

1 International Criminal Court
2 Pre-Trial Chamber I
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 Péter Kovács, Judge Marc Perrin de Brichambaut and
7 Judge Reine Adélaïde Sophie Alapini-Gansou
8 Confirmation of Charges Hearing - Courtroom 1
9 Tuesday, 9 July 2019
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:32:01] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KOVÁCS: [9:32:23] (Interpretation) Good morning. Welcome.
15 Court officer, could you please call the case.
16 THE COURT OFFICER: [9:32:37] (Interpretation) Good morning, Mr President,
17 your Honours.
18 The situation in Mali, The Prosecutor versus Al Hassan Ag Abdoul Aziz Ag
19 Mohamed Ag Mahmoud, ICC-01/12-01/18.
20 PRESIDING JUDGE KOVÁCS: [9:32:58] (Interpretation) Thank you.
21 According to our schedule we will now continue hearing submissions from the
22 Prosecution.
23 But first of all, I would like to ask whether there are any
24 changes to the teams. Any changes?
25 MR DUTERTRE: [9:33:19] (Interpretation) Good morning, your Honours. Indeed

1 there have been a few team changes. Today with me is our case manager,
2 Sanja Bokulic; to my left, another speaker, Hesham Mourad; Matt Cross;
3 Sarah Coquillaud; and Marie-Jeanne Sardachti.
4 Now we will be turning our attention to the role of Mr Al Hassan and we will speak
5 to telephone information before we move on to the irregularly constituted tribunal.

6 PRESIDING JUDGE KOVÁCS: [9:34:04](Interpretation) Thank you.

7 Now, Defence, any changes to your team?

8 MS TAYLOR: [9:34:11] Good morning, Mr President, your Honours.

9 Our team remains the same, except for the fact that Ms Dolly Chahla and
10 Ms Marie-Noëlle Delisle are not in the courtroom today.

11 Thank you very much.

12 PRESIDING JUDGE KOVÁCS: [9:34:25] (Interpretation) Thank you very much.

13 Legal Representatives of Victims.

14 MR DOUMBIA: [9:34:34] (Interpretation) No change within our team.

15 THE INTERPRETER: [9:34:37] Could parties and participants please observe the
16 five-second rule. Many thanks.

17 MR DUTERTRE: [9:34:42] (Interpretation) Before we begin, I would like to put
18 a question to the Defence for clarification, and this is subsequent to the observations
19 made by the Defence yesterday concerning Judge Alapini. Does the Defence intend
20 to raise the issue with the plenary of Judges? Thank you.

21 PRESIDING JUDGE KOVÁCS: [9:35:06](Interpretation) Thank you very much.

22 Would the Defence care to respond to the question just put by the Prosecutor?

23 MS TAYLOR: [9:35:16] Thank you very much, Mr President.

24 We are not quite aware of the propriety of having this *inter partes* disclosure
25 happening in the courtroom. I think we have made our position clear for the record

1 and we will act accordingly. Thank you.

2 PRESIDING JUDGE KOVÁCS: [9:35:33] (Interpretation) Thank you very much.

3 Duly noted.

4 We will now allow the Prosecutor to address the Court.

5 MR MUNEEESAMY: [9:35:43] Your Honour, at the outset of my presentation, I

6 would like to inform the Court that all the broadcasting should be in public unless I

7 indicate otherwise, unless of course we move into private session, your Honours.

8 May I proceed, your Honours?

9 PRESIDING JUDGE KOVÁCS: [9:35:59] (Interpretation) Very well.

10 MR MUNEEESAMY: [9:36:02] Mr President, your Honours, in Timbuktu, Al Hassan

11 was not just a member of the armed groups, he was also a member of the Islamic

12 police, and within this police, Al Hassan was the commissaire. As commissaire,

13 Al Hassan was involved in every aspect of the work of the police.

14 Your Honours, the Document Containing the Charges covers all aspects of

15 Al Hassan's role in detail. For this presentation we will only focus on some of the

16 key aspects of his role.

17 Your Honours, we will look at how Al Hassan made sure that the new rules of the

18 armed groups were imposed on the population of Timbuktu. He was involved in

19 patrols, he took part in arrests, he investigated into the breaches of the new rules, he

20 was also involved in tortures, he referred cases to the Islamic tribunal, and he

21 punished those who breached the new rules of the armed groups.

22 We will also look at how Al Hassan dealt with the population directly, noting the

23 complaints and mediating over disputes. We will look at how Al Hassan issued

24 permits and carried out various administrative tasks. And finally, your Honours, we

25 will look at how Al Hassan was the one to speak to the media on behalf of the Islamic

1 police.

2 Your Honours, in Timbuktu between 2012 and 2013, when the armed groups were in
3 control, the men of the Islamic police were everywhere. It would be hard not to see
4 them. They carried weapons, they wore distinctive outfits, they wore blue vests
5 with Islamic police written on them. They patrolled the streets on foot or in vehicles.
6 They watched everyone. They were alert, ready to take action against anyone
7 caught breaching the newly imposed rules of the armed groups.

8 Al Hassan placed these men there. As commissaire, he organised the daily work of
9 the Islamic police. He told police officers what tasks to carry out, when to carry out
10 the task, and where to carry out the task.

11 He designated police officers, told them when to patrol and where to patrol. At
12 times, your Honours, Al Hassan himself decided what task to allocate. At other
13 times he relayed the orders he obtained from his hierarchy to the members of the
14 police, in other words, from the top of the ladder to the bottom. He also relayed
15 requests from the bottom of the ladder to the top. In other words, from members of
16 the police to the top of the hierarchy.

17 Members of the police were given food, money, or clothes. If a member of the police
18 needed anything, he went to Al Hassan. Al Hassan then conveyed the request to the
19 director of the police.

20 When it came to patrols, your Honours, Al Hassan made sure that they knew how to
21 react when they detected a breach of the new rules. In these instances, police officers
22 had to know how to interact with the population. Al Hassan made sure of that.

23 According to P-150, your Honours, Al Hassan could also discipline and reprimand
24 police officers. This is referred to at paragraph 284 of the Document Containing the
25 Charges, your Honours.

1 Police officers on patrols were provided with walkie-talkies. According to P-582 at
2 paragraph 19 of his evidence, if the patrols encountered any problems, they could
3 contact Al Hassan on his walkie-talkie.

4 I would like to show your Honours a picture. You can see on your screens,
5 your Honours, Al Hassan behind his desk at the police station. The screenshot,
6 your Honours, is referred to at paragraph 154 of the DCC. We will come back to this
7 picture later on in the presentation, but for now, I want to show your Honours the
8 walkie-talkie on the desk of Al Hassan.

9 He could easily be contacted through the walkie-talkie in case the patrols encountered
10 problems. All this, your Honours, was key to the proper functioning of the Islamic
11 police.

12 In Timbuktu, those caught breaching the rules of the armed groups were arrested,
13 detained, subjected to an investigation, referred to the tribunal and then punished.

14 Al Hassan took part in these arrests and detentions. For instance, he arrested
15 Dédéou Maiga who had allegedly committed a theft. Dédéou Maiga was arrested
16 and taken to the Islamic police where he was detained.

17 Al Hassan carried out investigations. He investigated breaches of the new rules of
18 the armed groups; he investigated cases involving the sale or consumption of alcohol,
19 the sale or consumption of cigarettes, the use of amulets or the practice of magic; he
20 investigated cases of adultery; and he investigated cases of theft.

21 During these investigations, Al Hassan also interrogated the suspects. Let me now
22 show your Honours a report. This is a report dated 23 May 2012. It's a report of the
23 Islamic police. Your Honours will find this report at paragraph 292 of the DCC.
24 This report, your Honours, concerns a case of theft. It contains the testimony of the
25 suspect in that case. It is drafted and signed by Al Hassan.

1 Your Honours, we know that it is Al Hassan's signature because he admitted that he
2 wrote and signed this report. Additionally, a handwriting expert also confirmed
3 that the signature was that of Al Hassan.

4 Your Honours, Al Hassan signed the report as an investigator. Your Honours can
5 see that this is the title he used in the report that he signed.

6 Upon completing an investigation, your Honours, Al Hassan prepared the report and
7 referred the case to the tribunal. Your Honours, the Prosecution has collected
8 numerous such reports. They are all listed at paragraph 300 of the DCC. It is
9 interesting to note that all of the signed reports that the Prosecution recovered bore
10 the signature of Al Hassan. All of them.

11 During the investigations carried out by Al Hassan torture was used. If a suspect
12 did not confess, he would be threatened. If he still did not confess, he would then be
13 tortured. In Timbuktu this was Al Hassan's method of conducting investigations.

14 Let's look at another report. This is the inquiry report against a man who allegedly
15 sold and consumed alcohol and was in company of a woman who was not his wife
16 and not his sister. These were crimes under the new rules of the armed groups.

17 The report can be found at paragraph 307 of the DCC, your Honours.

18 Al Hassan signed this inquiry report. In it, Al Hassan wrote that the suspect was
19 interrogated and tortured, but to no avail.

20 Your Honours, we will look at the precise acts of torture when my colleague,
21 Mr Raymond Sandoval will take the floor. But for now let me move on.

22 As I mentioned earlier, your Honours, once Al Hassan completed an investigation, he
23 referred the case to the Islamic tribunal. It is important to highlight that when
24 referring cases to the tribunal, Al Hassan also made recommendations. In a report,
25 he urged members of the court to be harsher because the suspect took money from

1 a lot of people.

2 Al Hassan was also involved in the punishment of those who disobeyed the new
3 rules of the armed groups. As a member of the police, Al Hassan could apply
4 discretionary punishments. He could flog or imprison people for what the armed
5 groups considered to be minor crimes, such as consuming alcoholic beverages or
6 smoking. Al Hassan would be present when these discretionary punishments
7 would be applied.

8 More serious crime, such as adultery or theft, were referred to the tribunal.

9 Al Hassan was present and executed the punishments imposed by the tribunal.

10 Your Honours, may we now move into private session for approximately two
11 minutes.

12 PRESIDING JUDGE KOVÁCS: [9:46:33] (Interpretation) Private session, please.

13 (Private session at 9.46 a.m.)

14 THE COURT OFFICER: [9:46:43] (Interpretation) We are now in private session,
15 your Honour.

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7 (Open session at 9.48 a.m.)

8 THE COURT OFFICER: [9:48:28] (Interpretation) We are now in open session.

9 PRESIDING JUDGE KOVÁCS: [9:48:35] (Interpretation) Please continue.

10 MR MUNEESEAMY: [9:48:37] As your Honours saw, Al Hassan was involved in the

11 imposition of the new rules of the armed groups, be it in the arrests, detentions,

12 investigations, tortures, referrals to the tribunal, or the punishments.

13 In Timbuktu women were sexually violated by members of the armed groups.

14 During the presentation of my colleague, Mrs Nelly Corbin, your Honours will hear

15 the extent of the sexual and gender-based crimes committed on the women of

16 Timbuktu, but for now allow me to mention the following:

17 Sexual and gender-based crimes were committed through a system of forced

18 marriages. Al Hassan acted as an intermediary in these so-called marriages.

19 Members of the Islamic police who wished to marry went to him. He then requested

20 money to facilitate the forced marriages.

21 My colleagues will tell you more about these crimes in her presentation to

22 your Honours.

23 Mr President, your Honours, Al Hassan was also involved in other aspects of the

24 work of the Islamic police and that, throughout the period of control of Timbuktu by

25 the armed groups, which began in April 2012 and ended in January 2013.

1 In Timbuktu, if you had to deal with the police, Al Hassan was the first person you
2 would call.

3 Let us look at a photograph. This picture is referred to at paragraph 155 of the DCC,
4 your Honours. It shows the facade of the police station. Your Honours can see the
5 big sign on the photograph. The big sign reads "*Police Islamique*".

6 Under these words your Honours will see phone numbers. The first one, 792 62 392,
7 is the number of Al Hassan.

8 My colleague, Ms Sarah Coquillaud, will take the floor just after me, will tell you
9 more about this phone number and the significance of the call data records,
10 your Honours.

11 From his seat at the police station, Al Hassan interacted directly with the population.

12 From the police station, Al Hassan dealt with all sorts of complaints. As he himself
13 puts it, and I quote:

14 "There were crowds of inhabitants in front of the police station every day. There
15 were debt-related issues, social issues and so forth, and all sorts of issues every day."
16 End quote.

17 This quote can be found at MLI-OTP-0067-1896, at page 1899, at lines 60 to 61.

18 Let me now show your Honours an example of a complaint.

19 The complaint was captured in a report dated 16 July 2012. The report is referred to
20 at paragraph 288 of the DCC, your Honours. The complaint concerns a man who
21 wants his wife to return to him. The report was drafted and signed by Al Hassan.

22 You can see his signature at the bottom of the report.

23 Your Honours, Al Hassan also mediated over disputes.

24 We saw the screenshot earlier, your Honours, let me now explain the context.

25 Al Hassan is in his office at the Islamic police station. As your Honours can see in

1 the screenshot, there are two other persons in the office. Your Honours can also see
2 two machine guns visible on the table between these two persons.

3 One of these persons made a complaint against the other for not paying for the
4 weapons he sold. Your Honours, this is an example of Al Hassan mediating over
5 a case.

6 Al Hassan could even conduct enquiries in case of a problem between a police officer
7 and a member of the population. He could even conduct enquiries when there are
8 complaints against persons at the top of the hierarchy of the armed groups. For
9 instance, he looked into a complaint against Adama, the director of the Islamic police.
10 Adama had allowed the police to enter the house of a man at midnight without the
11 man's permission.

12 In the discharge of his duties, Al Hassan could also summon people.

13 On your screen, your Honours, you can now see a summons issued by Al Hassan.

14 This photograph is referred to at paragraph 298 of the DCC, your Honours.

15 In Timbuktu, under the control of Ansar Dine and AQIM, if a person wanted to dig
16 a well, he had to ask permission. Al Hassan had the authority to give permission.

17 Your Honours can now see on your screens an example of a permit. On your screen
18 is a permit allowing someone to dig a well. It is dated 17 June 2012. This permit is
19 referred to at paragraph 152 of the DCC.

20 Your Honours can see the signature of Al Hassan at the bottom of the permit.

21 Your Honours can also see that Al Hassan signed as the emir of the Islamic police.

22 Now before proceeding further, your Honour, may I request that the next photograph
23 not be broadcasted to the public. I would like to show the next evidence on the
24 courtroom screens only.

25 PRESIDING JUDGE KOVÁCS: [9:55:31] (Interpretation) Courtroom officer, if you

1 could, please.

2 MR MUNEESEAMY: [9:55:43] Yes. Your Honours, you can now see a different kind
3 of permit on your screens. This permit is for allowing someone to carry out
4 a different kind of activity in Timbuktu. Al Hassan signed this permit.
5 Let me move on.

6 Al Hassan also dealt in administrative matters. He compiled information on
7 localities, processed applications from people who wanted to join the armed groups,
8 and kept copies of the decisions of the tribunal. Al Hassan also kept a register of the
9 membership of the Islamic police.
10 Your Honours, Al Hassan was inextricably linked to the Islamic police and the
11 imposition of the new rules of the armed groups. Because of this, journalists wanted
12 to talk to him. Witness P-623, your Honours, was one of these journalist. At
13 paragraph 32 of her statement she said, and I quote:
14 "I was interested in Al Hassan, because lots of people who fled to Bamako spoke
15 about Al Hassan and the Islamic police arresting people, and forcing women to cover
16 up, more than they spoke about Sanda and the ruling of the armed groups. This was
17 probably around August or September 2012 that I understood that he was the one
18 executing such punishments." End quote.

19 Your Honours, before proceeding further may we move into private session for
20 another two minutes.

21 PRESIDING JUDGE KOVÁCS: [9:57:27] (Interpretation) Courtroom officer, if we
22 could go into private session, please.

23 (Private session at 9.57 a.m.)

24 THE COURT OFFICER: [9:57:38] (Interpretation) We are in private session,
25 your Honour.

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22 (Open session at 9.59 a.m.)

23 THE COURT OFFICER: [9:59:52] (Interpretation) We are in open session,
24 your Honour.

25 PRESIDING JUDGE KOVÁCS: [9:59:59] (Interpretation) Thank you.

1 MR MUNEEESAMY: [10:00:01] Your Honours, Al Hassan was involved in every
2 aspect of the work of the police. He was involved in the patrols, the arrests, the
3 investigations, the torture, the referrals to the tribunals and the punishments. He
4 issued permits and dealt with the administration of the police.
5 He was the person to go to when it came to the police. Mr President, your Honours,
6 I will conclude by quoting witness P-582, a member of the Islamic police. At
7 paragraph 20 of his evidence he says, and I will quote in French, your Honours:
8 (Interpretation)

9 "The police there, the person in charge is the commissioner, everything that is done
10 within the police, the commissioner is the one responsible." End of quote.

11 (Speaks English) Your Honour, this brings my presentation to the end. I will now
12 give the floor to my colleague, Ms Coquillaud.

13 PRESIDING JUDGE KOVÁCS: [10:01:10] (Interpretation) Thank you very much,
14 Mr Prosecutor, and I now give the floor to Madam.

15 MR DUTERTRE: [10:01:20] (Interpretation) Mr President, just one moment for us to
16 make the arrangements for the next speaker. Thank you.

17 PRESIDING JUDGE KOVÁCS: [10:02:09] Madam, you have the floor.

18 MS COQUILLAUD: [10:02:13] (Interpretation) Thank you. Mr President,
19 your Honours, my presentation will focus on the call data records.

20 The Prosecutor obtained call data records thanks to co-operation from the
21 government of Mali and Orange Mali.

22 This data touches the call data available at the time in Timbuktu on the various
23 telephone lines, as well as in regard to the various subscribers of telephones in
24 Timbuktu. The data was reviewed and analysed by OTP and by a group of experts.
25 There were more than 2 million such records. From these records it was possible to

1 establish more than 700,000 records covering the relevant period under review.

2 There might be some limitations as to what can be obtained through call records,
3 given that antenna might malfunction or fail, as the case may be in any city across the
4 word.

5 Antennae generally cover a certain perimeter and do not make it possible to establish
6 to the very dot the position of an individual. However, it makes it possible to
7 determine the general area in which an individual may have been located.

8 *Brutes* data or gross data might make it possible to identify any measures of errors,
9 and such corrections can be done by computers.

10 I have raised these problems to point that they might not apply in the current case
11 because the data we have received does demonstrate that although the antenna may
12 have failed from time to time, they did not fail during the period under review, that is,
13 around or on the day on which the crimes were committed.

14 Then, when it comes to errors and other issues that might arise from the collection of
15 data, the problem was reviewed by the expert group that reviewed the data and did
16 not identify such errors.

17 Why is data call analysis relevant? Well, it is because to begin with, generally
18 speaking, the data makes it possible to establish the level of participation and
19 co-ordination between members of the common plan. Then it also makes it possible
20 to determine the movements of an individual such as Mr Al Hassan and his presence
21 at the crime scene as the case may be.

22 To be more specific, the evidence shows that members of Ansar Dine such as
23 Al Hassan usually used mobile telephones in their communications.

24 Evidence also points to the fact that torture was used as a coercive measure to obtain
25 information from suspects and was sometimes done over the phone. It is the suspect

1 himself who confirms this information.

2 Let me now proceed to the assignment or attribution of numbers which will enable us
3 to determine that such-and-such a number does belong to Mr Al Hassan. And I'm
4 going to focus on two numbers both starting with 223, which is the country code for
5 Mali. One ends with 7799 and the other with 2392. Both numbers were assigned to
6 Mr Al Hassan and they are telephone numbers from Mali.

7 Now let me address the first number ending in 7799. The key indicator here that this
8 number was assigned to Mr Al Hassan is himself, he himself said that for the
9 purposes of the relevant period under review, he was assigned this number.

10 I will not spend any more time in this presentation on this particular number because
11 it was not much used. Only in April 2012 and for about a month in 2012, between
12 June and July.

13 Then I will focus on the second number which ends in 2392 and this number was
14 assigned to Mr Al Hassan.

15 How can we state with certainty that this number belonged to Mr Al Hassan? We
16 rely on the number of pieces of evidence for this purpose. First, a handwritten note
17 found at BMS indicating that this number belonged to him. And this was identified
18 by Witness P-7 in 2013. You can see that on your screen, the original to the left and
19 the translation to the right. And you see clearly that it bears Mr Al Hassan's name as
20 being the owner of that number which I'm referring to, that is the number ending
21 in 2392.

22 Other evidence for that purpose arises from witness statements, particularly
23 Witness P-4 who stated that whenever he wanted to contact Mr Al Hassan, he would
24 use that number. Secondly, Mr Al Hassan himself agreed that the number belonged
25 to him when asked whether he had a telephone number at the time, and in his answer

1 he said yes and provided that very number.

2 Furthermore, the call data records themselves establish that the individual who used
3 that number on a daily basis called the following persons: Al Hassan's father,
4 Al Hassan's wife, and Al Hassan's brother who, by the way, was himself a member of
5 the same armed group in Timbuktu.

6 Furthermore, it's interesting to note that this number was the first number used by
7 anyone who wanted to contact the Islamic police, which was then found at the BMS
8 and Al Hassan was its *de facto* commissioner. So you see on the picture the facade of
9 the BMS and the flag of the police Islamic. And as you saw from my colleague's
10 presentation yesterday, members of the Islamic police were well armed and they all
11 bore weapons such as Kalashnikovs and went about in pickups and on motorbikes
12 and some of their pickups had heavy weapons mounted on them.

13 Now returning to our telephone data, as my colleague said previously, you can see
14 right upfront, the first number being the number of Mr Al Hassan, and the next
15 number, the second number, is the number belonging to Adama, the first emir of the
16 Islamic police.

17 As I said before, call data records make it possible to establish contacts between the
18 members of the common plan. What do these data point to?

19 First, contact was extremely frequent. Al Hassan was in regular contact with
20 members of the common plan before, during and after the commission of the crimes.
21 The contacts were permanent and ongoing. Al Hassan was in contact with the
22 members throughout the entire relevant period and there is always some ongoing
23 activity.

24 Now when it comes to the types of communications, more than 3,000 SMSs were
25 exchanged between Al Hassan and others between 1 May 2012 and 15 January 2013.

1 And some 15,000 calls or more were either received or made by Mr Al Hassan during
2 the same period. As you can see on the graph before you it is eligible, so to speak,
3 but what you are looking at is a condensation of some 15,000 calls or so made by or
4 received by Mr Al Hassan.

5 What matters, it must be said, is that these contacts were frequent, intense, and that
6 there was no lull or no time of inactivity in those contacts. The question then is, who
7 was Mr Al Hassan was talking with? These are his main interlocutors as you can see
8 on this graph, and I will introduce you to them clockwise.

9 Right at the top the Houka Houka, the judge of the Islamic tribunal. Then to his left,
10 your right, is Youssef, a member who was involved in the destruction of the sites.

11 Sanda Ould Boumama, spokesperson of Ansar Dine and close collaborator of

12 Abou Zeid and Yahia Abou Al Hammam. Abdallah Al Chinguetti, he was

13 a preacher of the AQMI, member of the presidency and member of the Islamic

14 tribunal. Ahmed Al Faqi Al Mahdi, chief of the Hisbah from April to September

15 2012 and member of the Islamic tribunal. You can also see that Mr Al Mahdi

16 appears twice on this photograph because he too had two phone numbers which he
17 used at the time.

18 Abou Thar, a combatant involved in providing security and destruction of various

19 sites under Mr Al Hassan's hierarchical command. Abou Tahla, member of AQMI in

20 charge of security and who took over from Abdallah Al Chinguetti at the head of

21 katiba Al-Furqan. Oumar Ould Hamaha, historic member of the AQMI. Adama,

22 first emir Islamic police. Mohamed Moussa, he took over from Al Mahdi as chief of

23 the Hisbah from September 2012 to January 2013 and member of the Islamic tribunal,

24 otherwise known as the hangman of the women. This is his nickname to the

25 population. Then there was Yahia Abou Al Hammam, a member of AQMI for the

1 Sahel. And then finally Abou Tahla, whom I mentioned a short while ago,
2 a member of AQMI, who, like Mr Al Hassan and Mr Al Mahdi, also had two
3 telephone numbers.

4 You can see on this slide the various communications with members of the armed
5 groups. Quite frequently Mr Al Hassan talked with the people listed most
6 frequently, Houka Houka, Islamic tribunal, Youssef, Sanda Ould Boumama,
7 Abdallah and others.

8 Now you can see the contacts between judges of the Islamic tribunal during the
9 relevant period under review. What matters here is that Houka Houka was in
10 contact with Iyad Ag Ghaly, the supreme leader of Ansar Dine; Ahmad Al Faqi
11 Al Mahdi on both telephones of that individual more than 300 contacts;

12 Abdallah Al Chinguetti, who was part of the AQMI presidency; Mohamed Moussa of
13 Hisbah; and his most privileged contact in relation to other members of the common
14 plan was Mr Al Hassan. Houka Houka also was in contact with
15 Sanda Ould Boumama, the spokesperson of Ansar Dine.

16 Now let me take another example, the call records of Mr Adama, first emir of the
17 Islamic police and his contacts with other members of the common plan.

18 Here you can see that he had frequent contacts with Sanda Ould Boumama, the
19 Ansar Dine spokesperson; contacts with Houka Houka, with Yahia Abou
20 Al Hamman of the AQMI presidency; and finally, the most significant contacts were
21 with Mr Al Hassan.

22 Here, I have surrounded or I have circled these contacts with Houka Houka and you
23 can see that what we want to highlight is that the most frequent contacts were indeed
24 between Houka Houka, the judge of the Islamic tribunal, and Mr Al Hassan,
25 commissioner, the *de facto* and effective commissioner of the Islamic police.

1 These contacts therefore were not in terms of co-ordination between organs, but
2 rather, contacts between two individuals, namely, Mr Houka Houka and
3 Mr Al Hassan.

4 Another example of such contacts was the contact between Mr Al Hassan and
5 Sanda Ould Boumama. What we want to focus on here is the dates on which these
6 contacts took place. There were more than 40 contacts before the first destructions
7 occurred, at which time the groups were still conducting intelligence in the area and
8 trying to convince the people not to go to the sites of the mausoleums. Ten times
9 after the flogging of 1 May 2012 and then also after the first wave of destructions on
10 9 June, as well as 16 of July 2012.

11 Why are we interested in these contacts? Because Sanda Ould Boumama played an
12 essential role during the occupation of Timbuktu. In addition to being Ansar Dine's
13 spokesperson, he was also one of the leaders of Ansar Dine. He was involved in the
14 governing of the city, he promoted the activities of the groups and encouraged the
15 destruction of the mausoleums and the floggings and the implementation of all
16 sanctions as was also testified to by international media.

17 You can see here Mr Sanda Ould Boumama's statements, and they do fall within the
18 time frames that I have mentioned. For example, 30 June, the day of the destruction
19 and he's saying, for example, that (overlapping speakers) (Speaks English) "Today
20 Ansar Dine will destroy all the mausoleums in town. All the mausoleums without
21 exception ... God is unique. All that is haram. We are Muslims. What is
22 UNESCO?" (Interpretation) End of quote.

23 He also is the one who, on that very day, said that 90 per cent of the mausoleums had
24 already been destroyed and that the group would continue. He also, and in
25 reference to the dates which I mentioned above, who made the statement on the

1 destructions of the various sites on 4 and 13 July 2012.

2 Now, what do Al Hassan's communications demonstrate in terms of crimes and the
3 common plan?

4 First, his presence on or around the areas where the various crimes were committed,
5 either the floggings or amputations. It also points to his involvement during and
6 after the execution of sentences, and it points to his direct and close links with
7 Houka Houka, with whom he had a *de facto* communication of police reports and
8 co-ordinated the execution of sentences. It finally speaks to his contact with
9 Al Faqi Al Mahdi, who was chief of the Hisbah during the period of destruction.

10 When it comes to his presence at a crime scene, you can see here an example. It
11 shows Al Hassan present at a public flogging of 20 June 2012. He is making or
12 placing a phone call at the time when this victim is being flogged. We can see him
13 clearly on the picture in the appropriate attire. The telephone data, therefore, points
14 to his effective presence at that crime scene on that day.

15 I also made reference to his close ties with Houka Houka, president of the Islamic
16 tribunal. They were in permanent contact and sometimes several times during the
17 same day.

18 What do the call records also establish? They establish that there was co-operation
19 between the organs the Islamic tribunal and the Islamic police. They established that
20 there was co-ordination in the implementation of public sentences.

21 And then they also point to the contacts I have already mentioned, particularly with a
22 view to obtaining authorisation for torture and forced confessions.

23 Let us now look at the relevant stats when it comes to contacts between the two
24 persons.

25 They call each other not less than ten times when the gates of Sidi Yahya are being

1 pulled down and the three mausolea in the three saints are being reduced to rubble.

2 They call each other 16 times on the date of the flogging, on 8 July.

3 They call each other four times on 2 September when the flogging occurred.

4 They call each other not less than 18 times on 16 December 2012, on the day of the
5 amputation.

6 Another key figure of the common plan with whom Mr Al Hassan had contact was
7 Mr Al Faqi Al Mahdi, chief of the Hisbah, who was in charge of the destruction of the
8 mausoleums in Timbuktu. The two men were in contact throughout the relevant
9 period, but mostly so during the times of the destruction.

10 We must recall here that the Islamic police provided information that contributed or
11 helped in the destruction of the mausoleums. We also see them involved in the
12 destruction proper. We see on this sketch that they had contact with each other on
13 the day before, on 20 June; and then the next day -- or on 29 June, rather; and then on
14 the next day on 30 June. And at that time, by 1 p.m., members of the groups were at
15 the various sites and in the cemeteries conducting the destructions. And then finally,
16 after the destruction, they called each other on 9 and 15 July 2012.

17 It must be stated clearly that the calls may appear to be short because they last only
18 a few seconds. But a lot can be said in 30 seconds and a lot more can be said when
19 people talk to each other for more than one minute.

20 Now let us look at the role of antenna in the analysis of the movements of suspects.

21 What do telephone antenna do? Through them it is possible to determine how
22 people move about. They also make it possible to determine the proximity of an
23 individual to such-and-such a location going by the position of such an antenna,
24 whether it is close to a mosque or cemetery or market or the governor's office and so
25 on and so forth.

1 So when there is an antenna, it simply serves for the purpose of receiving signals and
2 sending signals to a telephone. How then can we establish the scope or geographic
3 extent of Mr Al Hassan's contacts?

4 There were so many of them in Timbuktu and its surrounding neighbourhoods and I
5 would like to demonstrate this by showing you a map.

6 Let us indicate that the focus is on the omnipresence of Mr Al Hassan in the city. He
7 was not only sitting in his office at the police precinct, he was also present at
8 a number of crime sites and his activities covered the entire city of Timbuktu. And
9 he travelled to various locations within the city, such as, the Islamic tribunal, the
10 *gouvernorat*, the small market and the cemetery and to various locations of protected
11 mausoleums.

12 And as I said before, he covered the entire city. He didn't simply dispatch patrols
13 out. He himself went out on patrol. You can see on the map before you, the city of
14 Timbuktu and you can see the various telephone antenna that I have been referring to
15 on this map.

16 This shot shows you the Islamic tribunal, BMS, the governor's office, the telecentre,
17 the BDM and BDNA banks. On this map, you can see the positions of the various
18 antennae. The antenna at *cimetière* and the antenna at *bibliothèque* as well as the
19 antenna at *petit marché*, and the antenna at *la place Timi*. You can also see the
20 positions of those antennae in relation to the areas of interest.

21 Let me now show you examples of the suspect's movements at or around crime
22 scenes.

23 Let me start by the flogging of 20 June 2012. You can see a simplified map of
24 Timbuktu, and you can see red circles that point to Mr Al Hassan's travels on that
25 day.

1 On that day, Mr Al Hassan was around the *petit marché* and the signal was received in
2 that area when the flogging was taking place at the Sankoré square nearby.

3 I refer you back to the map, which I showed a short while ago confirming the
4 information that Mr Al Hassan was present at the flogging of 20 June, and on this
5 sketch you see that he made a phone call.

6 Another example is the flogging of 8 July 2012. Once again, Mr Al Hassan's signal is
7 picked up by the antenna near the *petit marché* during the time of the flogging at the
8 *petit marché*.

9 Let me recall that on the day of that flogging or flagellation, the police had arrested
10 two men who were accused of being drunk. It's Al Hassan and other members of
11 the Islamic police who took them to Youboutao at the *petit marché* and it's Al Hassan
12 who had the handcuffs and they both flogged the two men on that day in public.

13 Another example is in relation to 16 September 2012 amputation. Telephone data
14 relating to that date point that Mr Al Hassan's signal was received at the antenna of
15 the *petit marché*, which is closed to the location where the flogging took place and this
16 happened at the field.

17 Al Hassan himself arrested the victim. He saw the judgment ordering an
18 amputation and he had various discussions with Houka Houka pursuant to these
19 telephone communications prior to the implementation of the amputation. And as I
20 have just indicated, his telephone signal was received on the nearby antenna.

21 The last example, the flogging of 29 November 2012. Once again, we see here that
22 Mr Al Hassan, his signal was received by the *petit marché* antenna, which is close to
23 the location at which the sentence and the flogging were executed.

24 On that day, Al Hassan was present along with other members of the Islamic police,
25 Abou Dhar and Abdallah Bourkinabi. They participated in the flogging of six

1 victims and he also took part in the flogging of one of the six victims.

2 To conclude, the telephone data and the antenna make it possible to establish the
3 active participation of Mr Al Hassan in the common plan with key members of the
4 common plan and also his links with the key members of the common plan and their
5 various organs, especially, Houka Houka, Sanda Boumama and others. And finally
6 to establish his presence in the vicinity of the scenes of the crime. And the data can
7 be corroborated by other evidence, such as audio and video calls.

8 I thank you now, and I will hand over the floor to my colleague, Mr Mourad.

9 PRESIDING JUDGE KOVÁCS: [10:31:43] (Interpretation) Mr Mourad, please.

10 MR DUTERTRE: [10:31:50] (Interpretation) Thank you, Mr President. While my
11 colleagues change places, the Defence wanted the presentation of Ms Coquillaud. I
12 will ask that it be tendered into the file with an MFI marking so that everyone can
13 have access.

14 PRESIDING JUDGE KOVÁCS: [10:32:15] (Interpretation) Thank you very much.

15 That is noted.

16 Madam Taylor.

17 MS TAYLOR: Thank you very much, Mr President. I apologise for disturbing, but
18 we would also be very grateful, if it would be possible to have the doc IDs of any of
19 the items of evidence referred to during the presentations.

20 For example, several maps were referred to and it's very difficult for us to follow
21 without the actual evidence references.

22 Thank you very much.

23 MR DUTERTRE: [10:32:50] (Interpretation) Yes, absolutely, Mr President.

24 The essential thing is the expert report on the telephone data, which was disclosed to
25 the Defence. We have some of the information on the slides, but we will ensure that

1 they appear fully.

2 PRESIDING JUDGE KOVÁCS: [10:33:11] (Interpretation) Thank you very much,
3 that is fine.

4 Mr Prosecutor, you can begin now.

5 MR MOURAD: [10:33:32] Mr President, your Honours, my name is
6 Hesham Mourad, trial lawyer with the OTP.

7 I will address in this submission the crime of passing of sentences under
8 Article 8(2)(c)(iv) of the statute.

9 We have addressed this crime in sufficient details in the document containing the
10 charges, in particular, in paragraphs 421 to 527.

11 In order to avoid unnecessary repetition, as instructed by the Chamber, I will only
12 focus on specific issues in two parts.

13 THE COURT USHER: [10:34:07] For the record, the presentation is in public, right?

14 MR MOURAD: [10:34:11] It is in public.

15 THE COURT USHER: [10:34:12] Thank you.

16 MR MOURAD: [10:34:13] In the first part, I will give an overview of the alternative
17 forms of the *actus reus* of this crime and highlight Mr Al Hassan's role and

18 involvement in the commission of the crime. In doing so, I will address some of the
19 questions included in the Chamber's questions list. This should take about 30

20 minutes. I'm afraid it might spill over to after the break. In this part I would like to
21 keep the slides shown only within the courtroom and not to the public.

22 In a second part, I will elaborate in further details on the interpretation of the notion
23 of regularly constituted court which we briefly addressed in paragraphs 486 to 488 in

24 the DCC. This may take also about 30 minutes.

25 This part of our submission will be rather technical because it addresses important

1 legal issues which have not yet been considered in detail by international courts and
2 tribunals and I would respond to a legal argument presented by the Defence in their
3 submissions filed last Thursday.

4 The slides in this part can be shown to the public, but when I get there I will make
5 another reminder.

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19 (Recess taken at 11.03 a.m.)
20 (Upon resuming in open session at 11.34 a.m.)
21 THE COURT USHER: [11:34:45] All rise.
22 Please be seated.
23 PRESIDING JUDGE KOVÁCS: [11:35:22](Interpretation) Good morning once again.
24 Before I give the floor to the Prosecution, I do need to indicate that I forgot to mention
25 something very important.

26

1 I would like to remind parties and participants not to speak too quickly so that the
2 interpreters can do their work properly in good conditions.

3 And now, Mr Prosecutor, you have the floor and you can continue with your
4 presentation.

5 Mr Dutertre.

6 MR DUTERTRE: [11:35:56](Interpretation) Thank you, Mr President.

7 I would like to say for the transcript that my colleague, Nelly Corbin, has joined us for
8 this second sitting this morning.

9 PRESIDING JUDGE KOVÁCS: [11:36:11](Interpretation) Thank you very much for
10 that clarification, Mr Prosecutor.

11 MR MOURAD: [11:36:17] Mr President, your Honours, first I would like to
12 apologise, before the break I was speeding up to finish before the break the first part,
13 but I will try to pace myself in this session.

14 Your Honours, I addressed in the first part, question 11 and 12 of your Honours'
15 questions. I was planning to address as well the remaining question concerning this
16 crime, but with your leave, given the time allocated to me and in order to cover the
17 legal part within the time allocated to me, I would seek your leave to respond in
18 writing about these questions.

19 PRESIDING JUDGE KOVÁCS: [11:37:05](Interpretation) Very well.

20 MR MOURAD: [11:37:08] Thank you very much, your Honour.

21 Mr President, your Honours, after this overview of the three alternative forms of this
22 crime's *actus reus* element, which we discussed before the break, I would like to
23 highlight briefly here Mr Al Hassan's main contributions to the commission of this
24 crime.

25 For the full discussion of his modes of liability I refer your Honours to paragraphs 502

1 to 527 in the DCC and the submissions of my colleague, Ms Dianne Luping, which
2 will discuss tomorrow in more details Mr Hassan's modes of liability.

3 And for the record, your Honours, this part of my submission can be public and the
4 slides can be shown to the gallery, with the exception of one slide, which I will
5 indicate in due course.

6 As we heard from Mr Muneesamy before the break, Mr Hassan's role can be
7 summarised as follows:

8 He organised the work and functioning of the police and participated in its activities.

9 And I refer your Honours to section 7.2.3 of the DCC. He distributed tasks for
10 members of the police; he dispatched police patrols; he issued and passed instructions
11 to members of the police to ensure the enforcement of the rules of the group.

12 Mr Hassan himself participated in police patrols and in the arrest and detention of
13 members of the civilian population, who were suspected of violating the new rules.

14 Mr Al Hassan played an essential role in the coordinated work between the police
15 and the tribunal. He received complaints. He investigated the alleged violation of
16 the new rules. He drafted the police reports. He referred the cases to the tribunal.

17 He received the judgments of the tribunal and organised with other organs the
18 implementation of the sentences passed by the tribunal.

19 Your Honours, the following slide should not be shown to the public.

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5 II, and why the Statute and elements reflect both these provisions.

6 Second, if common article 3 and Additional Protocol II are read together, which

7 Element 4 in the Elements of Crimes suggests they must be, the definition of regularly

8 constituted court must be a functional definition rather than a formal one.

9 Third, the content of the functional definition includes a requirement for courts to

10 apply the pre-existing law in force in the state in which they operate. This follows

11 from; one, the most basic principles of the law of non-international armed conflict;

12 two, the treaty provision which inspired article 6 of Additional Protocol II; three, the

13 interest in consistency with similar principles in the law of international armed

14 conflict, and principles of international human rights law.

15 And while this requirement for courts to apply pre-existing state law has two

16 qualifications, these qualifications are narrowly confined and do not arise in this case.

17 Turning to our first point: We say that interplay between two protected values is

18 crucial to understanding and interpreting Article 8(2)(c)(iv), and that both these

19 values must be given effect.

20 The first of these values is the ability of all parties to an armed conflict, including an

21 non-international armed conflict, to uphold the law, including international criminal

22 law, in order to protect the civilian population. This value comes from common

23 article 3 itself, which establishes minimum guarantees for all persons not taking active

24 part in hostilities and provisions such as Article 28 of the Statute, which impose

25 positive obligations to prevent and punish crimes. Recognising this value means

1 recognising that non-state organised armed groups may sometimes need access to
2 a judicial system, even if they are not the established government of a state.

3 The second of these values seeks to ensure that people are protected and not exploited
4 by the law or by judicial systems or by people who claim to act in the name of the
5 judicial system. In other words, to ensure a basic set of minimum guarantees,
6 including not only that they are dealt with fairly, but that the law itself is not used as
7 a tool of oppression.

8 This value follows naturally from the requirement in common article 3 that courts are
9 regularly constituted in the first place, and it follows from similar protections for
10 protected persons under the third and fourth Geneva Conventions and under the first
11 and second additional protocols.

12 Now, these values are important to understand, because they help to explain why
13 common article 3 could not be the last word on the question of regularly constituted
14 courts. This explains the relationship between Article 8(2)(c)(iv) of the Statute and
15 Element 4 of the relevant Elements of Crimes, which brings me to our second point.

16 As your Honours can see on the screen, common article 3, which dates back to 1949,
17 provides without further explanation that a court must be regularly constituted.

18 However, while common article 3 clearly promoted the protective value, doubts arose
19 whether it adequately protected the equality value. If "regularly constituted" were
20 understood to mean a formal requirement, that a court must itself be an organ of the
21 state, then non-state armed groups could never avail themselves of any kind of justice
22 mechanism.

23 Your Honours can see in support of this reference A3 in our reference list.

24 The solution to this problem was the formulation in Additional Protocol II which
25 replaced the term "regularly constituted court" with a functional definition and thus

1 implicitly rejected the application of a formal definition.

2 On this basis, provided that a court offers essential guarantees of independence and
3 impartiality, the language of Additional Protocol II that your Honours can see on the
4 screen, it may be said to be regularly constituted in the language of common article 3.

5 This did not mean eliminating altogether the requirement for courts to be regularly
6 constituted, which would weaken the second value that I mentioned, ensuring the
7 protective function of the law. This is illustrated, for example, by Article 75(4) of
8 first additional protocol, which was adopted at the same time as the second protocol.

9 As your Honours can see, this continues to require, in the context of international
10 armed conflict, courts, first, to be regularly constituted and, second, to respect the
11 generally recognised principles of regular judicial procedure.

12 The Statute of this Court also makes clear that drafters intended to retain the
13 requirements for courts to be regularly constituted. As shown now on the screen,
14 the drafters opted to model Article 8(2)(c)(iv) exactly on the terms of common article 3.
15 If they did not think this language was appropriate or necessary, they wouldn't have
16 included it.

17 But, then again, in the Elements of Crimes, your Honours can see the drafters'
18 adoption of the functional definition from Article 6(2) of the second additional
19 protocol. Element 4 of the Elements of Crimes reproduces the relevant language
20 word for word. And it makes clear that this is meant to define the meaning of
21 a regularly constituted court by saying "that it".

22 For all these reasons we say the concept of a regularly constituted court has
23 a functional definition, not a formal one. And this brings me to our third point,
24 which is that the functional definition contains a requirement to apply the
25 pre-existing law of the state.

1 Now we fully acknowledge that this is not spelled out Article 6(2) of Additional
2 Protocol II. However, while it's true that this provision lists some of the relevant
3 considerations, these are not exhaustive. This is illustrated, for example, by use of
4 the term "in particular" in the *chapeau* of Article 6(2). This point is confirmed in
5 reference A4 in our reference list and is consistent with the approach of the ICRC in
6 its customary law study at reference A5. It is also significant that the examples in
7 Article 6(2) were not included in Element 4 at all. Rather, this Court was trusted to
8 assess for itself the natural meaning of independence and impartiality.

9 In this context, your Honours, we submit that the application of the pre-existing
10 national law is an essential quality of independence and impartiality. It's implicit in
11 those basic concepts. If a court merely executes the policy of the group which
12 created it and does not neutrally consider the content or the effect of the national law
13 in force, or applicable international law, then how can it be said to be independent or
14 impartial?

15 This understanding is confirmed by the clear position in international law that
16 non-state armed groups do not have a general power to enact new law and must
17 refrain from doing so, except in limited circumstances. We say this for four reasons,
18 which are:

19 The principle of state sovereignty in the law of non-international armed conflict.

20 Second, the context of article 84 of the Third Geneva Convention, which was the
21 inspiration for Article 6(2) of the second protocol.

22 Third, the context also provided by relevant principles in the law of international
23 armed conflicts in the Fourth Geneva Convention.

24 And finally, the context provided by internationally recognised human rights under
25 Article 21(1)(b) and 21(3) of the Statute.

1 I will briefly explain each of these points, beginning with state sovereignty. This
2 concern is one of the core reasons why the law of international and non-international
3 armed conflict is different. From the perspective of a state party to
4 a non-international armed conflict, the whole reason for the conflict is to maintain the
5 sovereign control of the constitutional government over the state's territory and core
6 functions. This includes the enactment of law on behalf of the people.

7 Consequently, the discussion of judicial activities by non-state armed groups was
8 very sensitive in negotiating the second protocol, as noted at reference A6 in our
9 reference list.

10 While states may have been content to recognise in Additional Protocol II that
11 non-state armed groups might enforce the law, at least to protect the civilian
12 population, this is very different from allowing that they may change the law, unless
13 and until they become the new government of the state in question. Article 6(2)(c) of
14 Additional Protocol II also contains a further clue that states were sensitive to these
15 issues. In English, this provision which deals with the principle of legality, another
16 guarantee of the essential guarantees, simply refers to the law in force at the material
17 time.

18 But in French, however, this is rendered, as and I quote in French (Interpretation)
19 "The natural or international law" (Overlapping speakers) (Speaks English) which is a
20 more faithful reflection of Article 15(1) of the ICCPR from which this text was taken.
21 Now while it may just be possible to argue that the term "national law" could be wide
22 enough to include rules created by a non-state group, as in reference A7 in our
23 reference list, this would create considerable ambiguities. That is in reference A8.
24 It's simpler and more convincing to understand that the reference to national law
25 means just what it is, what it says, the law enacted by the state, which then leaves no

1 ambiguity at all.

2 Zegveld seems to agree, at reference A9 and on the screen, when she stresses the
3 continued applicability of national legislation as a basic premise for both of common
4 article 3 and Additional Protocol II.

5 The understanding that the law applied by a regularly constituted court would be the
6 law of the state is also implicit in the text on which Article 6(2) of Additional Protocol
7 II was based.

8 As noted in the commentary on the screen from page 1398, the drafters borrowed the
9 text of Article 84 of the Third Geneva Convention for this purpose.

10 As your Honours can see, while this provision permits military courts of the
11 detaining power to try cases against prisoners of war, such courts must offer the
12 essential guarantees of independence and impartiality. But if we look at the rest of
13 the third convention as context to these guarantees, we can also see the clear
14 understanding that such courts can only apply the duly enacted law of the state, or
15 international law, and not rules or policy emanating from any other non-state source.
16 This follows from Articles 82, 87-88, 102, 106 and 108, and especially Article 99, which
17 is shown on screen.

18 It's true, of course, that the legal protection of prisoners of war under the third
19 convention is different in nature from the legal protection of the civilian population
20 under the fourth convention. In particular, prisoners of war are already under
21 military discipline and civilians are not.

22 For this reason, it was not considered inappropriate for prisoners of war to be subject
23 to the law of the detaining power rather than their own law. That's reference A10.
24 By contrast, this approach is inappropriate for civilians, as illustrated in the Fourth
25 Convention.

1 But what is common to both regimes is that the concept of a regularly constituted
2 court is inherently linked to the state's monopoly on law making, according to its own
3 lawful procedure. That principle is consistent across all the references to regularly
4 constituted or properly constituted courts, which have the same meaning - reference
5 A11 in our reference list - whether in the Third Convention or the Fourth Convention
6 or common article 3.

7 The requirement that regularly constituted courts under common article 3 must only
8 apply pre-existing law of the state is also suggested by the law of occupation under
9 the Fourth Geneva Convention.

10 Again, this presumes the continuity of the state law already in force in the occupied
11 territory. And it is well-established that the principles and rules of international
12 armed conflict may be relevant to interpreting common article 3. That is
13 reference A12.

14 And if I may say in this context, the Defence submission is inaccurate when saying
15 at paragraphs 118 to 121 and paragraph 132, that we seek to apply the laws of
16 occupation directly to this situation.

17 Rather, we merely refer to the laws of occupation to help illustrate the content of
18 a distinct legal regime which applies in non-international armed conflict.

19 So while the Fourth Geneva Convention does allow the occupying power a limited
20 capacity to legislate, it stills preserves the independent sovereignty of the occupied
21 territory. This is why, for example, occupation is different from annexation,
22 which is --

23 THE COURT OFFICER: [12:08:56] I am sorry for interrupting, we have a request for
24 redaction and we need an urgent answer from the OTP bench. Thank you very
25 much.

1 (Pause in proceedings)

2 THE COURT OFFICER: [12:09:13] We just received the answer. Thank you very
3 much.

4 PRESIDING JUDGE KOVÁCS: [12:09:22](Interpretation) Please proceed.

5 MR MOURAD: [12:09:25] I will resume, your Honours.

6 PRESIDING JUDGE KOVÁCS: [12:09:28](Interpretation) Please proceed.

7 MR MOURAD: [12:09:30] That's why, for example, occupation is different from
8 annexation, which is not only unlawful, but which under Article 47 has no effect on
9 the rights or persons under the Fourth Convention. That's reference A13 in our
10 reference list.

11 For this reason, the extent to which an occupying power can enact new law is strictly
12 controlled. The default principle remains that the pre-existing law in force in the
13 occupied territory continues to be the only law of the land.

14 As your Honours can see on the screen, this follows, for example, from article 64 of
15 the Fourth Geneva Convention, which specifically provides that the penal laws of the
16 occupied territory shall remain in force, unless they constitute a threat to the security
17 of the occupying power or an obstacle to the application of the Fourth Geneva
18 Convention itself.

19 While article 64 expressly refers to penal law, which has the greatest potential for
20 misuse against the civilian population, it actually applies to all laws in force in the
21 occupied territory. And this can be supported in reference A14.

22 This is also consistent with article 43 of the Hague Regulations, which obliges the
23 occupying power to respect the laws in force in the occupied territory. And in
24 particular, as Pictet says in his commentary at page 336, they cannot abrogate or
25 suspend the existing law "... merely to make it accord with their own legal

1 conceptions." End of quote.

2 Coming to our last reason for interpreting common Article 3 to require the continuity
3 of pre-existing law, this is also consistent with international human rights law, which
4 may continue to apply during times of armed conflict as *lex generalis*. To the extent
5 that human rights obligations are primarily addressed to states, even if not
6 exclusively so - reference A15 - it would be wholly inconsistent to suggest that
7 international law recognises that non-state groups may change state law to the
8 detriment of individual rights.

9 Indeed, as we noted in our DCC at footnote 1191, human rights bodies typically
10 approach the judicial activities of non-state groups with great caution.

11 Now coming to my final point, I have said that the common article 3 requirement for
12 courts to apply pre-existing state law has two limited qualifications. This is also set
13 out in our DCC at footnote 1190.

14 We mention this for the sake of clarity, but we see neither of these qualifications as
15 relevant in this case. These qualifications exist to the extent that it may sometimes be
16 necessary for non-state armed groups to modify state law in order to give effect to the
17 international law obligations of the state in question, either under international
18 humanitarian or international human rights law. This remains consistent with the
19 principle of state sovereignty because such international obligations were consented
20 to by the state in question.

21 We reach this conclusion for three reasons:

22 First, as we have already discussed, the plain terms of Additional Protocol II refers to
23 courts applying international law. This means that a court may still be regularly
24 constituted if it convicts a person of a crime under international law, even if it is not
25 a crime under national law. And this is confirmed in the commentary to this

1 protocol at reference A16.

2 Second, common article 3 requires the same conclusion, because it imposes minimum
3 standards of humane treatment. Reference A17. To any extent that the national
4 law of a state does not give effect to the minimum standards in common article 3, then
5 a non-state armed group must necessarily be able to enforce the terms of common
6 article 3 itself. Otherwise, the whole purpose would be defeated.

7 Conversely, if a group purported to enact rules which are inconsistent with common
8 article 3, then such law would be invalid and could not be enforced by a regularly
9 constituted court.

10 In this context, inhuman treatment specifically includes the prohibition of corporal
11 and collective punishment and requires respect for the religious convictions and
12 practices of civilians. That is reference A18.

13 Third, and lastly, article 64 of the Fourth Geneva Convention reflects similar
14 principles in the context of international armed conflict in that it recognises capacity
15 of the occupying power to legislate only under conditions recognised by international
16 law. The first of those conditions, as provided in article 64 itself, is where necessary
17 for its own security. And the second is to give effect to the provisions and objectives
18 of the Fourth Geneva Convention.

19 As Pictet's commentary has explained, at page 336 and 337, this limited permission
20 means that the occupying power can take measures to hold the imposition of
21 pre-existing inhumane or discriminatory laws, but that its powers must not under any
22 circumstances serve as a means of oppressing the population.

23 Consequently, international armed conflict only permits departing from pre-existing
24 national law in order to enhance the protections afforded to the civilian population by
25 that state's obligation under international law, or as strictly necessary for the security

1 of the occupying power.

2 So this brings me to our conclusion, your Honours.

3 For the reasons I have explained, we do not say that the creation of a court by
4 a non-state organised armed group itself creates liability under Article 8(2)(c)(iv)
5 of the Statute. But we submit that liability does arise where such a court does not
6 confine itself to applying the pre-existing law in force in the territory, as modified, if
7 necessary, by international law.

8 This means that if the court of a non-state organised armed group systematically
9 passes sentences on conduct which was not prohibited by the pre-existing national
10 law in force and not expressly permitted or required by international law, then it does
11 not exhibit the essential guarantees of independence and impartiality and therefore is
12 not regularly constituted.

13 The same is true if such a court imposes punishments which are not allowed by
14 national law. And this approach is simply the correct interpretation of Article
15 8(2)(c)(iv) and Element 4 in light of the development of customary international law
16 as reflected in the Geneva Conventions and additional protocols. It is the only
17 interpretation which allows these provisions to be read in harmony.

18 And while this legal issue is a novel one, it is not entirely unprecedented. As we
19 noted in the DCC, courts in Sweden, both at first instance and on appeal, have already
20 reached very similar conclusions. Thus, as shown on the screen, the Stockholm
21 District Court in 2017 concluded that:

22 A non-state actor can establish courts provided that the court applies the law that was
23 in effect before the start of the conflict or which at least does not deviate significantly
24 in a more stringent direction from the legislation that applied.

25 For all these reasons, we submit that there are substantial grounds to believe that

1 Mr Al Hassan is criminally responsible for the offence in Article 8(2)(c)(iv)

2 of the Statute, under each of the alternative forums of the *actus reus*.

3 While Ansar Dine and AQIM controlled Timbuktu, and as part of their policy and
4 common plan, members of the civilian populations were subjected to summary and
5 arbitrary punishment without any kind of process whatsoever.

6 Others were brought before the tribunal, but this tribunal was not regularly
7 constituted because it did not apply the pre-existing law of Mali or give effect to
8 international law, but instead simply applied the policy and the rules of Ansar Dine
9 and AQIM. Nor did it afford other essential guarantees of independence and
10 impartiality.

11 Furthermore, proceedings before the tribunal were manifestly unfair, insofar as they
12 relied on evidence obtained by criminal conduct without adequate facilities to
13 prepare a defence and without the necessary judicial safeguards.

14 That concludes my submission, your Honours. Thank you very much.

15 PRESIDING JUDGE KOVÁCS: [12:21:03](Interpretation) Thank you very much,
16 Mr Prosecutor.

17 Ms Taylor.

18 MS TAYLOR: [12:21:08] I apologise for interrupting, Mr President, I didn't want to
19 disrupt my colleague's presentation. But at the very beginning, my colleague
20 intimated that or actually asked for permission to respond to the Judges' questions
21 through writing, and I note that in the order for the calendar of these proceeding, the
22 parties were enjoined to respond to the questions during the hearing.

23 Now the Prosecution didn't yesterday raise any concerns about that calendar and we
24 would respectfully submit that the introduction of written arguments at the end of
25 these proceedings would be contrary to Article 61, which clearly sets out in

1 subsection 4, that it is for the Prosecution to present its evidence and allegations
2 during the hearing and it is then for the Defence to respond.
3 We can't respond, Mr President, your Honours, if we don't have the entire
4 Prosecution case on these issues. So we would respectfully submit that it is
5 incumbent on the Prosecution, given how much time they have to present their case,
6 to fully elucidate their position on these issues during their component of the
7 hearings, so we can then exercise our right to respond. And the prejudice is
8 particularly attenuated in this case, given that when they file their final written
9 observations we will only have effectively four working days to prepare ours.
10 So that does result in a significant prejudice concerning our ability to participate in
11 these hearings and to have an effective right to respond.

12 Thank you.

13 PRESIDING JUDGE KOVÁCS: [12:22:58](Interpretation) Mr Dutertre.

14 MR DUTERTRE: [12:23:02](Interpretation) Yes, your Honour. A few points in
15 answer. We received 43 questions Friday evening at 7 p.m. and we need time to be
16 able to answer the questions and calibrate them into our oral submissions for which
17 we have already been given a limited amount of time.

18 Yesterday I pointed out that our intention was to provide partial answers orally and
19 partial in writing, and so there is no surprise for the Defence. We were -- we
20 indicated this since yesterday.

21 Our intention is to make written submissions by tomorrow evening at the latest so
22 that this is available to the Defence as well, and so that Defence may have time to take
23 those into consideration in their response in the days and time allotted to them in the
24 days ahead.

25 PRESIDING JUDGE KOVÁCS: [12:24:07](Interpretation) Thank you, Mr Dutertre.

1 I think some of the questions were already addressed by the Prosecutor, your
2 colleague.

3 MR DUTERTRE: [12:24:19](Interpretation) Yes, questions 11 and 12 were dealt with,
4 and of course we will not be making written submissions on all the questions, but I
5 think there are issues of sourcing that are also to be dealt with and it's very difficult to
6 outline ERNs during oral submissions. And that is why we felt that it would be
7 probably best to provide written submissions in answer to these questions in order to
8 provide as full information as possible.

9 PRESIDING JUDGE KOVÁCS: [12:24:52](Interpretation) Ms Taylor.

10 MS TAYLOR: [12:24:55] Thank you very much, Mr President.

11 I note that we're currently scheduled to commence our submissions on Thursday
12 morning. If we receive the Prosecution's written observations on Wednesday at
13 some undefined time, obviously that makes it very difficult for us to respond
14 effectively.

15 We would therefore invite the Chamber to allow us to commence on Friday, or at
16 least have greater clarity as to what the Prosecution will respond to on Wednesday, so
17 we can prepare accordingly.

18 Thank you.

19 PRESIDING JUDGE KOVÁCS: [12:25:28](Interpretation) Prosecutor, do you want
20 the floor again?

21 MR DUTERTRE: [12:25:34](Interpretation) The Prosecutor has no objection for
22 a little time being granted to the Defence. Maybe enough time for the written
23 submissions to be made without, in any way, upsetting the scheduling.

24 PRESIDING JUDGE KOVÁCS: [12:25:55](Interpretation) We have taken note of
25 your proposal and the Chamber will deliberate on this matter right away.

1 THE COURT USHER: [12:26:10] All rise.

2 (Recess taken at 12.26 p.m.)

3 (Upon resuming in open session at 12.51 p.m.)

4 THE COURT USHER: [12:51:18] All rise.

5 Please be seated.

6 PRESIDING JUDGE KOVÁCS: [12:51:47](Interpretation) Good afternoon, ladies and
7 gentlemen.

8 With relation to the decision of the Chamber, with regard to the Defence request, the
9 decision is as follows:

10 The schedule of the hearing shall not be amended.

11 In accordance with the order of Monday, 8 July, the parties and participants must, to
12 the extent possible, answer the questions of the Chamber during the hearing.

13 The application of the Prosecutor to file additional written submissions is rejected.

14 In this regard, the Chamber recalls that the parties and participants, in accordance
15 with the amended schedule, can provide additional answers to the Chamber in their
16 written submissions and they can request additional pages.

17 Before returning the floor to the Prosecutor to continue with the merits of the case, I
18 would like to request you to maintain the confidentiality of the documents
19 mentioned.

20 Now I give the floor to the Prosecutor.

21 MR DUTERTRE: [12:53:22](Interpretation) Yes. And thank you, Mr President.

22 Mr President, your Honours, my colleague Mr Sandoval will make the next
23 presentation.

24 PRESIDING JUDGE KOVÁCS: [12:53:35](Interpretation) Very well.

25 Continue, please.

1 MR SANDOVAL: [12:53:38] (Overlapping speakers)

2 As I have not entered my appearance for this session, allow me to introduce myself.

3 I am Raymond Sandoval, trial lawyer in the Office of the Prosecutor.

4 Your Honours, I intend to remain in public session throughout most of my

5 presentation. I will, however, request that we enter into private session when

6 discussing and displaying evidence which cannot be broadcast to the public.

7 And, your Honours, I am conscious of the limited time remaining that we have

8 remaining for this section, so I will attempt to discuss the introductory part of my

9 presentation and I may have to request for a few additional minutes in order to

10 complete the introduction, with your leave, your Honours.

11 PRESIDING JUDGE KOVÁCS: [12:54:21](Interpretation) Very well. Continue,

12 please.

13 MR SANDOVAL: [12:55:00] My apologies for the delay, your Honours.

14 Your Honours, I will be discussing this afternoon the charges against Al Hassan of

15 torture and serious ill-treatment. These are discussed in detail in sections 8.2 and 8.3

16 of the Document Containing the Charges or the DCC.

17 Your Honours, violent acts amounting to torture and serious ill-treatment arose in

18 a particular context in the occupation of Timbuktu by the armed groups.

19 As my colleagues Claudine Umurungi and Jagganaden Muneesamy have discussed

20 at length, members of Ansar Dine and *Al-Qaïda au Maghreb Islamique* or AQMI, the

21 two armed groups which occupied and controlled Timbuktu from April 2012 to

22 January 2013, implemented a common plan to establish their power and control over

23 Timbuktu and to impose their own ideological and religious vision upon the civilian

24 population by any means.

25 This vision entailed the imposition of new rules requiring, among others, women to

1 be sufficiently covered, forbidding men and women to be seen together unless they
2 were married or related, banning alcohol and tobacco, among other numerous
3 restrictions upon the Timbuktu residents' way of life.

4 And the implementation of these new rules led to, in the ordinary course of events,
5 violent means of enforcement, giving rise to the commission of torture and serious
6 ill-treatment.

7 And these violent means of enforcement arose in three principle situations:

8 The first, extrajudicial beatings and floggings carried out by the Islamic police and
9 other organs when they came across violations of their newly imposed rules during
10 their patrols of the city.

11 Second, beatings as an accepted method of interrogation to extract confessions and
12 information.

13 And third, floggings and one amputation as sanctions imposed by the irregularly
14 constituted Islamic tribunal.

15 So this case, your Honours, reflects the major role that these violent means of
16 enforcement played in the armed groups' implementation of their common plan in
17 Timbuktu.

18 We charge 15 incidents as torture and/or serious ill-treatment.

19 As will be discussed in greater detail by my colleagues Yayoi Yamaguchi and
20 Sandra Schoeters, the present case involves both a widespread and systematic attack
21 upon the civilian population of Timbuktu, such that crimes against humanity arise;
22 and also involves the existence of a non-international armed conflict, such that war
23 crimes come into play.

24 So in relation to torture, we charge both crimes against humanity and the war crime
25 of torture, along with the war crime of cruel treatment. And we also charge serious

1 ill-treatment comprised of the crime against humanity, of other inhuman acts and the
2 war crime of outrages upon personal dignity.

3 Of the 15 incidents in this case relevant to these crimes, 12 are charged with all five of
4 these crimes. Two incidents are charged only as the crime against humanity of other
5 inhumane acts and the war crime of outrages upon personal dignity, and one incident
6 is charged solely as the war crime of outrages upon personal dignity.

7 For purposes of my presentation this afternoon, your Honours, I will focus on the
8 most egregious incidents which are charged as all five of these crimes.

9 Before I proceed to discussing the factual matters relevant to the charges, allow me to
10 briefly review the key elements of these crimes. This will allow all those following
11 the proceedings to have the proper legal framework in mind when I subsequently
12 discuss the specific incidents. At the same time, however, in the interest of time, I
13 will focus only on the key elements of each crime.

14 So first, in relation to torture, and I will be discussing torture broadly as both a war
15 crime and as a crime against humanity. The first key element is the infliction of
16 severe physical or mental pain or suffering.

17 The incidents subject to these charges, your Honour, mostly involve floggings and
18 beatings, with one case of amputation.

19 Second, is the custody or control requirement specific to torture as a crime against
20 humanity. The victims of the relevant incidents were in the custody or control of the
21 armed groups, usually the Islamic police.

22 Third, is the prohibited purpose requirement of the war crime of torture.

23 The relevant incidents, subject of these charges, also entail the infliction of pain and
24 suffering for the prohibited purposes of punishment or to obtain information or
25 a confession.

1 And as your Honours are well aware, the norm prohibiting torture is *jus cogens*, and
2 sanctions such as floggings and amputations which amount to torture, cannot be
3 considered as lawful under any circumstances.

4 And allow me to also briefly refer to the war crime of cruel treatment, which has the
5 same elements as the war crime of torture, without the prohibited purpose
6 requirement.

7 Moving on to the crimes comprising serious ill-treatment. First, the crime against
8 humanity of other inhumane acts. The key element of this crime, your Honours, is
9 the infliction of great suffering or serious injury to body or to mental or physical
10 health by means of an inhumane act, and such act was of a character similar to other
11 crimes against humanity.

12 And secondly, the war crime of outrages upon personal dignity. The key element of
13 this war crime is the humiliation, degradation or other violation of the dignity of one
14 or more persons and the severity of the humiliation, degradation or other violation
15 was of such degree as to be generally recognised as an outrage upon personal dignity.

16 Your Honour, I am looking at the time. If I may have an additional five minutes just
17 to wrap up another point in the introductory portion of my presentation?

18 PRESIDING JUDGE KOVÁCS: [13:02:56](Interpretation) Yes, I will grant you the
19 five minutes.

20 MR SANDOVAL: [13:03:01] With the legal elements of torture and serious
21 ill-treatment in mind, allow me to proceed to discussing the facts of the case
22 underpinning these charges.

23 So moving on to Al Hassan's role in the commission of torture and serious
24 ill-treatment.

25 As my colleague Jagganaden Muneesamy has discussed, along with

1 Claudine Umurungi, throughout much of the occupation of Timbuktu by the armed
2 groups, Al Hassan was the *de facto* commissaire of the Islamic police. The Islamic
3 police was one of the principle organs established by the armed groups to control
4 Timbuktu and apply their ideological and religious vision.

5 The Islamic police worked in close cooperation with the armed groups' other organs,
6 particularly the Hisbah and the irregularly constituted Islamic tribunal.

7 Al Hassan as the *de facto* commissaire of the Islamic police played an essential role in
8 all three of the situations discussed earlier, wherein violent means were used to
9 enforce the newly imposed rules of the armed groups implementing their common
10 plan.

11 While my colleague Dianne Luping will discuss at length the modes of liability with
12 which Al Hassan is alleged to have committed the crimes with which he is charged,
13 allow me to state at this juncture that Al Hassan is charged with committing torture
14 and serious ill-treatment as a direct perpetrator under Article 25(3)(a) of the ICC
15 statute in two of the 15 relevant incidents. Al Hassan himself flogged three men in
16 these two incidents.

17 Al Hassan is also charged as a direct co-perpetrator or, alternatively, as an indirect
18 co-perpetrator under Article 25(3)(a) of the ICC statute in 10 of the 15 relevant
19 incidents.

20 And he is also charged under the other modes of liability, namely, soliciting and/or
21 inducing the commission of a crime under Article 25(3)(b), assisting in the
22 commission of these crimes under Article 25(3)(c) and contributing to their
23 commission under Article 25(3)(d)(i) and (ii).

24 Your Honours, at this point I intend to proceed to discuss the incidents giving rise to
25 these charges. So I believe this is an opportune moment for us to take a break,

1 your Honours.

2 PRESIDING JUDGE KOVÁCS: [13:05:50](Interpretation) Thank you very much,
3 Mr Prosecutor.

4 This session of the Prosecutor's presentations has come to an end.

5 We will break now and resume at 2.30 p.m.

6 THE COURT USHER: [13:06:08] All rise.

7 (Recess taken at 1.06 p.m.)

8 (Upon resuming in open session at 2.31 p.m.)

9 THE COURT USHER: [14:31:16] All rise.

10 Please be seated.

11 PRESIDING JUDGE KOVÁCS: [14:31:48](Interpretation) Good afternoon.

12 Now before I allow the Prosecution to address the Court again, I wish to make an
13 announcement.

14 Given that sensitive information may be disclosed when the OTP presentations are
15 broadcast outside the courtroom, the Chamber orders the Registry to treat materials
16 as confidential by default.

17 If it is thought that materials can be shown in public, we will do so, and then the
18 Registry will rebroadcast information outside the courtroom.

19 I will now give the floor back to the Prosecution so that the Prosecution may resume
20 their presentation.

21 Mr Prosecutor.

22 MR SANDOVAL: [14:32:45] Good afternoon, Mr President. Good afternoon,
23 your Honours.

24 As I had mentioned at the beginning of my presentation, I do intend to conduct my
25 presentation in public session, but I will request that we enter into private session

1 when discussing certain individuals and certain pieces of evidence which cannot be
2 broadcast to the public.

3 Before the break, your Honours, I discussed the context in which torture and serious
4 ill-treatment were committed in the context of the armed groups' occupation of
5 Timbuktu.

6 I went on to discuss the central role that Al Hassan played in the commission of
7 torture and serious ill-treatment as the *de facto* commissaire of the Islamic police.

8 I would like to continue, your Honours, by showing one notable document which
9 illustrates Al Hassan's central role.

10 As you will notice, your Honours, the document shown on the screen has the details
11 blurred out. And this is intentional, your Honours, in order to maximise the public
12 portion of my presentation. The evidence registration numbers, or ERNs, of the
13 documents that I am currently showing and will subsequently show are visible, and
14 these have been disclosed to the Defence. Your Honours, you will see on your
15 screens the original Arabic document containing an Islamic police report dated
16 19 June 2012, and its ERN number MLI-OTP-0001-7546.

17 I am now showing a blurred out English translation of this document with ERN
18 number MLI-OTP-0054-0014, and I'd like to highlight one paragraph in this document
19 wherein Al Hassan urges the members of the Islamic tribunal to be harsher with the
20 individual subject of this police report, because he had taken a lot of money from a lot
21 of people.

22 And I refer in this regard, your Honours, to paragraph 308 of the DCC.

23 Your Honours, moving on to the first situation involving the violent enforcement of
24 rules implementing the armed groups' common plan.

25 As I had mentioned at the beginning of my presentation, the first situation entails

1 extrajudicial beatings and floggings carried out by the Islamic police and other organs
2 when they came across violations of their newly imposed rules during their patrols of
3 the city.

4 The Islamic police disseminated leaflets containing the new rules imposed by the
5 armed groups and escorted preachers proclaiming the new regulations throughout
6 the town.

7 The Islamic police conducted patrols throughout the town and carried out inspections
8 on the streets, in markets, stores, and even inside people's homes, to ensure that the
9 new rules were being followed.

10 Al Hassan described these patrols as aimed at, and I quote:

11 "... correcting objectionable acts: Any type of reprehensible act which has been
12 forbidden we correct, such as drinking alcohol, smoking, and a woman adorning
13 herself, and other such acts." End quote.

14 And this is taken from ERN MLI-OTP-0067-1896, on page 1898, lines 26 to 28.

15 Al Hassan noted that the Islamic police possessed the discretion to flog people for
16 minor religious infractions. And this is found in MLI-OTP-0051-1184, page 1205,
17 lines 686 to 705.

18 Many of these patrols were conducted jointly with members of the Hisbah. And
19 your Honours will note that, as members of the Hisbah were not uniformly armed, it
20 was important that the Islamic police escort them and conduct joint patrols with them
21 because the Islamic police, on the other hand, were consistently armed with
22 Kalashnikovs.

23 And floggings were carried out with various kinds of whips made of leather, tree
24 branches or water pipes. And I refer to MLI-OTP-0062-1218, pages 1227 to 1228,
25 lines 292 to 308.

1 Abou Zeid, who was appointed the governor of Timbuktu by the armed group
2 Ansar Dine and he was a member of the common plan, issued instructions
3 authorising the Islamic police to resort to extrajudicial punishment of violations of the
4 armed groups' newly imposed rules.

5 So this document is entitled the "Compulsory Instructions of Abou Zeid", which was
6 issued in August 2012 to the Islamic police, members of the Hisbah and security
7 battalions. And this is discussed in greater detail in paragraph 366 of the DCC.

8 So you will see on your screens, your Honours, two documents; the original Arabic
9 document on the left with ERN MLI-OTP-0001-7193, and the English translation on
10 the right with ERN MLI-OTP-0034-0037.

11 And, among others, these instructions authorised the Islamic police to impose a
12 discretionary penalty for misdemeanours such as the sale or the use of tobacco. And
13 you will see the relevant paragraph highlighted on your screens.

14 The Islamic police were also granted the discretion to punish women who were not
15 properly dressed. And you will now see the relevant paragraph highlighted
16 referring to women who are unveiled in public.

17 Al Hassan acknowledged the Islamic police were guided by these instructions. And
18 I direct your Honours' attention to MLI-OTP-0051-1184, page 1206, lines 706 to 722.

19 Your Honours, I will now proceed to discuss three incidents which exemplify how
20 flogging was imposed and carried out as an extrajudicial punishment for violations of
21 the armed groups' newly imposed rules, and I will remain in public session for the
22 first incident.

23 So the first incident concerns P-580, whose being subjected to serious and
24 ill-treatment took place between June 2012 and January 2013. And I refer your
25 Honours to paragraphs 563 to 569 of the DCC.

1 P-580 was a man caught selling tobacco in Timbuktu by a member of the Hisbah.
2 Al Hassan and other members of the Islamic police arrested P-580 and confiscated
3 cigarette cartons and electronics from his shop. He was flogged to punish his
4 possession and sale of cigarettes, as well as to compel him to reveal the source of the
5 cigarettes, and to punish him for discouraging his younger brother and other youths
6 from joining the armed groups.
7 He was detained throughout most of a six-month period, and much of this detention
8 took place at the *Banque Malienne de Solidarité*, BMS, which was at various points in
9 time the headquarters of the Islamic police.
10 So he was detained for much of the six-month period, with a few intervening periods
11 when he was released or hospitalised following floggings. And notably among these
12 periods of detention is a 15-day continuous period of detention where he was not
13 provided any food.
14 Al Hassan gave Mohamed Moussa, who was the second head of the Hisbah and a
15 fellow member of the common plan, the keys to the chest where a whip was stored,
16 and this whip was used to inflict 100 lashes upon P-580 in front of the *Banque Malienne*
17 *de Solidarité*.
18 But throughout this six-month period, P-580 received 400 lashes, your Honours.
19 Moreover, he was threatened with drowning. Members of the Islamic police made
20 him wear a sack to restrict the movement of his arms, his feet were bound and he was
21 made to stand in a fountain with water up to his shoulders.
22 And he was threatened to be killed several times.
23 Your Honours, before I proceed to discuss the second incident -- or, the two
24 remaining incidents, may we move into private session? And I expect that we will
25 remain in private session for approximately eight minutes.

1 PRESIDING JUDGE KOVÁCS: [14:44:11] (Interpretation) Madam court officer, if we
2 could go into private session.

3 (Private session at 2.44 p.m.)

4 THE COURT OFFICER: [14:44:25] (Interpretation) We are in private session, your
5 Honour.

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1 (Redacted)

2 (Open session at 2.53 p.m.)

3 THE COURT OFFICER: [14:53:18] (Interpretation) We are now in open session.

4 PRESIDING JUDGE KOVÁCS: [14:53:24] (Interpretation) Thank you. Please
5 proceed.

6 MR SANDOVAL: [14:53:26] So moving on to the second situation wherein violent
7 means of enforcement were used in implementation of the newly imposed rules of the
8 armed groups, that of beatings as an accepted method of interrogation to extract
9 confessions and obtain information. And I refer, your Honours, to paragraphs 582 to
10 585 of the DCC.

11 In the course of its work, the Islamic police arrested and detained individuals who
12 they considered to have violated the armed groups' rules.

13 The Islamic police often interrogated these individuals in order to obtain confessions
14 from them, which would then serve as basis for judgments by the irregularly
15 constituted Islamic tribunal convicting them and sentencing them to be flogged or,
16 one case, amputated.

17 These were also conducted to obtain information from the individuals.

18 In instances where people were caught smoking or drinking alcohol, for example,
19 these individuals were interrogated in order to determine the source of their tobacco
20 and alcohol.

21 Al Hassan explained that when it came to cases involving people's property or money,
22 it was necessary to determine the truth so these could be recovered and returned to
23 their rightful owners.

24 And I refer to MLI-OTP-0060-1662, pages 1670 to 1671, lines 275 to 283 and lines 296
25 to 297.

1 Al Hassan explained if the suspect did not confess after being advised to do so, the
2 suspect would be threatened. And I refer to MLI-OTP-0060-1662, page 1671,
3 lines 303 to 312.

4 And if this did not work, the Islamic police resorted to torture. And again I refer to
5 MLI-OTP-0060-1662, page 1672, line 314.

6 The irregularly constituted Islamic tribunal authorised the Islamic police to use
7 torture as an interrogation method, and this authorisation could even be granted
8 verbally over the phone. And I refer to MLI-OTP-0060-1662, page 1674, line 388 and
9 lines 395 to 404.

10 And Al Hassan specified that the chief of the Islamic police, or the emir, himself told

11 Al Hassan that the Islamic police resorted to the following acts of torture. And I
12 quote in French: (Interpretation)

13 "They torture by beating the person up. For the most part, the form of torture is
14 hitting the person." End of quote. (Overlapping speakers) (Speaks English)

15 MLI-OTP-0060-1662, page 1672, lines 338 to 355.

16 Your Honours, I will now be presenting two documents which demonstrate that
17 torture was utilised during interrogations in order to extract confessions and
18 information. So, as with the Islamic police report that I showed earlier, most details
19 will be blurred out so as to remain in public session.

20 The first document that I'd like to show is an Islamic police report dated 16 July 2012.

21 So you will see the original Arabic document on the left with ERN

22 MLI-OTP-0001-7514, and the English translation on the right with ERN

23 MLI-OTP-0034-0169.

24 And I'd like to highlight one paragraph in this report which refers to how the subject
25 of this report was interrogated and tortured, but to no avail. And this report was

1 signed by Al Hassan, and you will see his signature highlighted in the original Arabic
2 document, and Al Hassan confirmed having written this report. And I refer to
3 MLI-OTP-0060-1662, pages 1676 to 1680, lines 478 to 595.

4 The second document that I'd like to show which establishes how torture was used in
5 interrogations is that of an Islamic tribunal judgment. Again, you'll see the original
6 Arabic document on the left with ERN MLI-OTP-0055-0229, and the English
7 translation on the right with ERN MLI-OTP-0054-0331.

8 And in one paragraph of the judgment the tribunal decided that the accused subject
9 of the judgment shall be kept in detention at a location pending the investigation,
10 while authorising the police to use any possible pressuring means within the limits
11 what is humanly tolerable.

12 And, your Honours, the reference to any possible pressuring means would constitute,
13 at the very least, serious ill-treatment.

14 And I refer your Honours to paragraph 532 of the DCC in relation to the Islamic
15 tribunal judgment, and to paragraph 562 of the DCC in relation to the Islamic police
16 report shown earlier. Your Honours, I failed to mention that these slides can be
17 shown publicly.

18 Your Honours, I will now proceed to discussing the third of the three situations
19 involving violent means of enforcement of the rules implementing the armed groups'
20 common plan. And this third situation is that of floggings and amputation as
21 sanctions imposed by the irregularly constituted Islamic tribunal.

22 The Islamic police itself executed the sentences imposed by the tribunal or played an
23 essential role in their execution, in coordination with the other organs of the armed
24 groups such as a Hisbah.

25 For instance, the Islamic police would transfer the convicted person from the tribunal

1 or the prison to the public site where the sentence would be carried out.

2 Along with the security battalions and the Hisbah, the Islamic police would ensure
3 that population summoned to witness the sentence would keep a safe distance and
4 not interfere with the proceedings.

5 So in this regard, your Honours, in relation to the 15 incidents relevant to the crimes
6 of torture and serious ill-treatment, there are 11 case of individuals flogged and one
7 amputation. But for purposes of my presentation this afternoon, your Honours,
8 I would like to focus on four cases of flogging in chronological order, and I will end
9 with a lone case of amputation.

10 Your Honours, I will proceed to the first incident of flogging imposed as a sanction by
11 the Islamic tribunal, and I will remain in public session for this incident and my slides
12 can continue to be broadcast.

13 So the first incident involves a couple, P-557, who was the man, and P-565, the
14 woman, they were flogged on or around 20 June 2012. And this incident was
15 discussed in detail in the DCC, principally in paragraphs 536 to 564.

16 So this flogging took place at Place Sankoré in Timbuktu and the couple were arrested
17 for having a child out of wedlock.

18 P-557, the man, was arrested by Adama, who was the first chief of the Islamic police,
19 and Demba Demba. Both Adama and Demba Demba were members of the Islamic
20 police.

21 P-557 was imprisoned for three days in a windowless cell of 2 square metres, lacking
22 ventilation, without food, and provided only limited drink. A pot was placed in his
23 cell as his toilet. He was brought before Houka Houka at the Islamic tribunal and
24 sentenced to 100 lashes.

25 Houka Houka was the *de facto* president of the Islamic tribunal and a fellow member

1 of the common plan.

2 He was ordered, P-557 was ordered by Houka Houka to marry P-565, and if either of
3 them refused they would be imprisoned for two years.

4 As regards P-565, the woman, she was detained during the day for three days,
5 detained for up to 12 hours in the prison of the *Banque Malienne de Solidarité*, which
6 was the Islamic police headquarters at the time, and was brought home in the evening.
7 She was given nothing to eat or drink while she was in the cell, although she was able
8 to bring some water with her.

9 Her cell, like P-577 -- sorry, P-557, had no windows. And unlike P-557, who had
10 been given at least a pot to relieve himself, P-565 had to relieve herself directly on the
11 floor.

12 So I will now be showing an excerpt of a documentary feature on this couple, which
13 includes clips of the actual flogging. And in one scene, while P-565, the woman, is
14 being flogged Al Hassan can be seen in the background speaking on his mobile
15 phone.

16 And I will present a screenshot of this particular scene afterwards for your reference.
17 This video has ERN MLI-OTP-0009-1749.

18 THE COURT OFFICER: [15:05:58] Just for the record, the video is to be shown
19 publicly.

20 MR SANDOVAL: [15:06:03] Yes, thank you. And the video excerpt begins at
21 timestamp 00:04:28.00.

22 (Viewing of the video excerpt)

23 MR SANDOVAL: [15:07:47] So as you saw in the video, Al Mahdi, who is referred
24 to as Abou Tourab, announced the couple's sentence and participated in the couple's
25 flogging.

1 So Al Mahdi was the first head of the Hisbah and a member of the common plan.

2 Al Hassan was present, along with other members of the common plan,

3 Houka Houka, Sanda Ould Boumama and Radwan.

4 And as mentioned earlier, Al Hassan is visible in the background speaking on his
5 mobile phone as P-565 is being flogged.

6 And my colleague Sarah Coquillaud discussed earlier the call detail records which
7 help establish that Al Hassan was in fact in the vicinity of Place Sankoré in Timbuktu
8 at the time of this flogging.

9 So I would like to show this screenshot now, and this is taken from that same video
10 that you had just watched, MLI-OTP-0009-1749 at timestamp 00.05.32.02, and you will
11 see that Al Hassan is visible in the background speaking on his phone.

12 And Al Hassan acknowledged that this was in fact him. And I refer to
13 MLI-OTP-0051-0970, pages 973 to 974, lines 208 to 212.

14 So I'd just like to discuss the experience of this couple more specifically in relation to
15 the severe physical and mental pain and suffering that they underwent.

16 So in relation to P-557, he related that he suffered bleeding wounds on his back and
17 on the back of his thighs.

18 On the day after his flogging he could not even get up and he coughed blood twice.
19 And his left side felt completely numb.

20 P-565, the woman, could not lie on her back and recalled that there were marks all
21 over her body immediately after the flogging, including red marks on, and
22 haematoma under her skin. As for the severe mental pain and suffering that they
23 underwent, P-557 explained that he felt so much shame after the flogging, that people
24 blamed him for what he did, that friends distanced themselves, and he felt inferior to
25 those who had not been punished.

1 And as for P-565, she explained, and I quote in French: (Interpretation) "When all
2 those people who were there were seen on that day when I received those beatings, I
3 felt so small and I felt that I would never be able to speak in front of all these
4 persons." (Overlapping speakers) (Speaks English) MLI-OTP-0046-8881, page 8890,
5 paragraph 60.

6 P-565 added that friends had stopped speaking to her, and again I quote in French:
7 (Interpretation)

8 "Some of them told me that I could not speak and that we let ourselves to be taken."

9 (Overlapping speakers) (Speaks English) same ERN mentioned earlier, and the same
10 paragraph, MLI-OTP-0046-8881, page 8890, paragraph 60.

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16 (Viewing of the video excerpt)

17 MR SANDOVAL: [15:13:12] Mr President, before I move on to the second incident,
18 I'd like to move into private session. And I expect to remain in private session for
19 approximately 10 minutes.

20 PRESIDING JUDGE KOVÁCS: [15:13:25] (Interpretation) Thank you. Court officer,
21 can we proceed accordingly. Thank you.

22 (Private session at 3.13 p.m.)

23 THE COURT OFFICER: [15:13:42] (Interpretation) Mr President, we are in private
24 session.

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6 (Open session at 3.37 p.m.)

7 THE COURT OFFICER: [15:37:11] (Interpretation) We are in open session,

8 Mr President.

9 PRESIDING JUDGE KOVÁCS: [15:37:15] (Interpretation) Thank you very much --

10 MR SANDOVAL: [15:37:15] (Overlapping speakers) Thank you, Mr President, and

11 Mr President --

12 PRESIDING JUDGE KOVÁCS: [15:37:15] (Interpretation) -- please proceed.

13 MR SANDOVAL: [15:37:18] (Overlapping speakers) broadcast in public.

14 So I'd like to proceed, your Honours, to having discussed the four cases of flogging

15 imposed as sanctions by the irregularly constituted Islamic tribunal, I'd like to

16 conclude with the lone case of amputation; that of Dédéou Maiga, whose right hand

17 was amputated on or around 16 September 2012 for theft. And this amputation is

18 discussed in the DCC, principally in paragraphs 547 to 549.

19 The amputation took place at Place Azalai in Timbuktu. Dédéou Maiga was arrested

20 by Al Hassan himself, and Adama, the first chief of the Islamic police and a fellow

21 member of the common plan, for stealing 20 sacks of rice.

22 And you will see the Islamic tribunal judgment on your screens, the original Arabic

23 judgment on the left with ERN MLI-OTP-0001-7474; and the English translation on

24 the right, with ERN MLI-OTP-0039-0894.

25 And this judgment is signed by Houka Houka, *de facto* Islamic tribunal president and

1 fellow member of the common plan.

2 Your Honours, Iyad Ag Ghaly himself, the leader of Ansar Dine and fellow member
3 of the common plan, believed that amputation was an obligatory punishment for theft.

4 He was quoted as saying, and I quote in French:

5 (Interpretation) "Islam is a whole. You cannot practice partial Islam. For example,
6 if you surprise a thief, you have to chop of his hand -- "

7 (Overlapping speakers)

8 MR SANDOVAL: And this is found at MLI-OTP --

9 THE INTERPRETER: (Interpretation continuing) -- "It is written in the Koran."

10 MR SANDOVAL: [15:39:25] (Overlapping speakers) -- 0040-0459. Iyad Ag Ghaly

11 even overruled the objections of Houka Houka to the amputation. And I cite

12 MLI-OTP-0025-0127, page 0152 as the basis for this.

13 The amputation was carried out by a member of the armed groups and Al Hassan

14 himself explained that the implementation of sanctions, including the amputation, led

15 to a significant decline in thefts and other crimes.

16 And I refer your Honours to MLI-OTP-0067-1896, pages 1898 to 1899, lines 31 to 40.

17 And Al Hassan considered that this particular judgment of amputation was

18 important. And the basis of this is MLI-OTP-0051-0658, page 0676, lines 607 to 611.

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10 (Private session at 3.43 p.m.)
11 THE COURT OFFICER: [15:43:35] (Interpretation) We're in private session,
12 Mr President.
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4 (Open session at 3.45 p.m.)
5 THE COURT OFFICER: [15:45:39] (Interpretation) We are back in open session.
6 PRESIDING JUDGE KOVÁCS: [15:45:43] (Interpretation) Please --
7 MR SANDOVAL: [15:45:46] Thank you, Mr President --
8 PRESIDING JUDGE KOVÁCS: [15:45:46] (Interpretation) -- continue.
9 MR SANDOVAL: [15:45:46] -- and I confirm that my slides can be broadcast to the
10 public.
11 So the physical pain and suffering that Dédéou Maiga suffered as a result of this
12 amputation is self-evident. As for his mental pain and suffering, a witness who
13 knew Dédéou Maiga had this observation after the amputation, and I quote in French:
14 (Interpretation) "My understanding is that for him since his hand has been
15 amputated -- "
16 MR SANDOVAL: (Overlapping speakers) And I direct your Honours' attention --
17 THE INTERPRETER: (Interpretation continuing) -- "his life had ended."
18 MR SANDOVAL: (Overlapping speakers) -- to MLI-OTP-0058-0196, page 0206,
19 paragraph 59.
20 Dédéou Maiga, your Honours, was a plumber and it was his dominant right hand
21 that had been amputated. So clearly, it was no longer an option for him to continue
22 his profession.
23 And according to the Prosecution's expert witness, a medical legal expert, P-598, his
24 opinion was that, and I quote in French:
25 (Interpretation) "At the socio-professional level, particularly with someone working

1 with his hand in plumbing, such an amputation did not make it possible for him to
2 continue his profession" (Overlapping speakers) (Speaks English) MLI-OTP-0060-9465,
3 page 9468.

4 Your Honours, I would like to complete my discussion of this amputation case with
5 an excerpt of a documentary depicting Dédéou Maiga's life after the amputation and
6 before he died in December 2017.

7 And this video has ERN MLI-OTP-0042-0157. And this can be played in public.
8 (Viewing of the video excerpt)

9 MR SANDOVAL: [15:51:16] So to summarise, your Honours, the armed groups
10 systematically resorted to torture and serious ill treatment in enforcing their newly
11 imposed rules implementing their religious and ideological vision upon the civilian
12 population of Timbuktu. Al Hassan was the *de facto* commissaire of the Islamic
13 police, one of the key organs established by the armed groups to implement their
14 common plan to control Timbuktu and impose this vision. Al Hassan played a
15 central role in the violent enforcement of these rules, giving rise to his personal
16 criminal responsibility for the crime against humanity and war crime of torture, war
17 crime of cruel treatment, crimes against humanity of other inhumane acts and the war
18 crime of outrages upon personal dignity. As direct perpetrator and direct or indirect
19 co-perpetrator under Article 25(3)(a) of the Statute in addition to other modes of
20 liability under Articles 25(3)(b), (c) and (d)(i) and (ii) of the Statute.

21 Mr President, your Honours, thank you for your attention.

22 PRESIDING JUDGE KOVÁCS: [15:52:29] (Interpretation) Thank you very much,
23 Mr Prosecutor.

24 Mr Dutertre, please.

25 MR DUTERTRE: [15:52:39] (Interpretation) Thank you, Mr President. We had

1 planned to begin a presentation of 30 minutes, but in order to best profit from the
2 remaining time, we can go to a presentation that would last just about 15 minutes.
3 We will need a few minutes of overtime to complete that, after which I will make a
4 few observations.

5 PRESIDING JUDGE KOVÁCS: [15:53:11] (Interpretation) Thank you very much.
6 You will have that additional time.

7 MR DUTERTRE: [15:53:17] (Interpretation) Thank you, Mr President.
8 It will be presented by my colleague Paola Sacchi on the destruction of mausoleums.
9 We have cut out all the legal issues so as to shorten the presentation and we will
10 include some more observations in our written submissions.

11 PRESIDING JUDGE KOVÁCS: [15:53:55] (Interpretation) Yes, well understood.
12 You have the floor, Madam Prosecutor.

13 MS SACCHI: [15:54:08] Good afternoon, your Honours. Unless otherwise
14 indicated, my presentation can be publicly broadcast.

15 In my presentation of approximately 12 minutes I will address the attack against
16 historical monuments and buildings dedicated to religion.

17 Between April and December 2012 a number of historical monuments and buildings
18 dedicated to religion were either damaged or razed to the ground in Timbuktu. The
19 attacks occurred in three waves of violence: The first between April and May 2012;
20 the second between June and July 2012; and the third between November and
21 December 2012.

22 All the attacks made by up part of a common plan aimed at taking control over the
23 city of Timbuktu and imposing on the population of ideological and religious views
24 of the attackers. In the present case Al Hassan is charged under Article 25(3)(a) and
25 (d) of the Rome Statute with the destruction of nine mausoleums and the damaging of

1 one mosque occurred between 30 June and 11 July 2012. All these monuments but
2 one have the status of monuments protected by UNESCO.

3 During my presentation I will first give a brief overview of the attacks. Second, I
4 will show a selection of the evidence concerning the destruction of two mausoleums
5 occurred on 30 June 2012. Finally, I will illustrate Al Hassan's involvement in the
6 common plan resulting in the destruction of the mausoleums.

7 Due to time constraints I will not go through the entirety of the evidence which is
8 detailed in the Document Containing the Charges. The aim of this presentation to
9 mainly to assist your Honours and the public in verbalising the scale of the
10 destruction, the modalities according to which it was carried out and the perpetrators.

11 Turning now to the overview of the destruction. Between 30 June and 11 July 2012
12 the attackers moved from the north to the south of Timbuktu in destroying the
13 mausoleums. On 30 June 2012 - and for the record this is 0024-2747 - the group first
14 attacked the cemetery of Sidi Mahamoud and destroyed two mausoleums therein, the
15 Sidi Mahmoud Ben Omar Mohamed Aquit, the Cheick Mohamed Mahmoud
16 Al Arawani.

17 Later the same day the attackers moved to the cemetery of Sidi El Moktar and
18 demolished the mausoleum named after the cemetery.

19 In the early afternoon of 30 June the group attacked the Alpha Moya cemetery and
20 tore down the mausoleum of Alpha Moya.

21 Later, the cemetery of the Three Saints was attacked. Three mausoleums were
22 destroyed: The Cheick Mahmoud El Micky, the Cheick Abdoul Kassim Attouaty,
23 the Cheick Sidi Ahmed Ben Amar Arragadi.

24 Around 2 July the attack continued and the group targeted the door of the mosque
25 Sidi Yahia. One last attack occurred on 11 July. The Bahaber Babadié and the

1 Ahamed Fulan mausoleums annexed to the Djingareyber mosque were razed to the
2 ground.

3 I will now turn to the evidence concerning the destruction of the first mausoleum
4 attacked in the early morning of 30 June 2012, the Sidi Mahmoud Ben Omar
5 Mohamed Aquit.

6 This is how the mausoleum looked like before the attack, and for the record this is
7 0009-1517, and after the attack. This second picture being taken from a different
8 angle, this is 0025-0006.

9 I will now play two excerpts from a public video from France2 channel, 0001-6926,
10 timestamps 14:15 -- 51, I beg your pardon, to 25:04 and 53:21 to 01:03:03.

11 (Viewing of the video excerpt)

12 MS SACCHI: [15:59:53] As Your Honours have seen, members of the Islamic police,
13 wearing the blue vest with the logo of the police, are visible at different timestamps
14 taking active part in the destruction of the mausoleum. Timestamps 19:06 and 54:02.

15 Another public video, 0001-6925, shows the attack to the Alpha Moya, the fourth
16 mausoleum destroyed on 30 June 2012. As your Honours will see, members of the
17 Islamic police were involved in the destruction of this mausoleum too.

18 (Viewing of the video excerpt)

19 MS SACCHI: [16:00:52] For the record these were timestamps 22:044 to 36:052.

20 The buildings appearing in these two videos have been geolocated by our expert
21 P-193 in his report 0030-0629.

22 For further details concerning the attacks of these two mausoleums and the others I
23 refer to section 8.4.1 of the Document Containing the Charges.

24 I'm now turning to the role of Al Hassan and of the other members of the common
25 plan in the destruction of the mausoleums.

1 First and foremost when speaking of Al Hassan's overall contribution to the
2 destruction of the mausoleums P-50 stated that Al Hassan blessed the campaign of
3 destruction and supported it. He added that whether Al Hassan stayed in the
4 station or went with the group, it would make no difference since he was with them
5 in any event. For the record, this is 0064-1231 at 1235, lines 106 to 108 and 125 to 126.
6 Whilst P-150 is vague about Al Hassan's presence at the destruction sites, another
7 witness saw Al Hassan in one of the vehicles heading to the Alpha Moya mausoleum
8 just before it was destroyed. The witness stated in 0025-0127, paragraph 50 that
9 Adama was driving another vehicle.

10 As your Honours will recall, the Alpha Moya mausoleum is the second video with
11 members of the Islamic police taking active part in the destruction. The evidence
12 shows that as their subordinates were destroying the Alpha Moya mausoleum, their
13 *de facto* commissaire Al Hassan, and Adama, the first emir of the Islamic police and
14 member of the common plan, were present at the destruction sight.

15 In the interview with the OTP investigators, 0060-1327 at 1338, lines 354-364,
16 Al Hassan himself acknowledged that the Islamic police took part in the destruction
17 of the mausoleums. He stated that the destruction necessitated everybody's help,
18 specifically, and I quote from French.

19 (Interpretation) "It's a job that needs an effort."

20 (Overlapping speakers) (Speaks English) The destruction of the mausoleums was
21 indeed the result of an effort, a common effort as the evidence before your Honour
22 shows. For more in-depth details concerning the common plan, I refer to section
23 8.4.3 of the Document Containing the Charges.

24 With your Honour's permission I will now need to go briefly into private session.

25 PRESIDING JUDGE KOVÁCS: [16:04:32] (Interpretation) Court officer, could we

1 please go into private session.

2 (Private session at 4.04 p.m.)

3 THE COURT OFFICER: [16:04:47] (Interpretation) We are in private session.

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Open session at 4.06 p.m.)

23 THE COURT OFFICER: [16:06:54] (Interpretation) We are back in open session.

24 PRESIDING JUDGE KOVÁCS: [16:06:59] (Interpretation) Thank you.

25 MS SACCHI: [16:07:01] In this slide at timestamp 00:21:15 taken from the France2

1 video we've seen earlier your Honours can see Abou Al Baraa, member of the
2 common plan and preacher of AQIM, taking active part in the destruction of the
3 Sidi Mahamoud mausoleum.

4 In the next slide, timestamp 19:11 from the same video, another member of the
5 common plan, Abou Baccar, employed in the Hisbah, is visible equally taking part in
6 the destruction.

7 Finally, my colleague Sarah Coquillaud showed that in the days preceding the attacks
8 of the first mausoleum, during the attacks of all mausoleums and after Al Hassan had
9 several contacts with other members of the common plan such as Al Mahdi of the
10 Hisbah, Sanda Ould Boumama of the media commission, and Houka Houka of the
11 Islamic tribunal.

12 Your Honours have heard now how indicative the frequency of calls within telephone
13 numbers is.

14 In conclusion, the evidence as a whole shows how the members of the common plan
15 acted in conjunction with each other. They planned ahead of time, coordinated,
16 supervised and took active part in the destruction of the mausoleums.

17 Al Hassan knew about the existence of the common plan to destroy the mausoleums,
18 he was a member of the common plan and give his essential contribution to it.

19 This concludes my presentation, your Honours.

20 PRESIDING JUDGE KOVÁCS: [16:09:08] (Interpretation) Thank you very much,
21 Madam Prosecutor.

22 Mr Dutertre.

23 MR DUTERTRE: [16:09:13] (Interpretation) Thank you, Mr President. Very briefly
24 in the earlier presentation on the last piece of video footage the arrow is pointing to
25 two people, there is one tall person and then a smaller person. I have two

1 submissions to make very briefly. The first one, I sent to all parties, the presentation
2 by Ms Coquillaud regarding the telephone call data, and I would like a hearing
3 reference number be allocated to that item for the case file.

4 And my second observation is this: The Office of the Prosecution has nine hours and
5 it's quite normal of course, to have short breaks and interruptions, not directly linked
6 to the presentation of our various presentations, but these short breaks have nibbled
7 away at our total time. We certainly don't want to depart from the schedule and we
8 realise that the Defence does wish to begin as per the schedule.

9 I have two possible solutions that I could put before the Chamber so we can enjoy our
10 full nine hours.

11 So first of all, the Registry will have to exactly calculate exactly the time we have
12 spent so far on our presentations, and then secondly we could try to extend each
13 session tomorrow by 5 or 10 minutes so that the OTP will have its full nine hours.

14 The second possibility, after chatting with the Legal Representatives of Victims,
15 apparently they will not be using all of the afternoon session tomorrow, so it might be
16 possible for the OTP to take some time during that session. We don't intend to go
17 beyond our nine hours, but to use our nine hours fully and to comply with the
18 schedule, we wish to make these suggestions. And of course we are in the hands of
19 the Chamber and we do hope that we can enjoy this flexibility.

20 PRESIDING JUDGE KOVÁCS: [16:12:01] (Interpretation) Thank you. I will confer
21 with my colleagues.

22 (Pre-Trial Chamber confers)

23 PRESIDING JUDGE KOVÁCS: [16:12:59] (Interpretation) Mr Prosecutor, after
24 consulting my colleagues, the Chamber agrees to your proposal and will show
25 flexibility, and thus the Registry will calculate the time used and we will allow for an

- 1 additional 15 minutes here or 20 minutes there. This is not a problem. So the
2 Registry will make the necessary calculations for those minutes. Agreed?
3 I thank you, Mr Prosecutor.
4 I'd like to thank everyone and we have come to the end of today's hearing. We will
5 now suspend and resume tomorrow at 9.30.
6 Now, before we actually conclude for the day, I'd like to thank the court reporters and
7 the interpreters in particular for their work, I forgot to thank them yesterday, and I
8 thank the Registry for their efforts.
9 Thank you to everyone.
10 The Court stands adjourned.
11 THE COURT USHER: [16:14:15] All rise.
12 (The hearing ends in open session at 4.14 p.m.)