8 So in this case, there are no attenuating circumstances when it comes to Mr Al Hassan,
9 and the Defence's arguments either have no basis in law or they're simply irrelevant.

10 I will take some examples, because they -- they will illustrate how the Defence is
11 making statements which are not based on any fact and may be misleading indeed to
12 the Chamber.

13 Now, I will leave to one side the matter of Mr Al Hassan's current state of health,
14 linked to COVID 19 and post -- the alleged post-traumatic syndrome due, it is alleged,
15 to his time in detention in Mali. These are things which have absolutely no link to
16 the proceedings here at the ICC. We've already explained this in detail in writing.

17 As regards the matter of Mr Al Hassan's current state of health, we would refer you to
18 the Ongwen decision on the matter and to your recent decision, number 2639.

19 So I shall focus on -- simply on the Defence's allegations regarding Mr Al Hassan's
20 alleged cooperation. It's pretty instructive I think you'll find as I proceed.

21 So first of all, the Defence refers to Mr Al Hassan's cooperation, cooperation of the
22 convicted person. Now we have examined in detail - inside and out - the
23 proceedings here before your Chamber and we see no trace of cooperation by Mr Al
24 Hassan.

25 Quite on the contrary, Mr Al Hassan has been far from cooperative with the

1 Prosecution and he has systematically stood against the proceedings. Yes, of course,
2 he did give an interview in 2017, but that was before the Pre-Trial Chamber issued an
3 arrest warrant for him in March 2018.

4 Since then, for six consecutive years, Mr Al Hassan has shown a total and persistent
5 lack of cooperation. He, therefore, objected in the strongest possible terms to his
6 2017 interview being entered into evidence before this Chamber.

7 The Prosecution has not even been able to secure a single agreed fact from him, not
8 even about the place of his birth or his profession as a pharmacist. Al Hassan even
9 denies the existence of an armed conflict in northern Mali. Now, every Malian
10 knows that there been armed conflict in Mali since 2012. All anyone has to do is...
11 We are far from the situation of Katanga who testified at length and provided details
12 under oath at his hearing -- or, at the hearing. Al Hassan can oppose everything -
13 that's his legitimate right - but we can't talk of cooperation; that would be wrong I
14 believe.

15 I'm now going to move on to the topic of remorse.

16 There is -- has been no explicit or sincere expression of remorse from Al Hassan. He
17 submitted a written statement to the Court and in it he says, and I quote:

18 "People may feel that they have been -- hurt has been done to them when they've not
19 realised that they have been hurt, but if they say that they've been hurt or suffered
20 prejudice, then they must ask for forgiveness."

21 Now, this is so general and so ambiguous. Al Hassan doesn't even mention
22 Timbuktu or the people of Timbuktu. He doesn't even mention the events of 2012.
23 He doesn't mention a single crime for which he has already been convicted by this
24 Court. He doesn't even mention the name of a single victim.

25 In short, he does not acknowledge having done harm or having committed crimes.

1 In fact, we -- there is no evidence of remorse here. And here, this is a far cry from
2 the position of Al Mahdi who was a Timbuktu local, like Al Hassan, and who was
3 prosecuted for the 2012 attack on the mausoleums and who expressed direct clear
4 regret at trial here at the ICC in 2016.

5 So, no cooperation. No remorse.

6 This brings me to the question of forgiveness or pardoning as raised by the Defence.

7 Now, the Defence refers to forgiveness, but be careful, even if someone is forgiven,
8 that doesn't mean that there should not be a punishment. One needs to distinguish
9 between morality and personal conviction on the one hand and application of the law
10 on the other.

11 In fact, retribution often precedes pardon. I believe that the victims are also asking
12 for life imprisonment in the case of Mr Al Hassan; so very clearly one has to
13 distinguish between punishment and pardon.

14 Secondly, the Defence says that the people of Timbuktu are ready to forgive those
15 who come forward to ask for forgiveness, but we're taking generalities here. There
16 are no details. It has been said that this is thought by the people there, but who does
17 this individual speak on behalf of?

18 And I would refer you again to the Ongwen case where the Chamber indicated that
19 only the Legal Representatives of the Victims can speak on their behalf.

20 Thirdly, there is no doubt that some people have certainly not forgiven. Consider
21 the case of Dédéou Maiga who was amputated in 2012 in Timbuktu. He's since died.
22 He did not forgive, and he said in a video, MLI-OTP-0001-7077 at the 20th minute,
23 there, he says: "He doesn't -- he's not worthy of forgiveness. All those people who
24 excuse him are actually accomplices."

25 So all in all, these assertions by the Defence regarding forgiveness are irrelevant when

1 it comes to sentencing.

2 The Prosecution is indeed requesting a minimum of 22 years' imprisonment. I'm not
3 going to repeat our written submissions, I shall just highlight a few points.

4 So, what is the situation now in terms of previous case law?

5 You are aware of the Semanza case at the ICTR. There, the Appeals Chamber found
6 that such a comparison may not be said -- that the decision as to the -- rather, such
7 comparison may not be of much use given that each case has its own particular
8 circumstances and that mitigating and aggravating circumstances may command
9 different results.

10 Ultimately the decision as to the length of sentence is left to the discretion of the
11 Judges; it depends on the particular circumstances of the case. So this is what we
12 read in Semanza.

13 So we must, therefore, focus on the particularly serious facts of the case and to the
14 numerous aggravating circumstances and the absence of mitigating factors and
15 circumstances.

16 Having said that I would like to draw the following justified parallels. Take the case
17 of Al Mahdi, a member of Ansar Dine and Al Qaeda in the Islamic Maghreb in 2012
18 during the occupation of the city. He too was a Timbuktu local. These are the same
19 places, the same period of time.

20 Al Mahdi was prosecuted for the attack carried over a period of 10 days against the
21 mausoleums of Timbuktu, which did not affect the physical integrity, so to speak, of
22 any individuals.

23 Mr Al Mahdi cooperated fully from the start of the investigation and throughout his
24 own trial. He pleaded guilty and he expressed a sincere remorse, and, on the basis
25 of these various factors, the relevant chamber handed down a sentence of 9 years'

1 imprisonment.

2 Now let's draw the comparison. The crimes of persecution, torture, cruel treatment,
3 outrages upon personal dignity, mutilation, other inhuman -- inhumane and
4 punishments handed down without a trial by an irregularly constituted court
5 committed by Al Hassan, these are infinitely more numerous and they affected
6 defenceless and vulnerable people, including children, women and the elderly and
7 have a lasting -- and have lasted infinitely longer over time.

8 I'm now going to refer to another case.

9 This is the Ongwen case in which the original sentence of 30 years' imprisonment was
10 reduced by a third to 20 years' imprisonment.

11 PRESIDING JUDGE PROST: [11:39:30] Excuse, Monsieur Dutertre -- (Interpretation)

12 I would like to interrupt, Mr Dutertre for a moment, we have a technical issue.

13 (Speaks English) Judge Akane does not appear to have the English interpretation
14 coming through. Perhaps someone could assist her. Thank you.

15 (Pause in proceedings)

16 THE INTERPRETER: [11:40:01] This is the English language interpreter, I hope the
17 Judge can hear --

18 PRESIDING JUDGE PROST: [11:40:07] Mr Dutertre, perhaps you could speak for
19 a moment, we'll just test this, in *français*.

20 MR DUTERTRE: [11:40:15](Interpretation) Yes, a quotation from a poet: It is
21 a matter of retaining one's dignity.

22 This is from the poetry compilation, "It is snowing during the night".

23 PRESIDING JUDGE PROST: [11:40:41](Interpretation) Thank you, Mr Dutertre. I
24 think that the problem has been resolved and we can proceed.

25 MR DUTERTRE: [11:40:51](Interpretation) Should I actually repeat a certain section?

1 From what point would you like me to pick up, your Honour?

2 PRESIDING JUDGE PROST: [11:41:00] I think that's fine, you can continue. Sorry
3 for the interruption, Mr Dutertre.

4 MR DUTERTRE: [11:41:05](Interpretation) Not at all, I'm in your hands.

5 So, aside from the Al Mahdi case where there was one charge which did not involve
6 direct harm to individuals, there's no comparison with the multitude of grave charges
7 faced by Mr Al Hassan.

8 I have also made reference to the Ongwen case where the original sentence of 30
9 years' imprisonment, which was reduced by a third to 20 years' imprisonment
10 because of the young age at which Mr Ongwen had been abducted.

11 Now in the Ongwen case, the acts constituting persecution included, as in the Al
12 Hassan case, convictions for torture and outrages upon personal dignity. In the
13 Ongwen case and the Al Hassan case, there was the aggravating circumstance of the
14 large number of victims. But in the case of Ongwen and Al Hassan, there were
15 different underlying crimes respectively. For example, attempted murder and
16 looting in the case of Ongwen, and convictions for mutilation and judgments by
17 illegally constituted courts and inhuman acts in the case of Al Hassan.

18 So there are some differences, but there were additional aggravating circumstances --
19 there are additional aggravating circumstances in the case of
20 Al Hassan and that is zeal, the defenceless nature of the victims and particularly the
21 cruelty.

22 All in all, comparing that which is more or less comparable between Ongwen and
23 Al Hassan, there is nothing which would justify going below 22 years' imprisonment
24 for the crime of persecution in this case.

25 Now at this stage I must briefly touch on three technical aspects and I'll try to get

1 through those as rapidly as possible. I'm going to be very brief, of course, but of
2 course I need to remain within my allotted time.

3 The first technical aspect was referred to by the Defence in its brief and it was related
4 to the conditions in which Mr Al Hassan was transferred to the International Criminal
5 Court. There was no violation of the Statute and there is no impact which would
6 lead to a reduction in the sentence.

7 And I refer to the filing ICC -- I shall give you the reference and numbers now.
8 You'll find it all in the document, the filing of 29 March 2018, 0112-0118.

9 I turn now to the argument raised by Al Hassan regarding the time he spent in
10 detention in Mali between April 2017 and March 2018, and that this should count
11 towards the sentence.

12 Let us be clear: the amount of time which was spent by Mr Al Hassan in Mali before
13 his transfer to the Court was unrelated to these proceedings and therefore is unrelated
14 to the sentence which you shall hand down.

15 Al Hassan was arrested by Barkhane on 21 April 2017. The Prosecution learnt of this
16 arrest through the media around May, 2017, and I refer to brief 982.

17 The Prosecution then questioned Al Hassan as a witness from 13 July 2017 onwards.

18 The first contact of the Office of the Prosecutor with the French authorities was in
19 November 2017, when we requested the interview notes -- the notes of interviews
20 made by the French authorities with Mr Al Hassan.

21 The request for an arrest warrant was filed with Pre-Trial Chamber I on 20 March
22 2018 and that arrest warrant was issued on 27 March 2018. So Barkhane did not
23 arrest Al Hassan in April 2017, further to an ICC arrest warrant, given that that arrest
24 warrant was issued almost a year later in March 2018. Also, the transfer of the case
25 from the French authorities to the Malians, and that's MLI-OTP-0069-9939 and the

1 interview notes of the Malian DGSE, that's MLI-OTP-0066-0452, notably, and this
2 shows that the French and Malian authorities were interested in Al Hassan's activities
3 with Al Mansour and Iyad Ag Ghaly after 2013-2014, and that has no link with the
4 case before you.

5 At the last minute, the Defence produced a document which she had held for almost
6 three years; that was in 2021. A document from the French ministry of the interior
7 containing some ambiguous wording. The Prosecution cannot speculate as to what
8 the author of that letter had meant by that wording, only the author could clarify that.

9 I note that the Defence has chosen not to call a witness to appear in this Court to
10 explain that document and therefore we have not had an opportunity to
11 cross-examine such an individual under oath, so we take note of how this was
12 handled.

13 So the -- Mr Al Hassan's detention in Mali has no link to the proceedings before the
14 ICC and has -- should have no link to the sentence which is issued.

15 Now just a few words regarding the composition of this Chamber and the change of --
16 or the matter of the Judges. There is no prejudice at all to Mr Al Hassan in this
17 connection; that is to say with the replacement of a Judge, no prejudice has been
18 suffered. Not even in relation to the period of detention at the ICC.

19 Now, serious offences were committed by Mr Al Hassan, that is clear from the events
20 which took place in 2012 and which he perpetrated.

21 Now let me just finish off with Dédéou Maiga. It is 16 September -- September 2012,
22 on the esplanade near the Azalai hotel. A crowd, including children, women and the
23 elderly, has been rounded up by Ansar Dine and Al Qaeda in the Islamic Maghreb.
24 That day, Timbuktu had witnessed an act of violence and cruelty unknown to them,
25 an act which has sadly become emblematic for the city; whereas in a not very distant

1 past, Timbuktu was renowned for its rich history and civilisation.

2 And here I would refer to what the Deputy Prosecutor said in opening this morning.

3 We have photographs of that sad event on 16 September 2012. You've seen them.

4 They are very prevalent and freely available in the file. A first photograph shows

5 Dédéou tied to the back of a chair by a rope around his abdomen. His ankles are

6 shackled, his head is covered by a piece of cloth - no doubt to prevent him from

7 seeing the horror that awaits him moments later so that he doesn't fight back. It's

8 revolting.

9 And a second photograph shows the scene after the amputation.

10 You can see the machete used to cut off Dédéou's right hand. There were streaks of

11 blood all along the blade. On the picture, you can also see the amputated hand on

12 one side with the splinters of bone, and, on the other side, Dédéou's bloody stump.

13 The stump is put in hot oil. It's clearly a scene of butchery. You can ascertain how

14 frightened Dédéou was.

15 Ansar Dine and Al Qaeda in the Islamic Maghreb are clearly pleased. They had

16 wanted to make an example of the people -- to the people to show their power and

17 terrorise the town. They've done it, the message is sadly clear: Ansar Dine and

18 Al Qaeda in the Islamic Maghreb will stop at nothing to impose their law. One

19 witness said that the crowd left very quickly and that the sky turned black. Another

20 said at the hearing, and I quote:

21 "Morale was shattered. There was little movement in the city. It was silent as

22 a cemetery."

23 Dédéou had been arrested for theft by two members of the Islamic police. Al Hassan

24 was one of them. Al Hassan knew full well what the punishment was. Al Hassan

25 also knew that the court that sentenced Dédéou had -- was not independent in any

1 way. In fact, Al Hassan is fully responsible for this cruelty.
2 And in the interview on 30 October 2012 at the *gouvernorat*, MLI-OTP-0069-3712, he
3 states and I quote:
4 "We applied rules on the thieves by cutting off their hands." End of quotation.
5 This is a far cry from the clemency and forgiveness that Al Hassan now claims for
6 himself.
7 Presiding Judge, your Honours, it's now a little over 10 years ago in January 2013, on
8 a day probably similar to today, that Al Qaeda and -- in the Islamic Maghreb and
9 Ansar Dine fled from Timbuktu in the face of advancing Malian troops backed by
10 French forces. Al Hassan left with AQIM and Ansar Dine. He was the last head of
11 the Islamic police and he knows why and the people of Timbuktu do too.
12 Timbuktu is liberated. Timbuktu was free, but for his part, Al Hassan continued on
13 in the same frame of mind. In 2013, in the Tigharghar mountains where AQIM and
14 Ansar Dine had taken refuge, he boasted about what he had done and about the bans,
15 prohibitions that he had applied. Paragraph 1093 of the judgment.
16 The Defence refers to other paragraphs of your judgment on Al Hassan's state of
17 mind, but is careful not to dwell on that paragraph, paragraph 1093.
18 Your Honours, a thousand generations have made up the great history of Timbuktu,
19 the pearl of the desert. Al Hassan has contributed, along with AQIM and
20 Ansar Dine, to destroying that heritage. A thousand generations to come will try to
21 repair the scars and the damage done in that dramatic episode of 2012.
22 But for the time being, this is the time for punishment, sanctions, a punishment based
23 on the need for retribution and deterrence.
24 Mr Al Hassan has made statements regarding his rehabilitation, but this is of limited
25 relevance when it comes to ascertaining what retribution and deterrence is needed. I

1 refer here to the decision in the Ntaganda case.

2 We are talking here about war crimes. We're talking here about crimes against
3 humanity with very serious consequences. We cannot pretend that nothing
4 happened. Mr Al Hassan has been responsible for abuses, violence, persecution of a
5 people and there must be a sanction, a heavy sanction for that. This is at the heart of
6 the international -- the system of the International Criminal Court and its Statute.

7 Now, the Chamber will note that the rules laid down by AQIM and Islamic Maghreb
8 and the threats and the actual violence perpetrated have been traumatising for the
9 people of Timbuktu who lived in a climate of fear. They were terrorised, and this all
10 took place with the contribution of Mr Al Hassan.

11 Mr Al Hassan was always present. He was there. At the police from May 2012 to
12 January 2013, whatever changes in command at the head of the police. He is the one
13 who ensured the day-to-day running and continuity of the police, the key body of
14 repression.

15 No matter how hard you look, you won't find anyone in AQIM and Ansar Dine who
16 was more involved throughout the occupation of Timbuktu from start to finish, and
17 who was so involved in implementing the specific religious vision of those two armed
18 groups.

19 Now, one final word - and I'm arriving at my conclusion - remember the writings of
20 Al Hassan which I quoted earlier and which have been submitted in evidence. He
21 said, and you will remember this: "Some people may feel that they have been
22 wronged, when they have not realised that they have been wronged."

23 If we understand correctly, when Dédéou was amputated, after having been arrested
24 by Al Hassan, Al Hassan does not realise that he has done any harm.

25 When P-0557, P-0565, who were minors, 14 years of age, were each beaten with 100

1 lashes in the presence of Al Hassan who was securing the scene, Al Hassan does not
2 feel he is doing any harm.

3 When three couples were given a total of 600 lashes in the presence of Al Hassan in
4 November 2012, Al Hassan never had the impression that he was harming them.

5 All in all, we have a population - local people, women, men, children - who had done
6 nothing and asked for nothing. Two groups arriving to abuse them with the
7 complicity of some locals, like Al Hassan, who acted against his own sisters, against
8 his own brother.

9 And a local prominent person said, and I quote:

10 "All the people were holed up in their houses for fear of being repressed, for fear of
11 being humiliated, for fear of being brutalised, for fear of being beaten."

12 For any organised bank robbery with weapons and hostage-taking that one might
13 find in any country, the perpetrators will receive an average of no less than 12 to 15
14 years' imprisonment in a simple national court.

15 Your Honours, in this case we are in another dimension. This is on a different scale.

16 A whole population has been taken hostage with a planned, organised, structured
17 and methodical system of repression that has been working smoothly and mercilessly
18 for months on end.

19 Al Hassan does not have the impression that he has done anything wrong. As for
20 the victims, P-0554, Madou Traoré, Dédéou Maiga, P-0565 and others, all those who
21 have appeared before this Court, clearly understood the tremendous harm done to
22 them.

23 The people of Timbuktu are exhausted. They have suffered tremendous harm.

24 You will give them justice, no more and no less, you will do so courageously and you
25 will hand down a minimum of 22 years' imprisonment, your Honours.

1 PRESIDING JUDGE PROST: [12:00:40](Interpretation) Thank you, Mr Dutertre.

2 (Speaks English) And I thank the Prosecution for their submissions and for staying
3 rightly within their time frame.

4 I turn now to the Legal Representatives of Victims.

5 Mr Nsita, you have the floor. I remind you that for your submissions, you have
6 30 minutes to be divided as you see fit.

7 MR LUVENGIKA: [12:01:23](Interpretation) Yes, thank you, Judge, thank you for
8 offering me the floor. And I would also like to thank you for the reminder that
9 you've just given us regarding the time which has been allotted to us.

10 But I will ask the Court to be indulgent and to check with my colleague, Mr Kassongo,
11 who is attending remotely, whether he can indeed hear us at this point in time and
12 whether he can indeed take the floor, because that will be necessary.

13 He, too, will speak as a member of our team.

14 I'm not sure if it's the court officer who might want to check that, but I'd like to
15 ascertain whether Mr Kassongo is in a position to speak, whether his microphone is
16 working. Thank you.

17 PRESIDING JUDGE PROST: [12:02:17] I see that the court officer is checking
18 whether that's possible. But I don't want to lose a lot of time with this, Monsieur
19 Nsita; so hopefully we can clarify this quickly.

20 (Pause in proceedings)

21 MR KASSONGO: [12:02:37](Interpretation) Yes, I can hear you.

22 PRESIDING JUDGE PROST: [12:02:48] It appears he can hear.

23 So let's proceed, Monsieur Nsita.

24 MR LUVENGIKA: [12:02:53](Interpretation) Yes, thank you, your Honour.

25 I just have two brief comments in light of the limited time allocated to us by the

1 Chamber, and then Mr Kassongo, who had just spoken up, shall speak in turn, and
2 Mr Seydou Doumbia shall close as regards the observations of the Legal
3 Representatives of the Victims at this hearing.

4 Now, the Prosecution's presentation this morning put forward or presented a factor
5 which is key to our approach on behalf of the Legal Representatives of Victims when
6 it comes to the -- what we are presenting to you today.

7 As regards -- aside from the individual harm suffered by the individuals, there's also
8 a collective aspect when it comes to the harm suffered as regards the crimes suffered.

9 The Prosecutor was using the term "abuse in Timbuktu" and the disdain for the
10 culture in Timbuktu, a population which was entirely terrorised -- women, girls, who
11 were particularly targeted.

12 Now this collective aspect of harm presents several different aspects. The
13 population of Timbuktu -- the entire population, first of all, and then there was the
14 group, including women, and the fact of their condition and -- as women.

15 And then among these women, there were those who were in circumstances -- or in
16 circumstances that was felt to justify the repression that was set up, either due to their
17 arrest for not having respected the new rules or because of other issues. They
18 represented for these people, they were used for forced marriage or for a series of
19 other motives which are still felt as a profound source of injustice. Because as the
20 Prosecutor recalled, the judgment specified that the -- there were specific prohibitions
21 and bans which were put on women and they were impacted and that impact was
22 negative on all aspects of the life of the women in Timbuktu.

23 And beyond the public observations and submissions that we have made here, I
24 would like to express the concerns of the victims with regards to the aspects that I
25 have just mentioned, and I would like to be as faithful as possible to the meetings that

1 we've had, although -- albeit limited, due to the deadlines imposed by the Chamber.
2 Now, we went to our clients towards the end of July in order to inform them of the
3 content of the judgment and the follow-up of the proceedings and to collect their
4 concerns with regards to the sentence. And during these meetings, we heard mainly
5 from women who, in various ways, still bear the scars of what happened and who
6 struggle every day to provide for their families.
7 A significant number of the participating victims were women. They expressed their
8 astonishment, their sadness and even their anger at the fact that all the charges
9 relating to gender crimes had been dropped, because despite the findings of the
10 Chamber and of a certain majority, none of the crimes specifically targeting women
11 had resulted in conviction. Not even gender-based persecution.
12 We have also heard from many displaced persons who are struggling to provide
13 education or indeed simply decent living conditions for their children in an attempt to
14 recover from their forced exile.
15 At each meeting, we heard from people who thirst for justice, just justice that actually
16 takes into account the key role played by Mr Al Hassan in the commission of crimes
17 during the occupation of Timbuktu from April 2012 to January 2013.
18 We were struck by how incredulous the victims were to learn of the gap between
19 what they felt they had contributed to the process of establishing the truth and what
20 had resulted in the judgment. Their feeling of incomprehension is considerable and
21 should be relayed to you as it reverberates in the victims' views of what here would
22 constitute a just sentence.
23 And as we pointed out in our submissions, indeed the victims with regards to their
24 experience consider that the sentence of life is the sentence which would be required.
25 But taking into account all the treatment beyond the analysis of what was made of the

1 Judges, they asked themselves the question: what can the just sentence be? How can
2 the victims receive -- how can there be a fair sentence for the victims when there were
3 complex aspects in the trial, which they were asked to put their trust in - and they
4 accepted to participate and it led to an acquittal - with regards to traumatic crimes?
5 Of course, acquittal is one of the possible outcomes of any criminal trial and the
6 victims have been informed -- the issue -- of the issues at stake in this trial and how
7 proof is established. However, this case is a very particular case and it is -- the
8 challenge, for example, is not in proving the crimes were committed and that the
9 convicted person was responsible for them. None of this is being challenged. But
10 rather there is a series of procedural contortions which have devastating effect for the
11 victims. Not even the convictions for torture or persecution on religious grounds
12 can assuage their amazement at the judgment.

13 And it is in this context that the victims' reflections on the sentencing have necessarily
14 been hijacked by a profound sense of injustice -- even betrayal.

15 Presiding Judge, your Honours, the second point that I would like to address is that
16 of apologies -- or, more precisely, the request for forgiveness. We have heard at
17 length the Prosecutor -- and we subscribe to everything that the Prosecutor said in
18 this regard and, of course, we share the concerns of the victims. Exchanges with the
19 victims have shown that there's a distinction which is explicit or implicit between the
20 position to adopt in the face of a convicted criminal who simply requests forgiveness
21 and one who also admits doing wrong.

22 If Mr Al Hassan sincerely intends to request to be pardoned - as he says he does -
23 without addressing the reasons for his actions that he carried out, the victims will
24 continue to question the sincerity of the apology and compare it with the fact that
25 Mr Ahmad Al Faqi Al Mahdi, for example, that his situation was different.

1 For a number of the victims represented, discussing the sentence led them to try to
2 understand why beyond presenting a request for forgiveness in -- there was no
3 admission, there was no admission of the nature of his conduct or an expression of
4 remorse for the wrong that was done.

5 These musings by the victims are all the more legitimate given the fact that the person
6 convicted himself has said that he was aware of taking actions that violated sharia
7 and that therefore, he must have been aware that these acts were unlawful. Of
8 course, any request for forgiveness will have to be the subject of more in-depth
9 discussions with the victims.

10 But at this stage, two points are highlighted by them: any request for forgiveness can
11 only be accepted if responsibility has been established; if the Judges have said what
12 crimes were committed and if a just sentence has been handed down.

13 And here, I refer back to my first point, and, consequently, this is my second and final
14 point. The victims believe that at this stage, the sentence should be determined
15 independently of the attitude or commitments however sincere of the convicted
16 person to forgive.

17 Madam President, Madam Judge, your Honour, when you make your decision under
18 Article 76 of the Rome Statute and decide on the applicable sentence in this case, the
19 victims ask you to take particular account of the scale of the damage which concerns
20 the population of a town.

21 The Prosecutor has ceaselessly repeated the impact that it had on the town of
22 Timbuktu and this act of occupation of Timbuktu, and to take into account the fact
23 that this is a population of a town as a whole, and whose consequences will not stop
24 with the generation that has lived through the events.

25 I would like to stress this point and I thank you.

1 I will now give the floor over to Maître Kassongo to continue with the observations.

2 PRESIDING JUDGE PROST: [12:14:57](Interpretation) Thank you, Mr Nsita.

3 Mr Kassongo.

4 MR KASSONGO: [12:15:11](Interpretation) Yes, thank you. Thank you very much.

5 Thank you to Mr Nsita.

6 I would like to take this opportunity first of all to thank the Chamber to have given us

7 the floor and above all, I wish to extend my greetings to the Presiding Judge and the

8 other Judges of this Chamber as well as the representatives of the parties and

9 participants.

10 I shall speak for a shorter period of time. I shall be making three points. First of all,

11 providing additional information to supplement what Mr Nsita said. He has given

12 information about how we have proceeded in framing the observations and views of

13 the victims. I shall be summarising the steps which we have taken and I shall also be

14 further underlining --

15 THE INTERPRETER: [12:16:31] Inaudible. The speaker is breaking up.

16 MR KASSONGO: [12:16:34](Interpretation) I want to relate to you that the victims

17 wish to see a heavy sentence handed down. First of all, why were the steps which

18 we took necessary?

19 Well, simply because we wanted to be able to relay to you the concerns of the victims

20 at this stage of the proceedings.

21 We visited the victims - myself with Mr Nsita and Mr Doumbia - to visit the victims

22 who were located in three different countries. We brought together the victims at

23 the three country point where the borders meet. There was one group which

24 constituted the women. We put a question to them, which I shall now relay to you,

25 and we heard their responses and then we had another group who was -- where we

1 put the same matters to separately.

2 THE INTERPRETER: [12:17:58] Inaudible.

3 MR KASSONGO: [12:18:00](Interpretation) ...teenagers and children and political
4 players. Our question was: what are your expectations of the Chamber when it
5 comes to sentencing?

6 Do you want a very heavy sentence? A moderate sentence or a light sentence?

7 Without going into the details, the victims and the women's group were a lot more
8 severe in their views. I think that that represented their state of mind. They felt
9 that the sentence should not be lower than the maximum.

10 The women that we spoke with referred to the gravity of the harm done in Timbuktu.

11 Those who had not been subjected by the -- subjected to the same acts did not share
12 the same degree of shock.

13 THE INTERPRETER: [12:19:22] Interpretation by the interpreter. Inaudible.

14 PRESIDING JUDGE PROST: [12:19:40] It seems we've -- we seem to have lost the
15 signal or at least there is some technical problem, Mr Registrar.

16 It appears that there is a technical issue on the other end of the communication.

17 Mr Nsita, perhaps we should proceed to Mr Doumbia's submissions and then see if
18 there's anything final from Mr Kassongo, if we have sufficient time. That's what I
19 would propose.

20 MR LUVENGIKA: [12:20:31](Interpretation) Yes, indeed, I was thinking the exact
21 same, your Honour. Let us proceed in that way.

22 Mr Doumbia, if you are ready, please do take the floor now.

23 PRESIDING JUDGE PROST: [12:20:57] Mr Doumbia, can you hear us and are you
24 able to make your intervention, please?

25 MR DOUMBIA: [12:21:06](Interpretation) Yes, I can hear you perfectly.

1 Good afternoon, your Honour, your Honours.

2 I am in the field and I would like to share some echoes coming from the field relating
3 to the victims that we met over the last days. The words we have gathered from
4 several victims - I would say approximately a dozen of them - they summarise to
5 a certain degree the victim -- what the victims feel who participated in the
6 proceedings, and they refer their great hopes to the Judges with regards to the final
7 outcome of this trial.

8 The first victim who gives their heartfelt plea in the following way, she says:

9 "With regards to the gravity of the case, Al Hassan deserves to stay in prison for
10 a long time still so that he may reflect on what he's done to the population of
11 Timbuktu. If today he -- if he doesn't ask sincerely for pardon, then he will stay in
12 prison for the rest of his life."

13 A second victim expresses the profound hopes they have, she says:

14 "There are always armed groups -- Ansar Dine, who are still terrorising people in the
15 north of Mali. We know what's happening in Timbuktu via intermediaries, our
16 relatives who have stayed there. From the information that we have gathered, the
17 population of Timbuktu is still not ready to pardon Al Hassan. The population
18 remains -- is still in misery, poverty, because of this painful past. These people have
19 been destroyed. Devastated. The population risks rising up, seeing them come to
20 Timbuktu. They could be resigned if they are prevented from reacting, but they will
21 not pardon ever. They will not forgive ever."

22 A third victim said the following:

23 "I think that he has to be kept for the amount of time until he's no longer able to -- to
24 take up the acts again which he's in prison for. If not, the relatives, who are still in
25 place, will continue to suffer from his misdeeds. In all cases, certain injustices -- it is

1 the case that justice must decide what is necessary for him. He must be sanctioned
2 in terms of the gravity of the acts he has committed, the impact of the acts that he
3 committed with regard to the victims who must receive reparations."

4 And a fourth victim states the following:

5 "For me, he must spend the rest of his life in prison because the real problems that he
6 caused are still there. We are suffering from the same problems, so the time that he's
7 already spent in prison is not sufficient. The misdeeds of these people, their crimes,
8 are extended everywhere and they must repair the harm that they have done.

9 A human being just cannot get up one morning and persecute an entire population,
10 mutilate people, flog them, rape them and think that just a few years are enough
11 afterwards. For those who have suffered harm must obtain just reparations, those
12 who have been harmed."

13 And a fifth person said:

14 "We're not ready to forgive. He must spend the rest of his life in prison. That
15 would not bother us at all. They've taken away everything that we held most
16 great -- our dignity, our honour, our goods, our animals.

17 The stigmatisation of women who are victims of rape and other sexual violence
18 continues, and the children who are born out of these forced marriages are treated as
19 if they were rebels. Some of our brothers have disappeared since 2013. We don't
20 know if they're alive or not."

21 Another victim states:

22 "If Al Hassan went to the north today, the population would not pardon him and,
23 particularly, because he was acquitted of certain charges. A few charges do not
24 make it possible to whitewash his criminal acts that he caused."

25 Another victim states to us:

1 "We cannot forget what he did. The reason why we cannot forgive and neither can
2 our children if he comes to us, we cannot bear him. What Al Hassan did is not
3 comparable with what others did to us."

4 Another victim shared with us the following:

5 "To this very day, the armed groups, Ansar Dine and AQIM, are still there. They are
6 still there. But they are just more dispersed. I left Timbuktu the day before
7 yesterday, once I returned -- they could be eliminated and members of -- they could
8 be eliminated by members of the Ansar Dine group. There's a lot of secrets of these
9 jihadists. Today, the evidence is that the group of jihadists are trying to kill people
10 and what Al Hassan deserves is to stay in prison because he made us suffer a lot."

11 Another victim states:

12 "I'm sorry to put it like this, but the Red Cross never pardon -- but the red skins never
13 pardon. Even if Al Hassan is liberated, he is banned from Timbuktu, he will always
14 be there."

15 THE INTERPRETER: [12:31:11] Inaudible.

16 MR DOUMBIA: [12:31:14](Interpretation) "Members of his group who will still be in
17 Timbuktu, but he will always have his radar, his roots, the members of his group who
18 will still be in place. He's a leader, and if he returns tomorrow, he will have
19 followers who are ready to follow him and he can still build up the same group
20 around him. He still has influence among the population."

21 There's another victim who says:

22 "When your father was killed by a serpent, you are scared of a black rope. Even if
23 Al Hassan is allowed among the population who -- everybody will be at -- will be
24 uneasy because of vengeance and desolation."

25 THE INTERPRETER: [12:32:23] Inaudible.

1 MR DOUMBIA: [12:32:25](Interpretation) "Because the harm has already been
2 done."

3 So what will be the result of this case? The population can never forget what has
4 been done to their own property and, for his own good, it's best that he stays in
5 prison.

6 Your Honour, honourable Judges, I had to share these few words quoting directly the
7 victims in order to illustrate the extent to which the pain is still very much present
8 among the Timbuktu population. And not only them, a lot of people are not in
9 Timbuktu, but they still have the same feeling. They are living the effects of the past.
10 Their only concern today, as one of the victims stated, is never ever to meet Al Hassan
11 across their path again, because a victim said, "If, in the future, Al Hassan had to be in
12 Timbuktu, then I would ask justice to go and live elsewhere."

13 Your Honour --

14 PRESIDING JUDGE PROST: [12:33:48] I'm sorry to interrupt you, but your time is
15 up, so please bring your submissions to a conclusion. Thank you.

16 MR DOUMBIA: [12:33:59](Interpretation) Yes, I'm just going to finish and this was
17 the final sentence that I wanted to say.

18 I would just say to you that the feeling of the population today is that they have their
19 hopes in justice, they believe in it firmly and they believe that justice will be rendered.
20 Thank you, your Honour.

21 PRESIDING JUDGE PROST: [12:34:25] Thank you very much for your submissions.
22 I'm sorry the technical problems continue to exist with Mr Kassongo, and, in any
23 event, the time frame has been exceeded, but I thank the Legal Representatives for the
24 Victims for the submissions that have been provided to the Chamber. Thank you
25 very much.

1 I turn now to the Defence.

2 Ms Taylor, you can commence your submissions and, of course, as with the others,
3 you're free to divide the submissions up as you see fit and including those which we
4 have authorised specifically. Thank you. You have the floor.

5 MS TAYLOR: [12:35:08] Thank you very much, Madam President. And if it would
6 assist, we would have no objection to the submissions of Maître Kassongo being filed
7 so that they are not prejudiced through technical errors, if that's of any assistance.

8 PRESIDING JUDGE PROST: [12:35:22] Thank you, Ms Taylor.

9 MS TAYLOR: [12:35:24] Madam President, your Honours, in 2012, Al Hassan was
10 not a politician. He was not a soldier. He did not choose a life of conflict. He did
11 not choose to bear the heavy responsibilities of fatherhood in a dark and difficult
12 time.

13 He has now been convicted for the choices he made and he has in turn sought the
14 forgiveness of the persons he harmed, the people in Timbuktu for those choices, and
15 we are standing before you speaking on his behalf to ask that you exercise your
16 discretion fairly and humanely.

17 In so doing I will address you in relation to the difficult context in which Mr Al
18 Hassan's conduct occurred and I will explain how that shaped and constrained his
19 choices.

20 I will further explain why the assistance he rendered to the people of Timbuktu
21 warrants lenience. A reduced sentence is also proportionate to the reduced nature of
22 his knowledge and contributions.

23 Maître Beaulieu Lussier will address the relevance of Mr Al Hassan's personal
24 circumstances to the Chamber's duty to craft a sentence that is proportionate in light
25 of the totality of his circumstances.

1 Maître Sethi will address the specific arguments raised by the Prosecution and
2 victims' counsel concerning gravity and aggravating circumstances.

3 And I would like to draw your attention to the fact that we did indeed submit a table
4 of authorities. Annex A is a list of legal authorities and evidential citations that will
5 be referred to by myself and my two colleagues. Annex B refers to the Prosecution's
6 submissions and then cross-references to the trial judgment's headings which are
7 colour coded. This is an operation that the Chamber will be required to do. They
8 will be required to assess whether there's double counting, and given the interests of
9 a speedy judgment, we have effectively performed that for you if it's of assistance.

10 Annex C lists the specific paragraphs in the Prosecution's submissions, which rely on
11 findings for which Mr Al Hassan was in fact acquitted. And we brought this to the
12 attention of the Prosecutor last Wednesday, and asked them to file a corrigendum and,
13 in the absence of one, I will address this in my submissions.

14 PRESIDING JUDGE PROST: [12:38:04] Ms Taylor, if I could just -- on that issue, this
15 material was not authorised by the Chamber to be filed. It's not a concept known in
16 the submissions before the Court. You are free to refer to this material, but
17 understand that the Chamber is not taking this into account as filed submissions or --
18 either written or oral.

19 So you make use of it as you wish, but it is not material that is in front of the Chamber
20 as submissions that have been presented in accordance with the directions of the
21 Chamber.

22 But feel free, I don't want to interrupt your submissions. Please proceed, you can
23 make the references as you wish, but that's the position of the Chamber.

24 So please proceed with your submissions, your oral submissions.

25 MS TAYLOR: [12:38:50] Thank you, Madam President.

1 Now, Mr Al Hassan was acquitted of half the charges and over half the charged
2 incidents in this the case, but although he was acquitted of gender persecution, rape
3 and forced marriage, the Prosecution and the victims' submissions are still predicated
4 on the harm caused by those crimes.

5 And they have asked him to be sentenced and punished for crimes for which he was
6 found innocent. Now we have listed that for you in Annex C, a snapshot, but
7 obviously you are a free to go through that in more detail to see the extent to which
8 both today and last week, their sentence is predicated on an acquittal. And they
9 have ignored these acquittals because their submissions have targeted the groups
10 Ansar Dine and Al Qaeda, not Al Hassan.

11 But today in this courtroom, the role of the Chamber is not to punish Al Qaeda or
12 Ansar Dine, nor is it to punish sharia. Your role is to determine the limits of a fair
13 and just sentence for Mr Al Hassan. And when you enter a conviction, you assess
14 conduct. But when you enter a sentence, you have to consider the man behind that
15 conduct, the man sitting behind me: a father, a husband, a torture survivor.

16 And when you assess his conduct, I would like you to bear in mind the following.

17 In the region of Brabant, the Netherlands, there is a statue erected in honour of a
18 German called Karl Heinz. He was an 18-year-old conscript stationed in occupied
19 Netherlands. When the village he was stationed in came under shelling, he rescued
20 two Dutch children, he brought them to their mother in the cellar, and then when he
21 emerged he, in turn, was killed by a shell.

22 On the plaque is a tribute, it honours all those who do good in evil times. And the
23 plaque does not honour this individual because he was a good person. Nor does it
24 assert that everything he did was good. What it honours is in that split second when
25 he heard the sound of shells, instead of running to protect himself, he stayed and

1 protected others. In a difficult and dark situation, he made things better by staying
2 and doing an act of good.

3 As armchair historians or lawyers in The Hague, it's easy to speculate about what one
4 could do or should do when faced with moral and legal conundrums faced by people
5 in dark and difficult times. But as Judges tasked with the heavy role of punishment
6 and sentence, your role requires you to put yourself into the shoes of Mr Al Hassan to
7 see things through his eyes. And while you have found Mr Al Hassan culpable of
8 these crimes, we ask you to grant him lenience for his efforts to do acts of good, to
9 achieve restraint through his role in dark and difficult times which he played no role
10 in bringing about.

11 In 2012, he was a married man with a baby boy, a daughter on the way. As the elder
12 son, he was responsible for his elderly parents and his family as a whole. His father,
13 a former veterinarian, was retired. That's at T-94, page 40.

14 The Trial Chamber recognised in its judgment that Mr Al Hassan may have genuinely
15 faced a danger from the Malian army, and this was based on their findings at
16 paragraph 411. So let's look closely at the nature of this risk.

17 D-605, a young Tuareg, was threatened with death when he was in Bamako.

18 Incidentally, D-534, also stationed in Bamako, was also threatened with death.

19 D-240 gave evidence that the routes between Bamako and the north were very
20 dangerous because they were controlled by the Malian army. Fleeing to Bamako was
21 not an option for Mr Al Hassan and his family.

22 The Chamber also heard evidence from D-540 concerning how difficult it was to flee
23 to Mauritania. He tried, he had to give up because it was too arduous for his aunt.

24 D-211's parents did flee to Mauritania and they had to do so riding donkeys. It took
25 them a long time, and when they arrived, they had to sleep under trees in the open air.

1 Drinking water was scarce and very expensive and there was no medicine.
2 The Chamber also heard from Prosecution witness 1086 who gave evidence that the
3 two Tuaregs in his convoy were brutally killed en route to Mauritania.
4 Now if you put yourself in his shoes, if you had a pregnant wife, a young son, and
5 very little means and money, would you risk taking that route only to end up in
6 a camp sleeping in open air under such conditions?
7 So Mr Al Hassan stayed in Mali. So what was his supposed to do to survive? His
8 pharmacy shut down, and the situation of insecurity had cut his supply of medicines.
9 The situation in Zohro was austere and there was not much there as testified D-627,
10 D-803 and D-243.
11 Mr Al Hassan had to travel to and from Timbuktu to get necessary supplies as there
12 was no employment in Zohro itself.
13 When the groups first arrived in Timbuktu, Al Hassan went to the MNLA. He went
14 to the airport to try to find work, but they didn't want him because he didn't have
15 a weapon. They sent him back to Timbuktu.
16 And at this point, he only had 200,000 CFA to his name; that's a total of around €300,
17 which he was hoping to save to use to escape with his family. This is in his
18 statement.
19 He, therefore, tried to make money selling light weapons to local Arab traders;
20 obviously not a good idea. When doing so, his cousin, who was already working
21 with the Islamists, told Al Hassan that he had to come with him to military camp to
22 meet the leaders of Ansar Dine. "*Tu dois partir avec moi*" is what he was told.
23 There, he was brought before Ansar Dine leaders who convinced him of the
24 obligation -- the necessity of working with the group. And even then, his first
25 instinct was to seek to work for the hospital. To use his medical skills to help people.

1 And his request to do so was rejected. He was brought directly to the police by
2 Sheikh Abdallah, where he was told that he would work as an interpreter because of
3 his language skills.
4 Al Hassan ended up at the police, after first exhausting at least three other
5 alternatives and after having been convinced of the obligation of accepting this work.
6 This is not the trajectory of a zealot. This is a path of desperation.
7 In its judgment, the Chamber referred to two examples of persons who were asked to
8 work for Ansar Dine and refused. This is P-557 and P-638. But after turning down
9 this offer, P-557 left Timbuktu, leaving his wife and child behind him.
10 P-638, who was young and single, fled to Mauritania several times, including with the
11 help of a westerner with means.
12 Al Hassan's reluctance to do the same, to leave his pregnant wife, infant son and
13 elderly parents, it warrants your lenience, your understanding. Not a heavy
14 sentence.
15 The Chamber also found that Mr Al Hassan's explanation of the context in which he
16 joined Ansar Dine was consistent with the evidence of close associates who knew him
17 at the time.
18 So what do these associates say?
19 D-211 confirmed that there were no other jobs available for people who did not have
20 pre-existing work or business. It was also not possible for a Tuareg to stay in
21 Timbuktu without being either associated or protected by one of the groups.
22 D-211 further testified that Al Hassan told him that Ansar Dine was the most
23 powerful force present, and he then said:
24 "Half the people in the city are foreigners and not from the local population. And
25 that if we, the local population, stay out of Ansar Dine, we would wind up being

1 unable to defend our neighbours, our acquaintances and our brothers."

2 It was not religion, it was not money, it was not hatred, but love for his neighbours,
3 acquaintances, the locals who were his brothers, who needed his protection; that's
4 what drove Al Hassan to join Ansar Dine.

5 Similarly, according to D-[2]43:

6 "Hassan told me that one of the reasons he joined Ansar Dine was to protect his
7 family and to protect the people in Timbuktu. And it was because of him that
8 people were able to stay in Timbuktu at this time."

9 And both D-243 and D-272 further testified that Mr Al Hassan's protection extended
10 beyond the Kel Ansar tribe, or indeed Tuaregs, to many locals of different ethnicities.

11 So, yes, when Al Hassan hit a wall regarding options to protect his family, he was
12 convinced of the necessity of working with Ansar Dine, but he used his position to
13 help the local population.

14 In our written submissions, we cite several examples where Mr Al Hassan used his
15 position to help the population in a non-discriminatory manner, and this attitude of
16 lenience and good deeds was not restricted to Mr Al Hassan's own actions. He also
17 used his position to counsel others to do the same.

18 P-582 confirmed this. At footnote 2668 of the judgment, the Chamber cites his
19 evidence that Al Hassan counselled him to interpret in a manner that favoured the
20 local population.

21 P-582 also gave evidence that Al Hassan reprimanded a police officer called Bilal who
22 had fired his weapon near a local. Bilal was disciplined for this and then left and
23 joined MUJAO. D-605 also testified that Al Hassan advised him to always use
24 restraint and calm with the local population.

25 Along with Sanda, Al Hassan assisted in bringing a police officer who raped a local

1 woman to justice.

2 This context should inform the way the Chamber assesses P-150's self-serving
3 evidence that the leaders were happy with Al Hassan and praised Al Hassan because
4 he was strict in comparison to Al Mahdi.

5 Now, we have no date for this conversation between P-150 and the leaders and we
6 have no examples of conduct that this supposedly refers to. But we do know that,
7 first, Al Hassan was strict. He was strict on members of the police whose actions
8 threatened to harm the local population.

9 Second, we know that the leaders of Ansar Dine and AQMI favoured maintaining
10 respectful and peaceful relationships with the local population as you found in
11 footnotes 1252 and para 466.

12 So the only reasonable interpretation of the sentiment that the leaders were pleased
13 with Al Hassan is that this was because he helped them to reign in and restrain
14 anyone who seemed likely to harm the local population. And he also did so by
15 resolving disputes in a peaceful manner, as you found.

16 Similarly, the Trial Chamber can place no weight on Prosecution submissions
17 concerning Mr Al Hassan possessing or bearing a weapon. There was only one
18 instance where the Chamber found that Mr Al Hassan had a weapon. This was the
19 execution of Musa which is not a charged crime.

20 And this one example cannot be used to extrapolate a broader finding for the
21 purposes of ascertaining his sentence for the charged crimes. You have the videos,
22 you've seen the punishments for which Mr Al Hassan was convicted and you can see
23 that he did not have a weapon at those crimes.

24 The circumstances of Musa are also completely apposite to the crimes for which Mr
25 Al Hassan was convicted. Musa was a member of Ansar Dine, not a civilian. He

1 accepted to be judged in accordance with sharia.

2 Al Hassan even asked Musa, "Why not flee?" And Musa's response was that he
3 could flee from humans but not from God.

4 And that's in Mr Al Hassan's interview records with the Prosecutor.

5 Musa was not a flight risk and Al Hassan knew that. Musa was his friend and
6 Al Hassan was there to support him having failed to save him. Al Hassan's nudges,
7 his prods in the direction of lenience did not always succeed. His efforts to save
8 Musa from execution did not succeed. The Islamic tribunal did not accept the
9 allegation in the police report that a particular victim had been raped by
10 her step-brother.

11 But he tried, and he did so at risk to himself.

12 In a sermon, Koutaiba, the chief religious leader of AQIM, warned that once the
13 police or *Hesbah* receive a complaint of adultery, theft or drunkenness, it was
14 forbidden to interfere with the process in any way inconsistent with God's will. Any
15 attempt to do so would be cursed by Allah.

16 The evidence shows that while Al Hassan did what he could to help the local
17 population through subtle interpretations and prods in the way of lenience, he also
18 felt constrained from open defiance.

19 When Al Hassan told the Prosecution that the people were scared of the punishments,
20 there was nothing he could do, he was also referring to himself. This constraint, this
21 fear of retaliation is reflected in the way he reacted to the arrest of his uncle who was
22 caught stealing weapons from Ansar Dine.

23 When the Prosecutor asked Al Hassan about this incident, they also inquired whether
24 the arrest happened before or after the flogging of Hussein Ould Badi. Like Al
25 Hassan's uncle, Hussein Ould Badi was also a member of the group that had broken

1 the rules. Al Hassan told the Prosecutor that it was afterwards and that was why
2 Al Hassan was scared. Al Hassan was scared, scared what would happen if he, as
3 a member of the group or his uncle or anyone else broke the rules. And this is in his
4 interview records.

5 So even with his uncle, a close relative, Al Hassan did what he could to help, not by
6 resisting, not by defying, but by participating. Specifically, Al Hassan asked the
7 emir of the police if Al Hassan could be the one to arrest his uncle to ensure that his
8 uncle would not be beaten. Ultimately, it was his cousin, not Al Hassan, who was
9 able to achieve his uncle's pardon, as Al Hassan himself could not.

10 And that was Al Hassan's modus operandi. He used his presence, he used his
11 participation to achieve protection, lenience and restraint, and this, your Honours,
12 deserves lenience and restraint in turn.

13 Now, the reason why I am focusing on this context is because the context necessarily
14 informs your sentence. Typically, individuals who collaborate under difficult
15 circumstances and pressures are treated with lenience, particularly if they use their
16 position to help when and where they can.

17 And in your judgment, you recognised that Al Hassan was someone who tried to
18 help in difficult times; at paragraph 1070.

19 And this finding extended beyond the members of his tribe, beyond his friends. You
20 found that it extended to locals who simply knew him.

21 Madam President, your Honours, true deterrence is achieved by targeting the drivers
22 of the occupation, not individuals swept up by its wake who are simply doing their
23 best to keep their head above water by trying to help others to do the same.

24 This precept has shaped sentencing practices concerning locals who accept similar
25 functionary positions in difficult times.

1 After World War II, Israel started prosecuting Jewish collaborators. There were
2 about 40 such prosecutions. The average sentence was 17 months. The highest, 10
3 years for Joseph Pal, who was convicted for persecution entailing numerous acts of
4 physical violence.

5 In these cases, the defendants were tried by the community which had suffered,
6 which understood the context in which the defendants acted. And this framework
7 was articulated by the Supreme Court in the Berenblat case, and they said:

8 "Men take care of themselves and their families, and the prohibitions of the criminal
9 law, [...]" they "were not written for exceptional heroes but for [the] ordinary mortals
10 with [ordinary] weaknesses."

11 The high court council of Timbuktu and D-553 have asked the same thing of this
12 bench. They are asking you to see things from their perspective. Al Hassan was
13 not one of the directors of the group. He was not with them when they came in on 1
14 or 2 April, when they installed their system. He was a local, but like many others,
15 was swept up in its wake.

16 Madam President, it's 1 o'clock, is a good time to break for the lunch.

17 PRESIDING JUDGE PROST: [12:59:16] Yes, thank you, Ms Taylor. I was hoping
18 for an appropriate pause.

19 So we will -- the Chamber will adjourn at this point until 2 p.m., so we're taking
20 a shortened break to ensure that we can finish within the time frames today.

21 So we will adjourn till 2 p.m.

22 THE COURT USHER: [12:59:38] All rise.

23 (Recess taken at 12.59 p.m.)

24 (Upon resuming in open session at 2.00 p.m.)

25 THE COURT USHER: [14:00:40] All rise.

1 Please be seated.

2 PRESIDING JUDGE PROST: [14:01:05] Good afternoon, everyone.

3 Ms Taylor, you have the floor again for continuation of your submissions.

4 MS TAYLOR: [14:01:13] Thank you.

5 Al Hassan was not the only local who cooperated with Ansar Dine. There were
6 many. Some higher, some lower. There were Arabs, Songhai and Tamasheq.

7 P-643 testified that even the local authorities, the traditional and religious authorities
8 cooperated, collaborated even, to ensure survival.

9 When so many people in Timbuktu collaborated, how is deterrence served by harshly
10 punishing Al Hassan, the second Tuareg tried by this Court, when Timbuktu
11 continues to be filled by collaborators who are no different than Al Hassan?

12 And there's nothing as concerns what Al Hassan did in 2012 that would militate
13 against lenience.

14 As reflected by Al Hassan's conversation with D-211, when he joined Ansar Dine they
15 were already the most powerful group at this time. They had already taken over
16 Timbuktu and they had already finalised their plans concerning how Timbuktu was
17 to be administered. This was a done deal before Al Hassan first stepped inside
18 the BMS.

19 And none of the crimes for which Mr Al Hassan was convicted occurred because of
20 his actions. He did not initiate complaints, he did not decide the punishments. His
21 presence and participation at floggings did not change or aggravate the way
22 the punishments were carried out. Ansar Dine was not lacking members. If he was
23 not present, he would have been quickly and easily replaced.

24 The Prosecution has asked you to impose a sentence of 22 years, and that is just eight
25 years shy of a life sentence. And we ask you, please, put that number aside, it has

1 nothing to do with Al Hassan or his actions.

2 In fact, in the Lubanga case, the Prosecutor explained to the judges that, for policy
3 reasons, they will never request a sentence of less than 80 per cent of the maximum,
4 which is 24 years, which can then be adjusted down for mitigation. That's filing 2901,
5 paragraph 92.

6 Given this policy, the Prosecution have a history of considerably overshooting
7 the mark.

8 In Lubanga they requested 30 years. He received 14.

9 In Katanga they requested between 22 and 25 years. He received 12.

10 In Bemba they said he should receive no less than 25 years. He received 18 and was
11 then completely acquitted on appeal.

12 The sentence range they have now requested is effectively the lowest range they have
13 actually proposed for an ICC defendant who did not plead guilty.

14 That means that they recognise that his culpability is less than Katanga, who received
15 12 months -- 12 years, and that is what should guide the considerations.

16 I think your microphone is on, Madam President.

17 I will now address the specific crimes for which the Prosecution has requested
18 the highest sentences, being torture, the war crime of passing sentences, and
19 persecution.

20 And turning to torture, the gravest crime was the amputation of Dédéou Maiga.

21 But Al Hassan was not convicted for the crime in the abstract sense but for his
22 contribution to the crime, and that is what must guide his punishment.

23 The Chamber relied on his statement as the basis for its finding that he was involved
24 in the rest. And this is what his involvement looked like.

25 On the day in question, Adam had passed by Al Hassan's house to take him to work.

1 They passed members of the population pursuing Dédéou Maiga who were accusing
2 him of theft.

3 To repeat, Dédéou Maiga was being chased by the local population. The local
4 population was so adamant in arresting him that even after a member of the Islamic
5 police helped him to escape, the population tracked him down, arrested him and
6 handed him over.

7 And there is no finding that Al Hassan was involved in this later arrest. Indeed,
8 P-582 gave evidence there was actually three arrests. In the first arrest Dédéou
9 escaped from the Islamic police. He was then caught stealing furniture and detained
10 at the Islamic prison. He then escaped from there with the help of a police officer
11 and after the second escape he was arrested by the local population.

12 There was thus a long winding road for Mr Al Hassan's participation at Dédéou's first
13 arrest to Dédéou's punishment.

14 There's no culpable finding that he wrote a police report concerning this incident.

15 There's no finding that he had any involvement at the Islamic tribunal. He was not
16 involved in the punishment itself and was not present.

17 Al Hassan was shocked by the punishment. In his words, he told the Prosecution he
18 was stupefied. Before this day, the tribunal had always found ways to avoid this
19 punishment and, afterwards, the police were more active in making sure that there
20 were no further such punishments.

21 So this was the first and only amputation in Timbuktu and, because of that, the details
22 were recorded in minute detail in a way that does not always happen in the
23 battlefield. The existence of such details, which were not known to Al Hassan,
24 should not sway you towards a disproportionate sentence.

25 Instead, when you assess proportionality we ask you to do so by reference to Katanga,

1 where the defendant was convicted for the murder of 60 civilians, of which 25 were
2 children. There was also a significant number of women and elderly persons.
3 And in the Katanga sentencing judgment, the Chamber noted that the attackers cut
4 up their victims limb by limb before taking their lives and some of the survivors had
5 to have limbs amputated to save them.

6 Like Al Hassan, Katanga was convicted under Article 25(3)(d) and like Al Hassan,
7 Katanga was not present when the crimes occurred or in their immediate aftermath.

8 PRESIDING JUDGE PROST: Mr Nsita.

9 MR LUVENGIKA: [14:08:03](Interpretation) Excuse me, your Honour, we don't
10 have a French interpretation.

11 PRESIDING JUDGE PROST: [14:08:11](Interpretation) Thank you, sir. (Speaks
12 English) I'll just check. I had mine on the original.

13 (Interpretation) Can you hear it now?

14 MR LUVENGIKA: [14:08:23](Interpretation) Yes. Thank you, we can hear it now.
15 But I think we missed a good five minutes. We didn't have interpretation for I
16 would say five minutes.

17 PRESIDING JUDGE PROST: [14:08:33] Thank you, Mr Nsita. It appears it's
18 the way?

19 (Interpretation) Thank you very much. Is it working for you now?

20 (Speaks English) Thank you very much.

21 Sorry for the interruption, Ms Taylor. Please proceed.

22 MS TAYLOR: [14:08:56] Thank you, Madam President.

23 Like Al Hassan, Katanga was convicted under Article 25(3)(d) and like Al Hassan,
24 Katanga was not present when the crimes occurred or in their immediate aftermath.
25 But unlike Al Hassan, Katanga was found to have been the highest ranked person in

1 the group and thus wielded considerable influence over the perpetrators. In contrast,
2 Al Hassan had a lower rank than the members of the Islamic tribunal who decided
3 the judgment, he had a lower rank than the member of Al-Qaeda who executed it and
4 a lower rank than the emirs who were present on that day.

5 Trial Chamber II ultimately found that a sentence of 12 years was appropriate for
6 Katanga's contribution to 60 deaths involving mutilation and amputations.

7 Through a winding road of liability, Al Hassan contributed to one amputation,
8 involving some degree of anaesthesia. When considered in connection with the fact
9 that Al Hassan exercised a lower organisational rank than Katanga, we submit that he
10 also merits a lower sentence.

11 Turning to the two young men flogged on 8 July. And today I would like to address
12 you on three aspects of this crime.

13 First, Al Hassan can only be punished in connection with the charged allegation that
14 each man was flogged 40 times.

15 Second, as a result of Judge Akane's dissent, it is not feasible to impose any
16 punishment for this crime under count 6.

17 And third, your assessment of a proportionate sentence must take account of
18 the ambiguous legal status of such punishments and the fact that Mr Al Hassan
19 executed them under orders.

20 Turning to my first point. The counting process that the Prosecutor has referred to
21 was never conducted or discussed during trial proceedings, as required by Article 74.

22 And the Chamber cannot itself generate new evidence during deliberations. By
23 doing so, by attempting to stitch together the chronology and sequence of flogs in
24 these heavily modified videos, the Bench will become a witness to the case, with one
25 of those witnesses now being replaced with a judge who was not part of this

1 deliberative process.

2 Second, the factual finding departs from the charges, which alleged at paragraph 477
3 that the two individuals were flogged 40 times each. And neither
4 the Pre-Trial Chamber nor the Trial Chamber have the power to amend or aggravate
5 a factual charge.

6 Third, the evidence relied upon to convict Mr Al Hassan cannot support a finding
7 beyond reasonable doubt that there was more than 40 flogs for the purpose of
8 sentencing.

9 In Judge Akane's opinion, she relied on P-150's evidence that was punishment was
10 a *tazir* implemented directly by the police, whereas Judge Prost and Judge Mindua
11 relied on Al Hassan's statement to conclude it was ordered by the tribunal.

12 If we rely on Judge Akane's finding, based on P-150, then we also need to take
13 account of P-150's evidence that the punishment for drinking alcohol in 2012 was 40
14 lashes. No more.

15 If we use Judge Mindua and Judge Prost's account, which is based on Al Hassan's
16 statement, then we have to consider his evidence that the flogging involved a total of
17 40 flogs for each person.

18 If you use the video without either Al Hassan or P-150, then you need to consider
19 the evidence of the person who filmed the video, and his evidence was that
20 the maximum punishment for alcohol in 2012 was 50 lashes.

21 This leads me to my second point, which is that due to the dissents from both
22 Judge Akane and the acquittal of Judge Mindua, there's no reliable basis to impose
23 a conviction under count 6 for this incident.

24 While Judge Mindua acquitted Mr Al Hassan, Judge Akane and Judge Prost made
25 findings that involved different and inconsistent forms of conduct for the purposes of

1 count 6. These two inconsistent fact scenarios cannot both be true. There's
2 therefore no majority finding of fact capable of sustaining a sentence.
3 Judge Akane found that what happened on 8 July was a *tazir*, that is a punishment
4 without a prior judgment from the tribunal. No findings were made as concerned
5 who arrested the individuals. Nor can it be assumed it was the police, given that the
6 *Hesbah* were responsible for enforcing rules concerning drinking.
7 This means Al Hassan's conduct arises exclusively from his participation at the
8 flogging.
9 Alternatively, if we look at Judge Prost's scenario, the gravamen of passing an unfair
10 sentence relates to the lack of due process during the proceedings at the tribunal and
11 Al Hassan's conduct relates to his role in that process, a process which according to
12 Judge Akane did not occur. The lack of cohesion concerning the factual matrix
13 underpinning this finding operates to the detriment of Mr Al Hassan for sentencing
14 purposes. How is Judge Paek supposed to treat the finding? Does he adopt
15 Judge Mindua's finding, which would equate to an acquittal?
16 Does he adopt Judge Akane's, in which there's a complete overlap in conduct which
17 means no additional sentence can be imposed.
18 Under Judge Prost you would have to consider that Al Hassan was acting
19 under superior orders emanating from the tribunal.
20 So we submit that this confusion can only be addressed in a manner that respects
21 the rights of the accused and the principle of *in dubio pro reo*. In case of ambiguity,
22 the doubt favours Mr Al Hassan and no sentence can attach for count 6 and no
23 sentence can attach for any more than 40 flogs per person.
24 And turning to my last point for this incident, Al Hassan's knowledge -- Al Hassan's
25 responsibility under counts 1 and 3 must be reduced in light of his diminished degree

1 of knowledge concerning culpability and the restraints on his conduct caused by
2 superior orders.

3 Both Judge Akane and Judge Mindua found that the punishment of flogging was not
4 in and of itself illegal under the Rome Statute. And the Chamber as a whole found
5 that while the prohibition of alcohol was not enforced before 2012, such prohibitions
6 were more common among Arab and Tuareg tribes, particularly in the west of
7 Timbuktu, which is where Mr Al Hassan is from.

8 The Chamber further found that religious judges traditionally exercise a significant
9 degree of influence over the population and they also exercised a significant influence
10 over Al Hassan. He told the Prosecutor that he believed the Islamic tribunal was
11 applying Sharia, that is the law of God.

12 And critically, Al Hassan admitted to the Prosecutor that he was ignorant as concerns
13 the content of Sharia. He was not in a position to know what was decided was right
14 or wrong, although he did believe that the punishments concerning alcohol were
15 *hudud* punishments, that is punishments mandated and required by Sharia. This is
16 in the transcripts.

17 Al Hassan told the Prosecutor that the emir of the police chose the person required to
18 execute the punishment. And, further, that an order to execute the punishment was
19 obligatory.

20 Given the diminished degree of his knowledge of wrongfulness and the clear
21 constraints as concerns his ability to depart from superior orders, we submit --

22 THE INTERPRETER: [14:17:32] From the interpreter: We kindly ask to speak
23 slower.

24 MS TAYLOR: [14:17:37] We submit his situation calls for a significant reduction in
25 sentence.

1 This is in keeping with the logic of Article 25(3)(a), which punishes perpetration,
2 co-perpetration, indirect perpetration. And this hierarchy, as applied by the ICC,
3 was devised by the German theorist Claus Roxin. It was applied in practice to
4 the situation of East German border guards who were punished and sentenced for
5 applying East German legal directives to shoot anyone who tried to cross the border.
6 According to Roxin, guards acting under orders should be considered as fungibles,
7 that is people who are interchangeable. But true responsibility should be reserved
8 for leaders who control these fungibles. Not the perpetrator, but the perpetrator
9 behind or in control of the perpetrator. And this analysis was not recently adopted
10 by the Appeals Chamber in Ongwen.

11 While German courts recognised that the orders given to border guards were
12 manifestly unlawful, they also mitigated punishment because of the prime facia
13 appearance of legality and the culture of obedience in the organisation. The guards
14 in question received sentences of about one year or two. They also took into account
15 the fact that the guards were praised by the regime in power for executing the orders,
16 which is also the case for Al Hassan.

17 The highest sentence, which was seven years, was reserved for the leaders who
18 devised the policy, the perpetrators behind it.

19 This distinction between the penalty between those who execute the judgment as
20 compared to those who device the judgment and policy is also reflected in
21 the World War II Ohashi case. Applying the defence of superior orders,
22 the Australian military court acquitted two of the guards who participated in the
23 execution, while sentencing the judge who ordered the execution to two years for
24 their role.

25 Mr Al Hassan has already served more than seven years. Without wishing to

1 minimise the degree of suffering of victims in this case, we submit that the objective
2 gravity is lower than murder. His sentence and conduct requires a significantly
3 lower sentence than that which was applied to the border guards who executed the
4 shoot to kill policy in East Germany and the leaders who devised it.

5 I will now address counts 6 and 13.

6 In her separate opinion, Judge Akane opposed a broad definition and conviction for
7 persecution and she joined the majority only insofar as the conviction related to other
8 crimes for which Mr Al Hassan was convicted. And we have set this out in our table
9 Annex C to demonstrate the extent to which the Prosecutor continues to rely on
10 incidents for which Mr Al Hassan was acquitted.

11 Given this narrowing of the scope, there's a high degree of overlap between count 6
12 and 13, meaning that the sentences should be similar, which the Prosecutor appears to
13 accept in their proposed sentences even though they wildly overshoot the mark.

14 In determining an appropriate sentence for this conduct, we invite the Chamber to
15 take account of:

16 First, your findings that the tribunal played an important, a helpful role in filling
17 the justice lacuna in Timbuktu.

18 Second, your findings that Al Hassan believed he was applying Sharia in
19 a nondiscriminatory manner and his lack of knowledge as concerns the specific
20 procedures applied at the tribunal.

21 Third, Al Hassan's lack of discriminatory intent before, during and after 2012.

22 Madam President, your Honours, in your judgment you found that there was
23 a security and justice deficit in Timbuktu before the arrival of Ansar Dine. You
24 found that after the tribunal was established there was an increase in the volume of
25 cases, as locals came to it enthusiastically to vindicate their rights and obtain justice.

1 You found that the tribunal was successful in promoting peaceful solutions and
2 reconciliation among tribes.

3 You found that the tribunal mostly followed the Malakite *madhhab*, or school, which
4 was also followed by the people of Timbuktu.

5 And the Chamber relied specifically on evidence from P-150 that after Al Hassan left
6 Timbuktu he spoke about having applied Sharia in a nondiscriminatory manner.
7 That is not a bad thing. To apply Sharia, to apply the law to everyone, without
8 discrimination, is the essence of fairness.

9 The Chamber also took great pains to point out that Sharia was not on trial. That
10 the application of Sharia was not in and of itself a crime. And you recognised that it
11 would be wrong to conflate Islamic law with extremism. And we urge you to
12 maintain this necessary distinction in your sentencing judgment, we urge you to
13 disregard the Prosecutor's attempt to conflate the notion of jihad with extremism.

14 The word jihad means to strive. In Islam there's a greater and lesser jihad.
15 The greater jihad is actually the one that takes place inside and the lesser is the one
16 that involves interactions with others. The jihad which is greater involves struggling
17 to purify one's heart to do good, avoid evil and make oneself a better person.

18 In his interviews with the prosecutor, Al Hassan explained his understanding of jihad.
19 He said that Sheikh Abdullah had described it as *da'wah*. The word *da'wah* literally
20 means invitation. *Da'wah* is an invitation to follow the path of good prescribed by
21 God.

22 Al Hassan told the Prosecutors that he understood jihad to refer to the intention of
23 the group to organise the administration of Timbuktu in accordance with Sharia, that
24 is in accordance with God's true law, which you found is not a crime.

25 Crucially, even after being convinced of the necessity and obligation of working with

1 Ansar Dine after hearing Sheikh Abdallah speak about jihad, Al Hassan asked to
2 work in the hospital, that is he saw his own path to good as treating and caring for
3 people's bodies, not their minds.

4 Apart from the evidence that Al Hassan believed that the tribunal was applying
5 sharia, the majority, that is Judges Akane and Mindua, found that Al Hassan was not
6 culpably aware of the specific details of the procedures or the judgments themselves.

7 This means that both Judges found Al Hassan did not have a culpable degree of
8 knowledge as concerns the extent to which the procedures or punishments departed
9 from either Sharia or international law.

10 This is now the lens through which this Bench must view his responsibility for
11 the crimes.

12 Moreover, as cautioned by Judge Akane, this Chamber cannot assume that the facts
13 set out in the judgments were true or that the punishments themselves were
14 implemented in the manner recorded in the judgments.

15 The risk of doing so is actually highlighted by case 43. This concerned four
16 individuals who were caught red-handed stealing from a shop. Al Hassan told
17 the Prosecutor he was not aware of the content of the judgment or how it was
18 handled by the tribunal.

19 The judgment itself contains several details which were not in the police report.

20 The judgment names the shopkeeper, it's an Arab name, and it mentions that
21 the shopkeeper filed complaints both in relation to the theft that occurred while
22 Ansar Dine was there and also as concerns an earlier theft.

23 Since the tribunal knew his name, it would appear that this local Arab shopkeeper
24 even enthusiastically came before the tribunal to follow up on his complaint. And
25 when the police received such complaints they were obliged to transfer them to

1 the tribunal.

2 The judgment states that the tribunal had to ignore the past accusations of theft
3 because it violated the principle of legality. Which is pretty fair.

4 The tribunal also found that there was a doubt as to whether the defendants were
5 adults and that, as such, the full penalty could not apply. The tribunal uses the word
6 "doubt". They do not say that the defendants were children or adolescents, only that
7 there was a doubt which allowed them to avoid imposing the full Koranic penalty.

8 Madam President, your Honours, your sentence can only be based on factors that
9 have been proven beyond reasonable doubt. They cannot be predicated on a doubt.

10 The Trial Chamber also received evidence that Arabic shopkeepers wanted to take
11 matters into their own hands if they caught someone stealing from shops.

12 The application of Sharia was thus proposed as a way of calming tensions. That's
13 D-551.

14 We therefore invite you to read between the lines to see the different ways in which
15 the police and the Islamic tribunal executed their functions in a way that helped locals
16 achieve lenience, while avoiding disputes between ethnicities. It may have been
17 rough justice, but in many ways it was better than no justice.

18 Viewed from this perspective, that Al Hassan was convicted for having contributed to
19 a lack of due process, in accordance with proceedings that he generally believed
20 would bring justice to Timbuktu, in accordance with God's prescriptions for
21 achieving a path of goodness, and the Malakite school of faith followed by the local
22 population, viewed through this lens, the sentence requested by the Prosecutor is
23 manifestly excessive, particularly when you compare it to the sentences issued in
24 the Ohashi case.

25 For persecution, it is necessary to take into account the absence of any finding in your

1 judgment that Al Hassan possessed discriminatory intent. Instead, the judgment is
2 rife with findings to the contrary.

3 The judgment relied on evidence from both P-650 and D-211 that in their interactions
4 with Al Hassan in 2012 he expressed no extremist sentiments. Their evidence is
5 consistent with a significant body of evidence Al Hassan was an open person, he
6 accepted different faiths and actively facilitated the professional careers of female
7 colleagues, a matter on which Maître Beaulieu Lussier will expand.

8 It is of course correct that Al Hassan was and is a Muslim. His faith was and is
9 important to him, as is the Koranic prescription to follow a path of good. But being
10 a believer, it cannot be equated with being a zealot or a terrorist.

11 While the Prosecutor has attempted to rely on specific video interviews to portray
12 Al Hassan in a different light, their conclusion cannot be sustained on the basis of
13 the evidence before you.

14 In interviews with the Prosecutor, Al Hassan told them of the context, that is that
15 the emirs had ordered him to participate and had scripted what he was to say.

16 The Trial Chamber also received evidence that many locals, including the imams,
17 were required to read out such scripts and sermons prepared by Ansar Dine. This
18 included sermons addressing the group's rules and the prescriptions applied by
19 the group. I refer you to transcript 130, page 29.

20 And when these imams and local leaders did so, they received payments from
21 Al Mahdi for doing so.

22 Whereas the local imams fulfilled this role every Friday, Al Hassan's speeches were
23 negligible in number and effect.

24 And while the Trial Chamber found that these videos reflected Al Hassan's
25 enthusiastic participation in Ansar Dine activities, the Chamber made no finding as

1 concerns what his enthusiasm related to. This Bench cannot now plug that gap by
2 making a more specific and prejudicial finding on this point.

3 There's also nothing wrong about being enthusiastic about a reduction in crime and
4 uptick in insecurity. Al Hassan's sentiments echoed that of many locals, including
5 notables like P-654, P-4, D-553.

6 Al Hassan's actions also speak louder than words. Critically, after the amputation of
7 Dédéou Maiga, there were no amputations in Timbuktu. And this was not purely by
8 chance, as Al Hassan, along with other locals, used their position to save people.

9 And I refer you to the examples in our sentencing brief.

10 On this basis, it is our submission that Al Hassan's circumstances are no more
11 culpable than that of Vlatko Kupreškić. He was a police operations officer convicted
12 for accessory liability in connection with persecution. And while acquitted on
13 appeal for evidentiary reasons, the quantum of sentence is relevant to this case.

14 Like Al Hassan, Vlatko Kupreškić displayed no persecutory intent before the attack in
15 question. Like Al Hassan, Vlatko Kupreškić was found to have assisted in logistical
16 preparations and to have assisted by being present on the day of the attack. This
17 was found to warrant a sentence of six years in connection with a persecutory attack
18 in which 116 Muslim civilians, including women and children, were killed.

19 A further relevant yardstick can be found in the case of Milan Gvero, the assistant
20 commander for moral, religious and legal affairs who received a five-year sentence in
21 connection with convictions for persecution, inhumane treatment related to a joint
22 criminal enterprise to forcibly remove thousands of Muslim men in Srebrenica. And
23 of relevance, while Gvero played an important and senior role in the operations, he
24 played no role in the decision-making processes that led to the crimes and his
25 contributions were not decisive.

1 Madam President, your Honours, that conclusion applies equally to Al Hassan.
2 The Chamber found Al Hassan's contributions to be of residual nature. The word
3 "residual" refers to what remains after the greater part has gone. We ask you to
4 follow the same logic in imposing a residual, that is a lesser sentence, for his
5 contributions.
6 Now just turning to the point of sentencing credit. Today, the Prosecutor has turned
7 and replied upon the transfer of Mr Al Hassan between the French and the Malian
8 authorities and claimed that this proves that he was detained in Bamako for other
9 conduct.
10 In fact, it proves the opposite. At page 9941, it says: "Reasons for the retention".
11 And those reasons, in black and white, are that Al Hassan *connaît Iyad Ag Ghaly depuis*
12 *2012, il reconnaît travailler à son profit.*
13 He was detained for knowing Iyad Ag Ghaly and having worked with him since 2012.
14 You've seen the arrest warrant against Iyad Ag Ghaly, you've seen the overlapping
15 conduct. The fact that the conduct domestically was greater does not mean that it
16 does not encompass the same conduct as the ICC. And whereas there is a domestic
17 dossier against Mr Al Hassan for 2012 events, there is no other domestic dossier.
18 Now, the Prosecutor has told you not to speculate. We invite you to do the same.
19 What is in black and white here, what is in the letter of the French Ministry of Interior
20 is clear and abundantly supports the threshold of balance of probabilities. He was
21 detained for his role in working with Iyad Ag Ghaly, with working with Ansar Dine
22 since 2012, and that is enough.
23 Turning to my conclusion, Madam President, your Honours, Al Hassan seeks
24 the pardon of the people of Timbuktu and all those he harmed. This wish was
25 expressed in his written statement and is conveyed today publicly on his behalf.

1 These sentiments fall squarely within the parameters of remorse defined by the ICTY
2 Appeals Chamber in Strugar, the appeals judgment para 365.

3 Al Hassan has no wish to cause harm. He loves Timbuktu. He would love and be
4 willing to return to promote reconciliation and peace among communities. But he
5 will also respect the wishes of the people of Timbuktu and the victims in this case.

6 As Maître Beaulieu Lussier will elaborate, the important thing for him is his family
7 and he is asking you for the chance to take care of them, to be there for them and to
8 use the time he has left to help guide them on a path of peace and reconciliation.

9 Thank you. I will now turn the floor over to her.

10 PRESIDING JUDGE PROST: [14:38:28] Thank you, Ms Taylor.

11 Ms Beaulieu Lussier.

12 MS BEAULIEU LUSSIER: [14:38:51](Interpretation) Madam President, Honourable
13 Judges, your Honours, it's an honour to address you today.

14 I will speak about Mr Al Hassan's personal circumstances before and after 2012, why
15 these circumstances differentiate Mr Al Hassan from other detainees and why these
16 circumstances should be taken into account and litigate the appropriate sentence for
17 this individual.

18 I would also like to explain to you the reasons for taking into account the impact of
19 the exceptionally severe restrictions during the pandemic and the experience of
20 Mr Al Hassan's detention in Bamako under the state security services for the acts of
21 2012 and its impact on detention here in The Hague.

22 Mr Al Hassan is a man who has already suffered enormously from the severe
23 consequences of the crimes for which he was found guilty. Not only has he been
24 deprived of his liberty for seven years, he has been deprived of his family, his
25 community, since by was arrested by Barkhane in 2017. He has missed the birth of

1 two of his children and he has had to mourn the death of his daughter in prison,
2 thousands of kilometres from his family.

3 This simple fact has a particularly deterrent effect on Mr Al Hassan and it already
4 achieves this particular objective of deterrence.

5 The objective of punishment has already also been achieved.

6 In fact, the sentence he has already served in Bamako and The Hague is already
7 sending out a strong signal which makes it possible to express the international
8 community's indignation at the commission of the crimes for which Mr Al Hassan has
9 been convicted.

10 The words of your judgment are already a punishment, a sentence, and it is a signal
11 to the local and international community. More time in prison will not send
12 a stronger message. Detention takes place in private, far from sight. What sends
13 a strong message are the words, the label that is put on Mr Al Hassan last June.
14 The objectives of a prison sentence - and here I put it to you respectfully - have
15 already been achieved.

16 All of the personal circumstances of Mr Al Hassan point in the direction of positive
17 rehabilitation and peaceful reintegration into his community.

18 On the basis of your conclusions contained in the judgment, the Prosecutor considers
19 that Mr Al Hassan deserves a sentence of 22 years' imprisonment. I put it to you
20 respectfully and without diminishing the seriousness of your conclusions, that
21 the Prosecutor's suggestion does not hold water. It is a sentence which is completely
22 disproportionate to the personal situation of Mr Al Hassan, even weighing the gravity
23 of the crimes against his contribution.

24 If we consider already last year in Bamako, the six years spent in detention in
25 The Hague, nevertheless Mr Al Hassan will have to serve a further 15 years in prison.

1 Mr Al Hassan would be released in 2039. He would be 62 years old. Considering
2 that he was arrested when he was 40.

3 We need to bear in mind that the World Bank in 2022 established that the average life
4 expectancy in Mali will be 58 years and his elder child will be approximately 29 years
5 old. He will barely have seen his last child who he has not met and who will be
6 16 years old.

7 Madam President, your Honours, Mr Al Hassan has been sentenced, but he remains
8 a human being.

9 Factors -- mitigating factors mitigate the sentence, but not the crime. Mitigating
10 factors enable the Court to impose an individualised and proportionate sentence.

11 I now turn to these mitigating factors in further detail.

12 Where it concerns Mr Al Hassan's character, the Defence presented evidence painting
13 a picture of Mr Al Hassan before and after the events. Mr Al Hassan was presented
14 as a man dedicated to his community, prepared to work for free to ensure access to
15 health care in his locality, and this before and after 2012. He was described as a man
16 who helps people in need, regardless of their ethnicity, their gender, or their financial
17 means.

18 He has also been described as an open-minded person who respects religious
19 practices different from his own.

20 In the Popović case, the Trial Chamber emphasised that an appropriate sentence must
21 reflect the character of the convicted person. The good character of an individual
22 before the events and the absence of a previous conviction are mitigating factors.

23 You have read Mr Al Hassan's words. He evokes no desire for revenge, quite
24 the contrary. His faith enables him to get through life's merciless ordeals without
25 holding any grudge against anyone else. He forgives the people who tortured him.

1 The truth is that Mr Al Hassan is not an extremist and he's already shown his
2 potential for rehabilitation and his capacity to reintegrate into his community.
3 The family circumstances also militate in favour of mitigating his sentence. Most
4 detainees have families, they have wives, they have children. But Mr Al Hassan's
5 situation is a little more distinct, it's more different. He is responsible for his family,
6 his seven minor children.
7 His family currently lives in a situation which is extremely precarious, it has to move
8 constantly because of the growing insecurity in Mali. And all this without
9 the protection of the family's head, Mr Al Hassan.
10 He's not there to look after his family. He cannot ensure their safety. Since
11 the beginning of his detention, it has been his parents who look after his children and,
12 in particular, his father who's 81 years old and is practically deaf and blind, whereas it
13 is he who should be taken care of.
14 The pressure that Mr Al Hassan's detention has on his family is immeasurable.
15 Mr Al Hassan said in his statement, and I paraphrase: visits from my family to
16 The Hague have brought me great joy, but also great sorrow when I see them leave.
17 I would really like to be able to see them now, but I'm too worried to ask them to
18 travel. I'm not there to protect them and I can't put that responsibility on my
19 parents' shoulders. I cannot favour my own happiness at the detriment of my
20 family.
21 His parents will soon no longer be able to look after his entire family because of their
22 age and the security situation in Mali is not improving. On top of this,
23 Mr Al Hassan's family is also in a particularly unique situation of additional
24 insecurity for which Mr Al Hassan is not responsible. And I refer the Chamber to
25 paragraph 31 of our Rule 68 application for the admission of Mr Al Hassan's

1 statement.

2 The extreme situation in which his family finds himself while Mr Al Hassan is in
3 detention, has a particularly deterrent effect on him and weighs heavily on him and
4 his family.

5 Courts have taken into account the personal circumstances to reduce sentences in
6 the Orić case at the ICTY and the Katanga case in this Court. This should also be
7 the case here.

8 Furthermore, the impact of ill-treatment suffered in detention in Bamako on his
9 detention here in The Hague, combined with the difficult circumstances during
10 the pandemic are factors that should be taken into account in the sentence of
11 Mr Al Hassan.

12 He is not a detainee like the others. His particularly traumatic experience of
13 detention prior to his arrival in The Hague has left its mark and has aggravated his
14 punishment in The Hague in detention from the outset and it's been all the more
15 aggravated during COVID. Nor is it a question of establishing a diagnosis nor is it
16 about determining who is responsible. What we are asking this Honourable Court
17 to do is to assess and grant a remedy for the impact of the acts suffered at the hands
18 of the security services in Bamako on Mr -- and on Mr Al Hassan's detention here.

19 This Honourable Chamber has never denied that Mr Al Hassan was tortured in
20 Bamako.

21 Madam President, your Honours, you have read in detail what Mr Al Hassan
22 experienced in Bamako. You have seen it. You have seen what was going on in his
23 head. I cannot -- he can never change what happened to him. He accepts it. But it
24 is forever engraved in his DNA. He lives it night and day. He lives in his head,
25 like in a prison inside a prison. Every day he constantly experiences a double

1 punishment.

2 This element forms an integral part of Mr Al Hassan's personal circumstances of
3 the man who stands before you and for whom you have the onerous task of
4 establishing an appropriate and individualised sentence.

5 When he arrived in The Hague in 2018, Mr Al Hassan was already in a distress that is
6 unique to detainees who have survived torture. He himself testified that all night,
7 when he heard somebody approach, he thought they were going to kill him. And he
8 relived the same nightmares as when he was detained by the security services.

9 During his detention in Bamako, he spent four months handcuffed, without a break,
10 every day. And when he arrived in The Hague he continued to sleep for one year in
11 a foetal position as if were still handcuffed, by way of habit.

12 A number of national courts have taken the difficult conditions of detention into
13 account in order to reduce prison sentence to be served. For example, in France, in
14 the case of Sassi and Benchellali. According to the case summary, the applicants,
15 accused of terrorism-related crimes were given a reduced sentence in France because
16 of the difficult conditions of detention at the Guantanamo base.

17 In this case, a doctor filed a report alleging that the ill-treatment and the particularly
18 precarious living conditions, the forced isolation, the uncertainty of tomorrow
19 maintained day after day, the danger of potential reactivity by the extensive
20 interrogations will leave traumatic traces on the person concerned.

21 Your Honour, your Honours, this is the same fate that befell Mr Al Hassan at the
22 hands of the security services and which enabled these individuals to receive
23 a reduced sentence.

24 No matter what diagnosis or label is applied to Mr Al Hassan, just like Mr Sassi and
25 Benchellali, Mr Al Hassan will bear the marks, the scars of his detention in Bamako

1 for the rest of his life. These are the marks that must be taken into account in
2 the determination of the appropriate sentence for him.

3 All detainees experience different things in prison, but not all detainees have been
4 tortured in detention. This is an additional layer of suffering which makes his
5 experience of detention more difficult and makes his punishment that he undergoes
6 every day more intense.

7 Now, just as his condition was beginning to improve, the pandemic arrived, and at
8 the same time the opening of his trial. The whole world was disorientated.

9 Imagine what it could do to a torture survivor, an individual who needs stability,
10 certitude, when all of a sudden his conditions of detention are changed, solitary
11 confinement is increased, face to face contact is cut and visits with his family and
12 lawyers are reduced.

13 The trial began in July 2020, at the very beginning of COVID, during the worst
14 months of the pandemic, while the measures were renewed every month, leaving no
15 predictability. Mr Al Hassan was also the only one to be standing trial at the time.

16 Now that we have left this dark days behind us of the pandemic, it's hard for us to
17 remember what our lives were like, but I would ask you to remember that period and
18 remember the first months and the extreme fear that we felt.

19 Here, in the Court, you will remember what it was to go to the courtroom and the fact
20 that Mr Al Hassan had to follow his trial from the detention centre without direct
21 contact with his lawyers.

22 Mr Al Hassan went through this period like everyone else, but the impact on him is
23 not the same.

24 What sets Mr Al Hassan's apart, his particularly traumatic experience of detention
25 prior to his arrival in The Hague which aggravated his detention in The Hague.

1 Mr Al Hassan, in his statement, testified that: Without contact with people, I had
2 a feeling of moral isolation. I had somehow found new bearings here after being
3 uprooted from my country, my culture, my family and my friends, but with COVID, I
4 felt that I had lost my bearings once again. I was disconnected and lost --
5 disoriented and lost.

6 From his arrest in 2017 to his transfer to The Hague, he was held incommunicado.
7 He had no contact with his family. It was only after one year in The Hague that he
8 was finally able to receive a first visit from his family in The Hague. And while
9 a second visit was meant to be planned, the pandemic arrived and the family visits
10 were suspended.

11 Mr Al Hassan did not see his family again for two and a half years. Two and a half
12 years in a situation of great stress is an eternity from anyone, but even more so for
13 someone who has lived through what Mr Al Hassan experienced in detention in
14 Bamako. He didn't know if he was going to see his family again.

15 Once again, each change was experienced as a re-traumatising event. Each change
16 plunged him back into the nightmare of the DGSE, the uncertainty of it all.

17 During this period, Mr Al Hassan lost a child, taken by malaria. And the reason for
18 the -- because of the COVID measures Mr Al Hassan was unable to see his wife,
19 the mother of his daughter, and grieve with her for 10 months. Imagine not being
20 able to hold your wife, the mother of your child in your arms in this situation for
21 10 months. Not being able to comfort her. Not being able to console the brothers
22 and sisters who have lost a sister, for 10 months.

23 When this second visit took place, Mr Al Hassan finally met his son, who he still
24 hadn't met and who at the time was four years old.

25 Since his arrest in 2017, he has seen a family a total of four times, each time lasting

1 10 days. He has spent approximately 40 days with his family since April 2017.

2 The case law of this Court is clear that family visits are imperative to ensure

3 the well-being of detainees.

4 In a decision of the United States Court of Appeal of the District of Columbia

5 the court concluded, I quote in English: (Speaks English)

6 "A prisoner is entitled to a remedy when, though lawfully in custody, he is deprived

7 of some right to which he is lawfully entitled even in his confinement, the deprivation

8 of which serves to make his imprisonment more burdensome than the law allows or

9 curtails his liberty to a greater extent than the law permits."

10 (Interpretation) So the COVID measures deprived Mr Al Hassan of his rights to

11 family visits for several months, despite the fact that it was nobody's fault.

12 National courts have also taken into consideration the impact that COVID could have

13 on individuals who already have a pre-existing vulnerability without necessarily

14 having to establish a specific diagnosis. For example, in Canada, New Zealand and

15 Australia, several courts have considered that the conditions under which the accused

16 were detained during this period were much more restrictive than normal.

17 And we currently have a vision of the pandemic which is different to that in 2021.

18 Mr Al Hassan should be able to benefit from the mitigation of his sentence because of

19 COVID, like all detained persons in the rest of the world.

20 Mr Al Hassan has expressed his wish to find a job on leaving prison that would

21 enable him, quite simply, to take care of his family. He wants nothing more than to

22 be able to be with them, ensure their safety, provide them with a roof over their heads

23 and live a quiet life in peace with them.

24 Every part of this case is tragic, including what happened to Mr Al Hassan.

25 Acknowledging this in no way diminishes the suffering of the victims in this case.

1 I would like to thank you, Madam President, your Honours, and I will now give
2 the floor to my colleague, Ms Sethi.

3 PRESIDING JUDGE PROST: [14:59:38](Interpretation) Thank you.
4 (Speaks English) Please proceed.

5 MS SETHI: [14:59:58] Good afternoon, Madam President. Good afternoon,
6 your Honours. My name is Havneet Sethi, and I stand here on behalf of
7 Mr Al Hassan.

8 Today, I'm addressing two issues:

9 The first, the absence of aggravating factors in this case, and the fact that those
10 forwarded by the Prosecution have either not been proven beyond a reasonable doubt
11 or were not objectively foreseeable to Mr Al Hassan.

12 The second, that the Prosecution's arguments on gravity and aggravating
13 circumstances are based on material findings already incorporated into the trial
14 judgment, and therefore constitute an impermissible use of double counting.

15 Turning to the first issue, the lack of aggravating factors:

16 The Prosecution has failed to demonstrate to the requisite standard the existence of
17 aggravating factors in respect of Mr Al Hassan.

18 The burden rests with the Prosecution to prove these aggravating factors beyond
19 a reasonable doubt. There must be a sufficiently proximate link between the factor
20 and the crime or crimes in question. Any inference drawn must be the only
21 reasonable inference from the available evidence. The Defence cannot be expected to
22 disprove a negative.

23 Contrary to the Prosecution's submissions of this morning, Mr Al Hassan is not
24 a zealot. The Prosecution has failed to demonstrate, much less prove beyond
25 a reasonable doubt, any evidence of repugnant, sadistic, or depraved behaviour.

1 Nor has it established any evidence of robust participation and dedication to criminal
2 activity, much less an engagement with behaviour of brutality. For that is
3 the standard, your Honours.

4 The law is clear. Zeal requires a very high threshold. Carrying out one's tasks with
5 dedication does not equate to eagerness to carry out the crimes, and doing your job
6 does not necessarily make you a zealot.

7 Your Honours, propaganda is not zeal. This Chamber has found that one of
8 Mr Al Hassan's jobs was to speak in support of the group's activities, of its missions
9 and objectives. It also found that he demonstrated enthusiastic participation in
10 certain video communications in respect of their activities. It also found that these
11 types of communications were part of the group's propaganda activities. And,
12 perhaps most importantly, that these types of propaganda activities were supervised
13 by a media office that routinely engaged in censorship.

14 The Prosecution has failed to show that the only reasonable inference for
15 Mr Al Hassan's appearances in these videos is zeal. It has failed to demonstrate
16 volition, to say nothing of eagerness or robust participation.

17 Indeed, this Chamber has, through its own findings, provided us with an alternative
18 reasonable reference -- pardon me, alternative reasonable inference. In footnote 3736
19 of the Trial Judgment, the Chamber found, in one of these video appearances, that
20 Mr Al Hassan may indeed have been reading from a script.

21 It took note of his statement that the media office had written out and provided him
22 with what to say.

23 This means, your Honours, that there is another equally plausible, equally reasonable
24 inference in respect of his appearance in these videos. One that does not assume he's
25 a zealot. Rather, there's a very real possibility, recognised by this Chamber, that his

1 message may have been a scripted one. And reading a script is not zeal.
2 In any event, Mr Al Hassan's participation in propaganda activities is not unlawful.
3 The Popović Chamber makes clear that propaganda does not equate to zeal. Milan
4 Gvero, one of the defendants in that case, was entrusted with key functions in relation
5 to external propaganda. Despite full and actual knowledge of the military's
6 intention at Srebrenica, he deliberately spread misinformation intended to mislead
7 and curtail the international community's ability to act.
8 And yet, despite these purposeful efforts to mislead the international community,
9 the trial chamber found that there was absolutely insufficient evidence of zeal or
10 enthusiasm.
11 Finally, it must be noted that aggravating factors cannot be established in relation to
12 uncharged offences and allegations. Accordingly, even if the Trial Chamber's factual
13 findings suggest that certain offences may have occurred, but no conviction was
14 entered on the basis of those facts, no aggravating circumstances may be inferred
15 from those findings.
16 The Prosecution's reference to P-0641's hearsay evidence concerning threats to a third
17 individual cannot be considered. First, this was an uncharged incident never fully
18 tested in court and which did not form part of Mr Al Hassan's conviction.
19 Second, it was premised on hearsay. P-0641 was not present when the incident
20 occurred and learned of the story from the man who claimed to be the victim. In
21 light of its diminished probative value, reliance on hearsay evidence to reach
22 the requisite standard is inappropriate.
23 Furthermore, P-0641 placed two different inflections on the hearsay account. In
24 the absence of an ability to confront the source with a view to establishing the truth of
25 the event, this Chamber cannot safely choose between these two versions to make

1 the aggravation assessments to the standard required. His account of the incident
2 fails the standard and, accordingly, must be dismissed.

3 Your Honours, before we turn to the issue of foreseeability, the Defence takes this
4 opportunity to respond to the submissions of the Prosecution and the Legal
5 Representative of Victims this morning that Ansar Dine targeted the whole city of
6 Timbuktu, an entire population. This is simply untrue. This use of rhetoric is
7 unhelpful. And the case law is clear. An offender can only be sentenced for those
8 crimes for which he was actually convicted.

9 And, as noted by Ms Taylor during her submission, Mr Al Hassan was acquitted of
10 half of the charges.

11 The Prosecution's position is specious and his argument should be dismissed. And
12 we trust that this Chamber should craft a sentence that is fateful to the verdicts.

13 Moving now to the lack of objective foreseeability.

14 Your Honours, Mr Al Hassan cannot be held responsible for those actions or
15 consequences not objectively foreseeable to him at the time of the events.

16 The Prosecution's position that Mr Al Hassan must be held responsible and his
17 sentence aggravated for circumstances of Dédéou Maïga's amputation, for example,
18 or the fact that P-554 was previously exposed. This is untenable and must be
19 rejected.

20 The Prosecution -- the spectrum of culpability ranges from objective foreseeability to
21 awareness to intent. An aggravating factor must at the very least have been
22 objectively foreseeable to the defendant at the time of the crime. And
23 the Prosecution must prove this beyond a reasonable doubt.

24 Your Honours have already heard from Ms Taylor the circumstances leading to and
25 of Mr Maïga's arrest and sentence. You will remember that Mr Al Hassan was not

1 present at the administration of that sentence.

2 This Chamber also found that Mr Maiga suffered social rejection after his punishment.

3 What it did not find was that Mr Al Hassan was responsible for that punishment --

4 I'm sorry, for that rejection, and that he contributed to it, or that it was even

5 objectively foreseeable. In the absence of such a finding, the Prosecution is

6 precluded from now making or relying on such an argument.

7 Nor did this Chamber find that Mr Al Hassan played any role in the broadcast or

8 advance publication of sentencing information. In the absence of a finding by this

9 Chamber that Mr Al Hassan was culpable of such actions, he cannot be held

10 responsible. The public attended the sentences of their own volition. It is unjust to

11 suggest that Mr Al Hassan must now pay the price.

12 Turning to another incident, the aggravating factor of publicity does not apply in

13 the incident in respect of P-0554. The Prosecution has failed to prove beyond

14 a reasonable doubt that it was objectively foreseeable to Mr Al Hassan that P-554

15 would be briefly exposed during her sentence.

16 The Trial Chamber has found that P-554 was arrested and detained by *Hesbah*, under

17 the command of Mohamed Moussa, against whom many Ansar Dine members had

18 failed complaints and tried to distance themselves.

19 The Trial Chamber did not find that Mr Al Hassan had any involvement with P-554's

20 arrest, detention, sentence, or exposure. Indeed, in paragraphs 842 to 844 of

21 the judgment, Mr Al Hassan is conspicuous only by his absence. His culpability in

22 respect of this victim was through the operation of Article 25(3)(d).

23 Your Honours, keeping in mind that Mr Al Hassan had no knowledge of her arrest,

24 her detention, or her sentence, would it be appropriate or just to say that it was

25 objectively foreseeable to Mr Al Hassan what would happen? Has the Prosecution

1 proven beyond a reasonable doubt that it was objectively foreseeable to Mr Al Hassan,
2 despite other women having undergone similar sentences, that this would happen to
3 P-554? We would submit, your Honours, that the answer is no.

4 Nor did Mr Al Hassan have knowledge of P-565's arrest, age, or eventual sentence.

5 In fact, the Chamber found that the police arrested P-565 because she identified
6 the location of her detention as the BMS, which was at the time the headquarters of
7 the Islamic police. It did not find that Mr Al Hassan arrested her. The Chamber
8 also did not find that he subsequently learned of her arrest or her sentence.

9 The Prosecution has not demonstrated that Mr Al Hassan knew of her age or that it
10 was objectively foreseeable to him that she was 14 and would be sentenced as she
11 was.

12 It should also be noted, in this respect, that P-565's sentence was the first of its kind
13 since Ansar Dine began operating in that region. No such punishment had ever
14 been carried out.

15 We ask you, your Honours, if it is truly objectively foreseeable that in June 2012, in
16 a context where no such sentence had been issued or carried out and where
17 Mr Al Hassan was not aware of a person's arrest, detention, or sentence, or even her
18 name and age, that he could have known she was vulnerable.

19 Again, your Honours, we submit the answer is no.

20 Turning to the second issue, your Honours, that the Prosecution relied on material
21 findings already incorporated into the trial judgment to argue gravity and
22 aggravating factors.

23 Your Honours, this morning the Defence provided to you a visual aid. We now
24 draw your attention to the entries in blue and pink of Annex B which is being
25 displayed in front of you.

1 Taken together, these -- these entries are taken directly from the Prosecution's
2 sentencing submissions and the judgment itself.

3 Your Honours, do you have it in front of you? Pardon me.

4 We simply would like to draw your attention to the entries in blue and pink. These
5 are taken from the Prosecution's sentencing submissions and the judgment itself.

6 And taken together, they detail the impermissible use of double counting by
7 the Prosecution.

8 As your Honours can see, there are many.

9 Indeed, it is well-established that any factors assessed in relation to the gravity of
10 the crime cannot later be considered as an aggravating factor, or vice versa.

11 Your Honours, I spoke earlier about P-554's brief exposure during the administration
12 of her sentence. This incident has already been incorporated into the Chamber's
13 findings on torture. So too has the Chamber's material findings on the physical
14 element of the crime. The Prosecution's attempt to double count these findings to
15 now argue both gravity and aggravation is impermissible and should be disregarded.

16 The Chamber found that children were present during the sentences of most of the
17 flogging victims. It also found, however, that the public nature of the punishment
18 and the presence of children intensified the victims' suffering. These factors, taken
19 together, satisfied the first element of the crime of torture in respect of these victims.

20 This has already been considered by the Chamber.

21 Similarly, the Chamber also relied, in paragraph 1311 of the judgment, on P-565 and
22 P-557's detention conditions to find that the first element of torture had been met.

23 Specifically, the Chamber found that the detention conditions formed part of a series
24 of acts perpetrated against these two victims which, taken together, satisfied
25 the element of pain and suffering.

1 This means, of course, that these conditions cannot now be relied upon by
2 the Prosecution to argue aggravation in relation to counts 1 and 3.

3 Now, regarding the Prosecution's use of discriminatory intent: Your Honours, this
4 isn't just a case of double counting, it is triple counting.

5 The Chamber relied upon discrimination to find the existence of an attack pursuant to
6 an organisational policy, a requisite element of Article 7's chapeau. The Ntaganda
7 chamber has found that, where the organisational policy of a non-persecution crime
8 contained a discriminatory element, that any factors taken into account in the gravity
9 or aggravation assessment of the non-persecution crime cannot then be taken into
10 account again when assessing the gravity or aggravation of persecution.

11 This Chamber has found that Ansar Dine's common purpose entailed
12 a discriminatory element. It also found that Mr Al Hassan was responsible under
13 Article 25(3)(d) for contributing to the enforcement of these discriminatory rules
14 through his role as a police officer. Given that these factors have already been relied
15 upon in material findings by this court on the modes of liability, they cannot now also
16 be relied upon in aggravation assessments.

17 These arguments must be dismissed, your Honours.

18 In determining an appropriate sentence, a distinction must be made between
19 individuals who have allowed themselves to be drawn in and those who have
20 initiated or aggravated the situation.

21 We ask you to take that into consideration today, your Honours, as you consider
22 the specific degree of Mr Al Hassan's involvement. You have found that he
23 contributed. The question now is how much did he contribute and how much more
24 do we want to punish him over and above what he has already lost.

25 Your Honours, we're spoken to you today, my colleagues and I, about the man that

1 Mr Al Hassan was in 2012. Who he was before and after the events at issue, and
2 the man he now wants to be. And we ask you, on the basis of what you've seen and
3 what you've heard, to let him be the son, the husband, and the father that he would
4 like to be.

5 Thank you.

6 PRESIDING JUDGE PROST: [15:19:05] Thank you very much.

7 Ms Taylor, does that conclude the submissions of the Defence?

8 MS TAYLOR: [15:19:11] Thank you, Madam President. Yes, it does.

9 PRESIDING JUDGE PROST: [15:19:13] Thank you very much. Thank Defence for
10 their submissions.

11 At this juncture I'm going to turn to my colleagues to see if they have -- they have any
12 questions.

13 Judge Akane, no.

14 Judge Paek, no.

15 I have one question for the Prosecution.

16 Mr Dutertre, it relates to the issue of cooperation as a factor, potentially mitigating
17 factor.

18 As I understood your submission, you acknowledged that Mr Al Hassan was
19 cooperative in providing a statement, a lengthy statement which has been admitted
20 before the Chamber, but you took the position that that was not of relevance for
21 the Chamber in considering cooperation as a mitigating factor because it was prior to
22 the issuance of the arrest warrant. And you focus then your analysis on cooperation
23 on those subsequent -- his subsequent acts with -- in terms of cooperation.

24 Is that your position, that cooperation in an investigation prior to the arrest warrant
25 issuing cannot be taken into account as a mitigating circumstance? Or is it more --

1 more nuanced than that? I'd appreciate a further explanation on how you consider
2 cooperation to be evaluated.

3 MR DUTERTRE: [15:20:44](Interpretation) Thank you, your Honour. And thank
4 you for the opportunity to clarify this.

5 It would have been the circumstances that followed that interview that leads one to
6 attribute little weight to that interview, which he did give voluntarily. Once
7 the arrest warrant had been issued, there was no further cooperation at all for
8 the reasons that I described.

9 All aspects of the case were disputed by him, and that's his right, I don't contest that.
10 And, of course, naturally, the fact that he firmly stood against the admission of that
11 interview into the file. So he steadfastly stood against the use of that interview and
12 that's why I believe that the Chamber should give little weight to it without
13 prejudging or anticipating what the Chamber might find.

14 I would suggest that it should be afforded very little weight under the rubric of
15 cooperation. And if we compare this to Mr Al Mahdi's conduct, it's day and night.

16 PRESIDING JUDGE PROST: [15:22:18] Thank you very much. That clarifies
17 the point for me. I have no further questions.

18 Any questions arising or comments arising out of that?

19 MS TAYLOR: [15:22:26] Madam President, may I be permitted to briefly address
20 the response of the Prosecution to have the last word?

21 PRESIDING JUDGE PROST: [15:22:33] Certainly, you can -- you can comment. It
22 arises out of the question from the Chamber. Please proceed.

23 MS TAYLOR: [15:22:39] Thank you very much, Madam President. I just have three
24 brief points to make in response to that.

25 PRESIDING JUDGE PROST: [15:22:44] I'm sorry, Ms Taylor, is this in response

1 generally to the Prosecution's submissions or just to this point?

2 MS TAYLOR: [15:22:50] Just to this point.

3 PRESIDING JUDGE PROST: [15:22:51] That's fine. Thank you, Ms Taylor.

4 MS TAYLOR: [15:22:53] Thank you very much.

5 The first point is this issue of volition. The Prosecutor has argued that Mr Al Hassan
6 opposed the admission of his statement. That opposition arose from the question as
7 to whether the statement was voluntary or involuntary. The Trial Chamber found it
8 was voluntary, it therefore in and of itself constitutes voluntary cooperation.

9 My second point is it's our submission that pre-arrest cooperation should be given
10 more weight. Because there was no arrest warrant against him, there was no quid
11 pro quo. This was a lengthy example of full and extensive cooperation where he
12 was given nothing in return. He asked for nothing in return. And because there
13 was no arrest warrant against him he was not minimising his role or trying to obtain
14 something.

15 My third point is that we need to separate two distinct things, the first is his statement
16 and extent to which that constitutes cooperation, and the second is the issue as to
17 whether we agree to any facts in the case. And the jurisprudence is clear that
18 you cannot say that a failure to agree to admit to agreed facts is -- can be used against
19 the defendant. He cannot be penalised for exercising his statutory rights. So what
20 you have before you is an example of clear and pure cooperation, anything else
21 cannot be taken into account to mitigate that or to lessen its weight. Thank you.

22 PRESIDING JUDGE PROST: [15:24:21] Thank you very much, Ms Taylor, for those
23 comments.

24 Unless there is anything further from any of the parties, and I'm not seeing any
25 indication - or participants - to that effect, that brings us to the conclusion of this

- 1 hearing.
- 2 The Chamber will retire to deliberate and will notify in due course the date of
- 3 the delivery on sentence under Article 76 of the Statute.
- 4 I would like to take the opportunity at this point to thank everyone in the courtroom,
- 5 the parties, the participants, our interpreters, security. And, of course, our members
- 6 of the public gallery present here or following on line.
- 7 And with those brief comments, this hearing is now adjourned.
- 8 THE COURT USHER: [15:25:20] All rise.
- 9 (The hearing ends in open session at 3.25 p.m.)