

1 International Criminal Court  
2 Trial Chamber X  
3 Situation: Republic of Mali  
4 In the case of The Prosecutor vs Al Hassan Ag Abdoul Aziz Ag Mohamed Ag  
5 Mahmoud - ICC-01/12-01/18  
6 Presiding Judge Antoine Kesia Mbe Mindua, Judge Tomoko Akane and Judge  
7 Kimberly Prost  
8 Trial Hearing - Courtroom 3  
9 Wednesday, 24 May 2023  
10 (The hearing starts in open session at 9.31 a.m.)  
11 THE COURT USHER: [9:31:56] All rise.  
12 The International Criminal Court is now in session.  
13 Please be seated.  
14 PRESIDING JUDGE MINDUA: [9:32:25](Interpretation) The hearing is opened.  
15 Good morning, all.  
16 Court officer, please call the case.  
17 THE COURT OFFICER: [9:32:36] Good morning, Mr President, your Honours.  
18 This is the situation in the Republic of Mali, in the case of The Prosecutor versus Al  
19 Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, case reference ICC-01/12-01/18.  
20 For the record, we are in open session.  
21 PRESIDING JUDGE MINDUA: [9:32:57](Interpretation) Thank you very much,  
22 court officer.  
23 I wish to welcome all those who are present here in the courtroom and welcome  
24 Mr Al Hassan, who is present. And I would like to welcome all those who are  
25 following us from the public gallery, as well as those who are following these

1 proceedings remotely.

2 Now, as I do each morning, I would like to invite each of the parties and participants  
3 to introduce themselves. Office of the Prosecutor first. Prosecutor, please.

4 MR DUTERTRE: [9:33:37](Interpretation) Good morning, your Honours. The  
5 Office of the Prosecutor this morning is represented by Marie Claudine Umurungi,  
6 Caroline Leroy, Yayoi Yamaguchi, Lucio Garcia, Gilles Dutertre and certain other  
7 colleagues. And I'd like to greet all those who are in and around the courtroom.

8 PRESIDING JUDGE MINDUA: [9:34:12](Interpretation) Thank you, Prosecutor  
9 Dutertre.

10 I turn now to the Defence. Ms Taylor.

11 MS TAYLOR: [9:34:19] Good morning, Mr President. Good morning, your  
12 Honours. Good morning to everyone in the courtroom and around the courtroom.

13 The Defence for Mr Al Hassan is represented today, going to my left, Dr  
14 Felicity Gerry, Maître Alka Pradhan, Maître Mohamed Youssef, Maître Melissa  
15 Beaulieu Lussier, Maître Leila Abid, Professor Mohamed Badar, Mr Maouloud  
16 Al-Ansary, Maître Kelsey Ryan and Ms Brianna Dyer. Thank you very much.

17 PRESIDING JUDGE MINDUA: [9:34:56](Interpretation) Thank you, Ms Taylor.

18 I now turn to the Legal Representatives of Victims. Mr Nsita.

19 MR LUVENGIKA: [9:35:04](Interpretation) Good morning, your Honours. The  
20 team of the Legal Representatives of Victims is made up this morning of, first of all,  
21 those in the field, Ms Jeanine Kapinga, Mr Maiga and Mr Seydou Doumbia; and here,  
22 in the courtroom, we have Ms Prisque Biyéké Dipanga, we have Mr Andrés Felipe  
23 Morales, Ms Julie Goffin and my colleague, Mr Mayombo Kassongo, and I myself,  
24 Mr Nsita.

25 I, too, would like to wish you good morning to all those in and around the courtroom.

1 PRESIDING JUDGE MINDUA: [9:36:08](Interpretation) Thank you very much,  
2 Mr Nsita. And I would particularly like to greet those legal representatives who are  
3 attending from afar.

4 So today, we have the second day of final closing arguments in this case. These  
5 arguments will be presented by the parties and the participants. This morning, we  
6 are going to hear the closing statements of the Legal Representatives of Victims.

7 So Mr Nsita, you have a full session for your team as agreed yesterday.

8 Mr Nsita, the floor is yours.

9 MR LUVENGIKA: [9:36:51](Interpretation) I'd like to thank the Presiding Judge for  
10 offering me the floor. I shall open the closing arguments for the legal representatives  
11 and my colleague, Mayombo Kassongo, shall follow me and then our colleague,  
12 Mr Seydou Doumbia, shall close for us from the field.

13 So I shall now begin straightaway, if that suits your Honour.

14 PRESIDING JUDGE MINDUA: [9:37:29](Interpretation) Yes, indeed, feel free. The  
15 floor is yours.

16 MR LUVENGIKA: [9:37:34](Interpretation) Your Honours, I have the honour of  
17 opening these proceedings on behalf of the Legal Representatives of Victims. Now, I  
18 shall be as brief as possible to allow my colleagues to have the time they need to  
19 address the Court. Now, I would like to spend some time on the specificities of the  
20 role of the Legal Representatives of Victims and the limits of that role.

21 I will then turn to some key points in this particular case, points which were  
22 addressed more particularly by the two victims that testified before this Court, and  
23 then I'll say a couple of words regarding the scale of the impact and the nature of the  
24 scars left by the occupation in Timbuktu.

25 Now, first of all, it is important to recall that the interests of the Legal Representatives

1 of Victims are different to those of the Prosecutor, the Prosecutor who we heard  
2 address the Court yesterday. The Prosecutor was presenting evidence to  
3 demonstrate the guilt of Mr Al Hassan for the crimes of which he is accused.  
4 Now, we listened closely to what the Prosecutor said and his presentation of his case  
5 and we share his opinion regarding the evidence and the necessity to find the accused  
6 guilty. However, our interests as representative of victims or as victims is broader  
7 still. The purpose for us, of this trial, is to serve the interests of the victims and that  
8 is to uncover the truth regarding what took place in Timbuktu in 2012 and  
9 January 2013, and to see the rights of the victims upheld in justice.  
10 I would underline that the victims are not participating simply to obtain some kind of  
11 financial compensation. No. They are participating so that the harm that has been  
12 done to them and the crimes that have been perpetrated against them be known.  
13 Now, it's always most unpleasant for victims to hear said that they are participating  
14 only to obtain reparations. No. What is important to them is the truth and  
15 recognition of what happened to them, particularly when the accused denies the  
16 crimes. So it is, in fact, quite insulting when victims hear it said that all they are  
17 interested in is compensation.  
18 Now, 2,196 victims have been authorised to participate in these proceedings. Two  
19 victims testified on their behalf in this court. Now, these victims come from all  
20 categories, or all quarters of the community in Timbuktu, who lived through these  
21 events. Their views and concerns have been gathered by us, and we have tried to  
22 take into account their individual views as well as the larger positions which they  
23 have adopted as groups.  
24 It can be a frustrating task to represent victims, or it has been frustrating to represent  
25 the victims in this case because we, as representatives, have not been authorised to

1 travel to visit the victims in Timbuktu and to visit the sites of the crimes, the scene of  
2 the crimes and to meet our clients. This has proven to be a handicap to us. We  
3 have had to just get by, and our familiarisation with the case and with the locations,  
4 which are relevant to this case, have been hampered in that way. We have, however,  
5 been able to meet our clients in Bamako.

6 Now, victims have needed to go through intermediaries to approach the Court.  
7 They have approached NGOs and those NGOs have supported the victims. It is,  
8 however, important to remember that the Defence has not proved that the evidence  
9 on file has been contaminated, owing to the involvement of individuals or entities  
10 which it alleges contributed to a narrative that did not reflect the truth or whose  
11 behaviour was questionable with regard to court procedures.

12 The victims have been seeking justice for many years now and much has been  
13 promised by the national authorities, but those promises have not been made good  
14 and that has, in fact, blighted the hope of the victims, and it makes the proceedings  
15 before this Court all the more important to them. They have been following these  
16 proceedings with the means available to them and are mindful of the role that is  
17 theirs with respect to the claims of the Defence and the position of the accused.

18 Now, some of the claims and positions which have been adopted or have been  
19 presented in this Court have been quite upsetting to victims, notably regarding the  
20 application of Sharia and the minimisation of the conduct of criminals. It has been  
21 asserted that what went on in Timbuktu was nothing more or less than practices  
22 which were already accepted in that city.

23 Now, it is unacceptable for victims that the scale of privation and the violations of  
24 their fundamental rights be misrepresented in this way, and that the acts of the  
25 persecution committed against the local population be justified in any way.

1 Now, the Prosecutor has described the rather tyrannical regime to you. It wasn't just  
2 a matter of wearing a full veil, for instance, and covering yourself from head to foot  
3 and that that being a price which, at the end of the day, might have been acceptable to  
4 victims to be able to get on with their lives in Timbuktu. No. Breaking the rules  
5 was punished, and it's precisely because those rules did not reflect existing practice in  
6 Timbuktu up to that point in time that a system of sanctions had to be developed and  
7 put in place, as without such a system, those rules would not have been  
8 needed -- would not have been heeded.

9 Now, as victim V-0001 said, each time that a woman was stopped who was not  
10 dressed appropriately, they beat her. And any time that a man and woman were  
11 stopped together, they would both be beaten. And you will find that on transcript  
12 168 at page 33. Victim V-0002 said in response to a question as to why women -- the  
13 women who normally worked in associations could not leave their homes to do their  
14 work, what that victim said was, Well, for the first reason, it's because they are -- they  
15 were afraid to leave their homes and to encounter the jihadists; and, secondly, there  
16 was mandatory clothing that they had to wear to leave their home. And if they  
17 made a mistake, the mistake of going out with -- and being in contravention of the  
18 rules, then they would be in trouble.

19 Now, the case file shows just how often these arrests took place and the consequences  
20 for those who were arrested. These were not just occasional cases of being stopped  
21 and questioned, but rather, it was a case of repeated acts of violence which were  
22 systematic and arrests which were very frequent, and you have heard much about the  
23 consequences and the impact of that on the victims. Those consequences still play  
24 on their minds and affect their body in the case of many of them.

25 Similarly, it was a matter -- it wasn't a matter of practices which were similar to

1 arranged marriage, which is unquestionably practiced in the region. No. V-0001  
2 explained the nature of these forced marriages.

3 Now, what he said at transcript 168, page 34, lines 23 to 28 was that they -- and he  
4 meant by this, and I put this in brackets, (the Mujahidin and the bearded men), closed  
5 brackets. V-0001 said that, "those people", just described, "arrived in our home, they  
6 saw my mother and they said that they had come to greet the family. They asked me  
7 if I was married and my mother said that I was -- that I was married. The gentleman  
8 answered that they had inquired in the neighbourhood, and they had found out that I  
9 was married and said that they wanted to marry me."

10 Now, V-0001 refers to the fact that she was taken by force in marriage, and she said:  
11 "He closed the door, there was no longer -- there was only he and I inside. We were  
12 in the house where he had taken me. What he had done was abduct me. As they  
13 knew that I didn't love them, they had come, laid down the sum of money and taken  
14 with me."

15 That was transcript 168, page 39, lines 26 to 27.

16 And she goes on to say that:

17 "As soon as we entered the home, he took me into the bedroom and he put me on the  
18 bed. I jumped up from the bed and went under the bed. He took me out of there,  
19 put me on the bed and he took me with force. He did what he did with full force."

20 V-0001 also explained in detail the conditions of life in the city or -- sorry, the  
21 conditions of her life in her forced marriage. She said that, "I wasn't allowed to leave.  
22 I didn't have authorisation to leave. I never left. It was my husband who would do  
23 the shopping and make the meals. He was fearful of being poisoned."

24 And as a consequence of this, victim 0001 bore a child by the man to whom she had  
25 been married by force. And she explained to us in very moving terms in this

1 courtroom -- or, rather, painful terms, she explained the life of that child and how that  
2 child had suffered - the child which is labelled "child of the Mujahidin" - to this day.  
3 Now, we have heard about all of the rules which were applied, which affected all  
4 aspects of life. We heard about violence against people, including sexual violence,  
5 violence against some people and violence and damage caused to goods. The crimes  
6 which were committed must not be forgotten. Similarly, V-0002, in response to a  
7 question put to him during his testimony said, and I quote:  
8 "Your Honour, when a city becomes dead, there is no escape. There is no entering,  
9 there's no leaving. There's no trading, there's no market. There's no fair. What  
10 will be fate of such a city? I simply mean to say that the community, the locals, they  
11 suffered during the occupation. They suffered financially. When you don't have  
12 any money, how are you going to pay to feed yourself? And when you don't leave  
13 your home - and I'm speaking here particularly about women - all that we earn to  
14 cover our needs and to have a social life, we have to go out to earn to get what we  
15 need. To sell what we have on the market, we have to leave our homes to go into the  
16 gardens, et cetera. Sir, all of that comes to an end." End of quotation.  
17 The acts, which were committed on 2012 and 2013 in Timbuktu, are -- show the  
18 persecution that was perpetrated against the population. These victims continue to  
19 suffer the consequences of the occupation. The traumatism -- the trauma which they  
20 have suffered has not healed. Their bodies and their souls continue to suffer.  
21 But beyond that, Timbuktu has not recovered socially or economically. The damage  
22 which was done is still apparent. It's apparent in the tissue of society. The city was  
23 a cultural melting pot and an ethnic melting pot. It has not recovered; nor has its  
24 economic life.  
25 Now, the occupation caused many people to flee the city. So many former people



1 of -- residents of Timbuktu are now found outside of Mali or elsewhere in the country.  
2 There were 10 months of occupation and that sufficed to disrupt a city in such a way  
3 that the repercussions are felt to this day.

4 Your Honours, in these terms, I wanted to bring to your mind the larger context of the  
5 judgment which you will hand down, a judgment which will be of the utmost  
6 importance of the victims, the victims not only of Timbuktu, but of all of northern  
7 Mali. Thank you.

8 PRESIDING JUDGE MINDUA: [9:54:17](Interpretation) Thank you very much,  
9 Mr Nsita, for that very clear presentation.

10 So would you like to introduce the next speaker from your team.

11 MR LUVENGIKA: [9:54:31](Interpretation) Yes, I'm going to hand over now to my  
12 colleague, Mr Mayombo.

13 PRESIDING JUDGE MINDUA: [9:54:43](Interpretation) Mr Mayombo, you have the  
14 floor.

15 MR KASSONGO: [9:54:58](Interpretation) Thank you, your Honours.

16 I would like to thank my colleague, Mr Nsita, for having given an excellent  
17 introduction to the set of submissions which we will be making today. I am  
18 Mr Kassongo and one of the representatives -- one of the Legal Representatives of  
19 Victims in this case as Mr Nsita explained.

20 Now, I will follow on from what he has said and I will add to what he has said as  
21 regards our oral submissions.

22 Now, what I have to say is based on, well, three aspects, I would say. First of all, the  
23 damage done. The damage done, as it is expressed by the victims themselves, not  
24 only the civilian population, the larger group, if you like, but also the city of  
25 Timbuktu as an entity. And the third aspect of what I have to say will be what the

1 victims have to say regarding the accused in this case.

2 Your Honours, first of all, if I might, I would -- on behalf of my colleagues who are  
3 listening, I would like to present the thanks of all of the victims who are taking part in  
4 these proceedings, over 2,000 victims, as Mr Nsita explained.

5 Now, these victims thank you, not only for having conducted this trial, but they  
6 would also like to thank the parties, the Office of the Prosecutor on the one hand, and  
7 the Defence who have assisted Mr Al Hassan on the other hand.

8 Now, your Honours, I would like to present a number of ideas. Now, in the  
9 submissions which have been made by the victims through their legal representatives  
10 or what they have written in their participation forms, you have read what they have  
11 had -- and heard what they have had to say. The term that they have used is  
12 "occupation". They use other words such as "jihadist" or "Tuareg". They use the  
13 term "destruction". They refer to mausoleums, they refer to the BMS, they refer to  
14 the *gouvernorat*.

15 Now, these are key words. These are key words which allow us to illuminate the  
16 Chamber further. Because your Chamber has heard what the victims have had to  
17 say, you have heard what they -- you have heard them testify. You have heard them  
18 be examined by the Prosecution, by the Defence, examination-in-chief, in  
19 cross-examination. We have questioned them too. The terms used by the victims  
20 will also illustrate to you what it is that our expectations are of this Court. They  
21 have expressed themselves by approaching this Court, by filling in their participation  
22 forms. All these victims responded to one particular question, and that question was:  
23 What do you expect of these proceedings?

24 Now, all of them, your Honours, had the expectation that this Chamber would  
25 convict the accused, would convict the accused provided that the alleged crimes were

1 proven. And those crimes have been proven. That is the state of affairs at the end  
2 of this trial.

3 Your Honours, there is no longer any doubt in the eyes of the victims that we  
4 represent, there's no doubt in their minds at this stage in the proceedings that the  
5 crimes have been proven. There is no doubt but that the witnesses have been heard.

6 Your Honours, we are the spokespersons for the victims of Timbuktu. These victims  
7 have suffered from the conflict which raged in northern Mali in 2012. Not only did  
8 they find themselves in a situation not of their making, but they found themselves in  
9 a situation not of their making in Timbuktu, and, in the surrounding region, because  
10 Timbuktu is more than a city. Timbuktu as a region was taken during that armed  
11 conflict and it lost its historical aura. Its inhabitants were forced to heir the earth.  
12 Many were displaced by the situation. Others had to take refuge in neighbouring  
13 countries.

14 Now, your Honour, one needs to understand and be clear that through this trial, the  
15 crimes that the victims have alleged have been proven, and at the outcome of these  
16 proceedings, it is abundantly clear that the facts have been proven.

17 Now, we, as Legal Representatives of the Victims, myself and my colleagues, we have  
18 considered this matter. We have travelled to visit those victims who have been  
19 displaced. I have visited with them and I have asked them what their expectations  
20 were of this trial. To that, I visited victims in countries located in proximity, I won't  
21 cite the names of those countries, but I took note of what it is -- what their views and  
22 concerns were.

23 Now, your Honours, those victims said that they were fearful of returning home, they  
24 were afraid to return to Timbuktu, be it the region or, more specifically, the city.  
25 They are still afraid to find themselves face to face with the police, as they tell me, or

1 to find themselves -- that is to say the Islamic police, of course, or to find themselves  
2 face to face with the jihadists. In the minds of these victims, the occupiers are still  
3 there.

4 Now, the witnesses who testified in this court, witness 0626, summarised the matter:  
5 the police took measures that they would take a person and put that person in prison.  
6 Now, it is this fear to find one's self grappling with such a system which is causing  
7 victims to remain abroad and to stay in exile. The occupier was embodied in the  
8 police, and they say -- they have told me that given that fact, a return to them is  
9 highly hypothetical. All of those victims continue to look to this Court to see a  
10 practical outcome to these proceedings, a solid concrete step.

11 Now, your Honours, as regards these victims, these are victims from Timbuktu.

12 They are very attached to their ancestral land and to the saints, the saints who are, in  
13 fact, their ancestors, their common ancestors. They would venerate them in the  
14 mausoleums. The mausoleums were sacred sites where prayer would take place  
15 and worship would take place.

16 These victims still suffer mental anguish today in 2023, and have done since the  
17 destruction and the occupation. Their wounds remain open. When Timbuktu was  
18 taken, the descendants of the saints left Timbuktu. They now heir the earth. When  
19 they speak, almost every one of them talk about their mental distress, their emotional  
20 suffering.

21 Now, this Court has undoubtedly read those participation forms which express their  
22 distress. It is distressful for them not to be able to visit the place where their  
23 ancestors lie and to no longer be able to venerate them as they did, to no longer be  
24 able to take part in the blessings, the veneration, the mysticism and the traditional  
25 way of practising their faith.

1 Now, the people of Timbuktu suffer -- have been suffering emotionally due to the  
2 destruction of the mausoleums by the jihadists, including Ansar Dine and AQIM who  
3 have been referred to much during these proceedings. Mr Al Hassan was a member  
4 of those groups, and it's because these saints were, in fact, their ancestors and that  
5 they owe them veneration, it is for that reason that this is particularly painful for  
6 them.

7 Now, witness 0608 testified before this Court and said that Sidi Mahmoud is referred  
8 to as the people of Timbuktu, as the saint of saints, and, I don't really know why.  
9 But we know why, your Honours, because we have discussed these matters with the  
10 ancestors -- with the descendants of the saints. And this lack of respect for the saints  
11 is at the source of the suffering felt by the victims who are in exile or displaced.  
12 Their society has been disrupted. Their families have been torn apart, and that has  
13 caused true wounds to them.

14 Normally, they would -- those abroad would want to return to Timbuktu to continue  
15 the veneration of the saints, but that is no longer possible, and even those in the  
16 country cannot do so. And this is of tremendous harm to the people of Timbuktu.  
17 Now, your Honours, they couldn't just simply continue to pray to the ancestors, no.  
18 According to their customs and traditions, they needed to be on-site, and this was all  
19 part of the prestige of Timbuktu.

20 Timbuktu has lost its prestige due to the destruction of the mausoleums and due to  
21 the occupation of the -- by the jihadists. And that is why the victims talk time and  
22 time again about the occupation. The occupation. You see it throughout their  
23 forms.

24 But let's talk about the occupation, your Honours. This was an occupation not only  
25 of Timbuktu, but beyond Timbuktu. An occupation in wider northern Mali.

1 Now, during that period of time, the population was simply powerless, because they  
2 had no means to defend themselves. Let's remember it was an armed occupation  
3 and the local people did not have weapons. The local people saw a vast amount of  
4 destruction. They joined forces -- the occupants joined forces to destroy what they  
5 found. How could the local people resist what they were doing?

6 The occupation humiliated families. The families are the families -- the descendants  
7 of the saints, and the saints, as I've explained, are parts -- are members of their  
8 families, they are their ancestors. So the people of Timbuktu felt as if they had lost a  
9 member of their family.

10 And the occupation was due to the jihadists. And one of the victims spoke of this,  
11 608: "They said they have not come here to do us good. They say they're coming  
12 here to bring Sharia." That's what the victim said.

13 Now, your Honours, in the case of an occupation, there is one choice open to the  
14 locals: either they flee or they stay and possibly die. That was the dilemma faced  
15 in Timbuktu. And that's why they fled and took refuge, and that's why they're  
16 hoping so strongly that you will find the accused guilty in this case.

17 Now, one victim, victim 0160, stated that the community recognised the armed  
18 groups, MUJAO, Ansar Dine and AQIM as being the occupiers. Therefore, the locals,  
19 the identity of their occupiers was at one point unclear. They had mixed ideas on it.

20 Now, these things are totally clear to them at the end of this trial. They're absolutely  
21 clear on what groups were involved, groups of which Mr Al Hassan was a member.

22 They have no doubt about how those armed groups attacked Timbuktu and the  
23 people.

24 Your Honours, the occupation was a perfect example of that tradition of Tuaregs  
25 taking possession of Malian territory, that is to say, Malian territory in the north.

1 Now, if you would allow, I shall quote from a piece of Malian literature. The  
2 authors were Choguel Kokalla Maïga and Issiaka Ahmadou Sangaré, and they wrote  
3 about the rebellions in northern Mali from the origins thereof to our days. And  
4 those authors wrote that on 6 April 2006, late President Mohamed Gaddafi traveled to  
5 Bamako, to travel from Bamako to Timbuktu to celebrate Maouloud. He had slipped  
6 the notice of the Malian services and disappeared for a few hours to meet with the  
7 Tuareg tribes.

8 Upon arrival there, the authors state he had no compunction about proclaiming his  
9 support for the creation of a Tuareg state, spanning from Mauritania to Iraq. And  
10 that is -- it is that concept of things that underlied the occupation of Timbuktu.

11 The population had no choice when it came to occupation. Using force is a way of  
12 communicating with the people, obliging them to obey or risk their lives.

13 Now, your Honours, as I said, I'm not going to take too much time, because I want to  
14 allow my colleagues the opportunity to share further with you. But I would now  
15 like to talk about the nature of the crimes of which -- which have been alleged against  
16 the accused.

17 The victims involved in this trial have no doubt about the reality of the crimes as they  
18 are known today. And before, when there was no clarity, there was a common  
19 mention of jihadists, in the absence of the application forms for participation. But as  
20 at today, the perpetrators of these crimes have an identity contrary to the general  
21 expression of jihadist. Mr Al Hassan has been recognised, and is known as the  
22 perpetrator of those crimes to them, and that will be the case at the end of this trial.

23 It has been said that the crimes were committed by jihadists, including Mr Al Hassan,  
24 who was part and parcel of the group. He stood in solidarity with them and acted  
25 with them and agreed with the system set up for repression and occupation.

1 Your Honours, the victims, who were held in detention at the facilities of the Islamic  
2 police, have demonstrated the involvement and participation of the accused person  
3 throughout this trial. And I am sure that everyone whom we represent at this stage  
4 in the proceedings is aware of this.

5 So through us, the victims are telling you that the accused person before you is indeed  
6 the person who was identified in page 1 of the victims' participation application form.

7 The one appearing before you has been recognised through various testimonies  
8 before your Chamber.

9 You see, when there's a trial, they have -- there has to be an interaction of evidence,  
10 inculpatory and exculpatory, and the onus is on the Prosecutor to indeed make his  
11 case, and with all parties and participants, all these charges have been discussed  
12 before your Court.

13 Your Honours, these crimes committed have a cultural dimension against the city of  
14 Timbuktu whose mausoleums were destroyed; although they are part of a world  
15 cultural heritage.

16 Your Honours, the victims, whom we represent today and who have participated in  
17 this trial, pray you to put the accused person on the path to conviction. And they  
18 urge your Chamber to come to the determination; that such an outcome will satisfy  
19 the expectations of the victims.

20 I now hand over to Maître Doumbia, while thanking you, and -- as he goes on to give  
21 further details on our representations regarding the victims. Thank you very much.

22 PRESIDING JUDGE MINDUA: [10:21:03](Interpretation) Thank you very much,  
23 Mr Kassongo, for your presentation.

24 I will now give the floor to Maître Doumbia.

25 MR DOUMBIA: [10:21:21](Interpretation) Good morning, Mr President. Good



1 morning, your Honours. It is indeed a great pleasure for me to appear as a legal  
2 representative of victims before you this morning.

3 I would like to draw on the essence of what the victims, whom we represent, feel  
4 again even this day. Mr President, your Honours, it is all very clear, after the closing  
5 statements submitted yesterday so eloquently by the Office of the Prosecutor, and  
6 after the statements made by my learned colleagues this morning, Maître Kassongo  
7 and Maître Nsita, I simply have to be brief. Brief, as you have repeatedly reminded  
8 us to uphold the principle whereby that which has been said and well said does not  
9 need to be repeated, or at least does not mean that we dwell on it beyond reasonable  
10 measure before your Chamber.

11 Having said this, Mr President, your Honours, mindful of the fact that the cause of  
12 the victims and the cause of the OTP are intricately linked, allow me to simply revisit  
13 a few extremely important aspects, which will not only help to allay the fears of the  
14 victims whom we represent, who are listening to you, but will also address a few  
15 pedagogical issues. And as you know, sometimes repetition has its merit.

16 First of all, Mr President, I would like to pay homage to you and your Chamber on  
17 behalf of the victims whom we represent and, rightly so, for the manner in which you  
18 have conducted this trial, symbolic, as it were, because, in fact, for the Legal  
19 Representatives of Victims as well as for the victims, the holding of this trial is already  
20 a victory. It is the victory that acknowledges a recognition of their status as victims  
21 of the crimes that were perpetrated in Timbuktu in 2012.

22 Mr President, your Honours, the significantly high number of victims in this trial,  
23 victims who were admitted by your Chamber to participate in these proceedings, is  
24 testament, if necessary, to the fact that you and your Chamber indeed took the full  
25 measure of the scope of the tragedy that befell Timbuktu in 2012, the harm and

1 suffering ensuing therefrom being beyond estimation.

2 It is for this reason, Mr President, and particularly mindful of the paucity of incidents  
3 relating to the charges in this trial, that the Legal Representatives of Victims ask you  
4 to come to very explicit determinations in your judgment, whereby you will establish  
5 the scope of the harm suffered, because of the crimes for which the accused person is  
6 charged, in relation to that suffering inflicted on the victims in Timbuktu.

7 Mr President, there's a second reason and a good reason for our satisfaction and our  
8 homage on behalf of the victims and ourselves who are their representatives. That  
9 reason is the following: We believe that when victims participate in a trial, that in  
10 itself is already a form of reparation, a type of reparation, and this is already  
11 established in the jurisprudence of this Court.

12 In fact, in the judgment on the application of Rule 74 of the Statute, a recognition of  
13 the scope of the harm suffered arising from the crimes charged and the attendant  
14 diversity amounts to some kind of recognition of their right to the truth and, thereby,  
15 a type of reparation. The legal representatives therefore call on the Chamber to be  
16 mindful in their judgment to recognise this right to the truth, based on Article 74 of  
17 the Rome Statute, regardless of the ruling on guilt.

18 Mr President, your Honours, the legal representatives also want to draw your kind  
19 and sustained attention to two words, which will enable you to understand these two  
20 words even better. Two words that are laden with meaning, two words that are at  
21 the very heart of our closing statements, and the first word is -- and that is the main  
22 word or expression, let me say that the Legal Representatives of Victims, the victims  
23 as a whole, are of the view that Mr Al Hassan should be found guilty and bound by  
24 the charges brought against him, all of the charges, may I say. I repeat, all the  
25 charges brought against him.

1 Secondly, and subsidiarily, the Legal Representatives of Victims believe that there is  
2 no exonerating ground that would absolve him of liability, be it partial, and that no  
3 such exoneration or exemption should be granted to Mr Al Hassan. The accused  
4 person does not, and is not, in a position to avail himself of any exculpatory grounds  
5 of responsibility, be they partial or not.

6 Mr President, your Honours, the verdict that will flow from your Chamber must, or  
7 should take into consideration the constant burning that the victims of Timbuktu  
8 experienced and continue to experience in their body and in their souls. These  
9 burnings, if one may say, Mr President, have been sufficiently put into evidence  
10 before you by the Prosecutor. We therefore simply want to say and to emphasise  
11 here, a few of those points which have remained absolutely constant.

12 First of all, Mr President, your Honours, what has been constant is that the jihadists'  
13 occupation of Timbuktu was the primary and determining cause of the dislocation of  
14 the society and irreversible dispersement, irreversible dispersement that is ongoing of  
15 the population of Timbuktu. This dislocation has had political and economic  
16 consequences, which were outlined before your Chamber by my learned colleagues  
17 who spoke before me on this matter.

18 A second constant fact in this trial is the very significant -- the principal and  
19 important role played by Mr Al Hassan in his capacity as an official of the Islamic  
20 police when it comes to perpetrating and perpetuating the crimes that were  
21 committed in Timbuktu in 2012.

22 Those crimes led to the subjugation of Timbuktu's population on behalf of Islam, on  
23 behalf of - one might say - a false Islam which, in fact, ended up in making women or  
24 turning women into objects and simply dehumanising the human being. These  
25 things are otherwise referred to as inhumane and highly degrading treatment, which

1 was inflicted on the people, and these things do not do honour to the human being.  
2 Mr President, your Honours, the Office of the Prosecution placed before this Court  
3 the irrefutable evidence on this point arising not only from witness testimonies, but  
4 also from Mr Al Hassan himself. Not only testimonies and statements, the OTP  
5 further provided images, horrible images in evidence. Profoundly disturbing  
6 images were placed before your Chamber by the Office of the Prosecutor here in this  
7 court.

8 The third constant point, Mr President, your Honours, is also an irrefutable point;  
9 namely, that Al Hassan, the accused, is not what one could refer to as a choirboy.  
10 Well, it is clear that the Defence will attempt to establish the contrary, but we all know  
11 that we cannot be fooled.

12 Mr President, let me present to you the image, the exact image that remains in the  
13 minds of the victims in Timbuktu, the image they have of Mr Al Hassan. So here we  
14 go. In the eyes of the victims of Timbuktu, the accused, Al Hassan, is the prototype  
15 of the coldblooded monster, intrepid and violent, totally insensitive to human  
16 suffering. That is the image they have of him.

17 Mr President, it is all very clear, Al Hassan is not a choirboy. Only a hardened heart  
18 could have discharged the functions and duties that were his within the Islamic police.  
19 It is not by happenstance that Al Hassan was selected to play that role which was his  
20 within the Islamic police. It was indeed an acknowledgment of his qualities as a *caïd*,  
21 that is, he was not a choirboy.

22 Mr President, let me conclude by saying that besides and beyond the highly --  
23 psychological harm, and, in addition to the material damage harm suffered and  
24 beyond the physical injuries, the Legal Representatives of Victims wants to  
25 particularly draw your attention to some other specific types of harm that were

1 suffered, which today, continue to haunt a number of victims with whom we have  
2 interacted, and have fully become aware of such harm on a daily basis in the course of  
3 our discussions with these displaced persons.

4 When I talk about displaced persons, I am referring, of course, to the harm of being  
5 separated from home. Mr President, that harm of being separated from home is a  
6 very important aspect of what the participating victims have told us, particularly in  
7 relation to members of the population of Timbuktu who had to go into exile without  
8 any possibility of returning home.

9 Exile has a strongly psychological component, whose effects clearly last a very long  
10 time when the victim is unable to integrate their new environment and when they  
11 don't have the resources that can enable them to return to their original homelands.  
12 This is the fate of a vast majority of victims whom we met.

13 Mr President, the next specific harm is loss of education. By loss of education, I  
14 mean something which has long-term consequences on many children who were  
15 unable to catch up the time lost because schools had been closed. Let me further say  
16 that thousands or hundreds of thousands of children simply lost their opportunity, or  
17 should I say their right to an education and that, in fact, is a loss of opportunity to  
18 become somebody, as one would say or, indeed, a chance to earn one's living with  
19 dignity.

20 Third point, Mr President, some of this harm has severely impacted the victims in a  
21 transgenerational manner: transgenerational harm. Allow us, the legal  
22 representatives, to remind the Court that the Court has recognised that psychological  
23 trauma that a direct victim may suffer could have repercussions on their children,  
24 whether or not those children experienced the trigger for the trauma of their parents.  
25 So the specific harm relating to children born out -- or born of forced marriages is also

1 a perfect illustration or example of this case, which we all experienced live when  
2 V-0001 testified about an accumulation of harm, including a child born of rape,  
3 committed within the context of a forced marriage, and, clearly, the child born of  
4 those circumstances did receive, by transmission, the trauma of its mother because of  
5 the life that the child lived.

6 So, Mr President, your Honours, I would prefer to stop here while hoping that in  
7 these few selected words, we have been able to bring the Chamber -- to take them into  
8 consideration as you withdraw to deliberate, to deliberate on the guilt of  
9 Mr Al Hassan. And when you would have come to your determination regarding  
10 the main issue of guilt, your answer will be: Yes, he is guilty.

11 In so doing, you would be able to find rest. And when your children will ask you  
12 how your day went, you will tell them, well, there was a man who came before the  
13 Court on that day and you found him guilty, because that man rightly deserved the  
14 treatment that would dissuade anyone, anyone whosoever from attempting to  
15 commit the same types of crimes with impunity.

16 That will be justice done, and that would clearly be a leap forward in the building of  
17 international justice, which we are invited to be part of, all of us, but about which the  
18 main responsibility lies on your shoulders going by the decisions that you render.

19 On that note, Mr President, your Honours, I leave in your hands the fate of the  
20 victims, while reiterating to you the absolute confidence that I have in you all.

21 Thank you.

22 PRESIDING JUDGE MINDUA: [10:51:29](Interpretation) Thank you very much,  
23 Mr Doumbia, for your eloquent and brilliant statement. Well, when it comes to your  
24 advice to the judges relating to what they must tell their children, I ascribe that to  
25 your oratory skills. It is true that we, as a Chamber, we must deliberate, but then the

1 stories we tell our children are something else.

2 We still have 10 minutes. I don't know what Ms Taylor thinks. I think that the

3 Legal Representatives of Victims have now concluded their statements, I think,

4 Mr Nsita.

5 MR LUVENGIKA: [10:52:25](Interpretation) Yes, Mr President, you're correct, your

6 Honours. The statement by Maître Seydou Doumbia closes the statements from the

7 Legal Representatives of Victims. Thank you.

8 PRESIDING JUDGE MINDUA: [10:52:41](Interpretation) Thank you, Mr Nsita.

9 The Legal Representatives of Victims have respected the time frames and I thank

10 them for that.

11 Ms Taylor.

12 MS TAYLOR: [10:52:51] Thank you, Mr President. I'm ready to start now;

13 otherwise, we can also break now and return earlier if that's more convenient.

14 PRESIDING JUDGE MINDUA: [10:53:04](Interpretation) That is correct, Ms Taylor.

15 We are happy to break now and to resume at 11.30; is that correct, Ms Taylor?

16 I see Ms Taylor agrees.

17 So let us break now and resume at 11.30.

18 THE COURT USHER: [10:53:35] All rise.

19 (Recess taken at 10.53 a.m.)

20 (Upon resuming in open session at 11.32 a.m.)

21 THE COURT USHER: [11:32:26] All rise.

22 Please be seated.

23 PRESIDING JUDGE MINDUA: [11:32:54](Interpretation) The hearing is resumed.

24 So, as planned, the floor is now the Defence's for its closing statements.

25 Ms Taylor, you have the floor.

1 MS TAYLOR: [11:33:13] Thank you very much.

2 Mr President, your Honours, in my opening statement in July last year, I started by  
3 painting a portrait of Mr Al Hassan -- who he was before, during and after the events.  
4 But, today, rather than using my words, I'll speak with the voices of Prosecution  
5 witnesses to show why the person behind me, Al Hassan Ag Abdoul Aziz, does not  
6 belong in this courtroom.

7 P-0654, a local Songhai notable described Al Hassan as a petite sardine, not an Ansar  
8 Dine leader. He said that Al Hassan was timid, peace-loving and friendly. A  
9 repairman who was working to restore services in Timbuktu told P-0654, "It's a good  
10 thing you've got a guy like that to facilitate things for us."

11 P-0150, a Prosecution witness, referred to Mr Al Hassan as an honest, straightforward  
12 man who was beloved by the people. He agreed that Al Hassan was someone who  
13 helped people and who wanted to protect his community.

14 P-0065, another Prosecution witness, described Al Hassan as a non-extremist,  
15 someone who had been pushed by his tribe to join Ansar Dine to protect the local  
16 community. And P-0065 confirmed that that is what Al Hassan did. He protected  
17 the local community and people talked about how positive Al Hassan had been to  
18 them.

19 P-0608, a Prosecution witness, a local Songhai woman, depicted Al Hassan as a little  
20 fish, someone who was very nice to the local population.

21 P-1086, a Prosecution witness who was a former MNLA soldier, testified that he  
22 heard said that Al Hassan was amongst the people who remained in Timbuktu to  
23 help people, to make people's lives easier in Timbuktu, and he heard said that  
24 Al Hassan had, in fact, helped a lot of people.

25 You have heard a multitude of concrete examples of Mr Al Hassan helping the local



1 population. But what you have not heard is any evidence from alleged victims of  
2 the charged events that Mr Al Hassan himself harmed them; that he was responsible  
3 for causing harm to them or that his actions made the situation worse.

4 In the words of P-0608, "I didn't deem him to be responsible for the acts that brought  
5 him here. And more -- what is more, I did not identify or hear people speak about  
6 something that he did personally." And that is the missing link, the link between  
7 Mr Al Hassan's knowledge, intent and actions and the commission of the charged  
8 incidents which form the exclusive basis for your judgment.

9 Today I will show that for each month of the charged time period, the Prosecution has  
10 failed to demonstrate beyond reasonable doubt that there's a culpable link between  
11 Mr Al Hassan and the charged incidents. The Prosecution case on these points is  
12 like a Trojan horse filled with errors that come tumbling out as soon as you look at  
13 them more closely.

14 Maître Pradhan will address you concerning the absence of any reliable evidential  
15 foundation to make such a link and the broader absence of any nexus to an armed  
16 conflict or widespread or systematic attack perpetrated pursuant to an organisational  
17 policy.

18 My colleague, Maître Beaulieu Lussier, will address you on the point that the  
19 Prosecution has failed to demonstrate that Mr Al Hassan knew of the charged  
20 incidents pertaining to sexual and gender-based violence, or that he played any  
21 measurable role in bringing them about.

22 My colleague, Maître Youssef, will also explain the absence of any culpable link  
23 between Mr Al Hassan's alleged role in the Islamic police and the judgments and  
24 punishments issued by the Islamic tribunal.

25 Finally, Dr Gerry will explain that for the operation of positive defences, the Chamber

1 cannot enter a conviction in relation to conduct that was mandated by superior orders  
2 or carried out while Al Hassan was under duress, or a mistake of fact or law.

3 Your Honours, Article 25(3) of the Statute was not designed to penalise small fish  
4 who carry out day-to-day routine acts for groups we don't like. Nor should its  
5 language be contorted by judicial fiat to achieve such an outcome. It would, indeed,  
6 be a Pyrrhic victory if the Court were to collapse under the weight of harmless small  
7 fry.

8 It is, therefore, necessary to give full effect to statutory provisions concerning *mens rea*  
9 and the required *actus reus*, and I'll explain today how the Prosecution's case fails to  
10 do so. At footnote 15 of the Prosecution's response, the Prosecution concede that it is  
11 necessary to demonstrate a link between Mr Al Hassan's contribution to the common  
12 purpose and the commission of the charged crimes. And they refer to the Ntaganda  
13 appeals judgment, where the Appeals Chamber confirmed that the principle of  
14 causation requires a causal link between the conduct of the accused and the crime for  
15 which he or she is responsible. And that's paragraph 1041 of the judgment.

16 This causal link means that the contribution must play a measurable -- a quantifiable  
17 role in bringing about the crime in question, and since the Rome Statute does not  
18 penalise the butterfly effect, the Prosecution must also prove a sufficient degree of  
19 blameworthy contribution, and to be blameworthy, a contribution must be  
20 accompanied by knowledge and intent.

21 Knowledge is defined by the Statute as awareness that a circumstance exists or a  
22 consequence will occur in the ordinary course of events. The emphasis is on  
23 "will" -- that is, its occurrence is virtually certain. "Virtually certain" means close to a  
24 hundred per cent chance of the event happening -- not a risk, not a possibility, but a  
25 certainty. An awareness must pertain to the specific incidents that have been

1 charged.

2 Article 30, coupled with either Article 25(3)(c) or (d), requires a bare minimum that

3 the Prosecution must prove that Al Hassan knew that his actions would have a

4 measurable impact that would help bring about the occurrence of the charged

5 incidents, and, as I will show, they have failed to do so.

6 I will start with 7 May, which is the commencement of the charged time period for

7 this case. At this point in time, Al Hassan is married, his wife is pregnant, he has a

8 very young son and his pharmacy in Zorho had shut down because he couldn't get

9 medications to sell. He had come to Timbuktu to try to obtain them, but had been

10 unsuccessful. There had been a drought earlier in the year, and times were very

11 hard, particularly for the Tuareg community.

12 Al Hassan was not part of Ansar Dine when it arrived in Timbuktu and he played no

13 role in the April meetings where Ansar Dine met with local notables to discuss their

14 intended programme. And at this juncture, Ansar Dine had already decided to

15 apply Sharia following the Malakite approach and to establish a tribunal, a *Hesbah*

16 and an Islamic police.

17 All of these matters were a *fait accompli* before Al Hassan started working with the

18 police. The die had already been cast.

19 The Chamber has heard evidence that when Al Hassan joined the police, he did so as

20 an interpreter and clerk. You have also heard evidence that at the beginning of the

21 events, the local population were afraid that the different ethnicities would turn on

22 each other. As written by Hobbes, without a central form of governance, life is nasty,

23 brutish and short. It's the law of the jungle. For this reason, governing and policing

24 play a necessary and important role in protecting and preserving life, and this is what

25 the Islamic police did, and their actions were welcomed by the local population.

1 The Prosecution has failed to establish that the actions that Mr Al Hassan took in such  
2 a capacity at the police had a blameworthy effect on the charged incidents in the case.  
3 Instead, they've used a smoke-and-mirrors approach, placing emphasis on irrelevant  
4 or unproven claims and even those which are patently untrue.  
5 A primary example includes their claim at paragraph 79 of their trial brief, that there  
6 was a number attributed to Mr Al Hassan on the facade of the BMS, and in their  
7 words, from April onwards. And to make this claim they cite a photo -- it's  
8 MLI-OTP-0012-1914 -- but the Prosecution itself has dated this photo as  
9 31 October 2012. So, clearly, this photo does not show that the number was there in  
10 April or even May.  
11 The Prosecution has then tried to use call data records, CDRs, to plug the hole in this  
12 gap, but their attempt to do so is like forcing a square-shaped peg through a  
13 star-shaped hole. It just doesn't fit the reality.  
14 Let's look at these claims in light of the CDRs. Their brief states that there were calls  
15 from Al Hassan to Adam from 30 April through to 25 June. Now, we do not accept  
16 that Al Hassan was the exclusive user of this phone or this number, but even if  
17 attribution was assumed, the claim is completely hollow.  
18 On 30 April, the number attributed to Mr Al Hassan was in contact with a range of  
19 different individuals, including members of the MNLA and even former members of  
20 the Malian army. Notably, there are no contacts with the number attributed to Talha  
21 on or before this date, which puts to rest the dubious claims that Al Hassan, as  
22 opposed to his brother, worked for security in April.  
23 Now, after these contacts on 30 April, there are then no calls in May. The number is  
24 not used. So, clearly, the number is not on the police sign at this time.  
25 Yesterday, the Prosecution relied on an October interview in which Mr Al Hassan

1 allegedly referred to the early days of the work of the police. Now, yesterday, the  
2 Prosecution itself conceded that the police was not set up until the very end of April,  
3 at the earliest. Now, the plain meaning of the phrase "first" or "early days" is the first  
4 phase of something; that the person is referring to the first phase of the police. So  
5 this interview does not prove that Al Hassan worked for the group or for the police in  
6 April.

7 The Prosecution's claim, based on P-0150, that Al Hassan allegedly played a role in  
8 dispersing a demonstration also does not provide a safe foundation to make any  
9 conclusions concerning the charges. Crucially, there is no reliable evidence  
10 concerning the date and the context of this demonstration.

11 P-0654 testified that a protest or demonstration occurred a few weeks after the  
12 *coup d'état*, but this demonstration was directed against the military junta in Bamako,  
13 and there were signs saying, "*Sanago, dégage!*"

14 P-0065 testified that when he first arrived in Timbuktu, he saw a protest march, and  
15 in this march he was told that people were requesting Ansar Dine to stay because  
16 they preferred the Ansar Dine to MNLA. Now, whether it's the same demonstration  
17 or not, there was no reliable proof that Mr Al Hassan participated or attended such a  
18 demonstration, or that he did so in his capacity as a member of the Islamic police.

19 There's also no established link between taking steps to protect locals to avoid  
20 violence and the commission of the charged crimes.

21 Yesterday, the Prosecution again tried to convince you that a photo of a document  
22 establishes that Mr Al Hassan was working at the Islamic police on 7 May. Now,  
23 here is why this argument is completely flawed:

24 First, the document itself is undated. It's a complaint filed by a local against other  
25 locals who threw rocks at his pregnant wife. There's nothing in the contents of this

1 undated document to tie it to May.

2 Second, the Prosecution's attempt to rely on a notebook does not show that this  
3 complaint was registered on or before 7 May. It actually shows that the complaint  
4 was more likely registered later in the year. In the notebook, there is one page dated  
5 7 May, which lists members of the tribunal. And on the next page, there's an index  
6 of all the judgments that are included in the notebook.

7 But this index contains cases that were heard up until November, not just 7 May.

8 And it's possible to see from this notebook that the case concerning the pregnant  
9 woman was heard by the tribunal between the months of September and November,  
10 and you can see this by going to page 0001-7398, where you have a judgment dated  
11 21 September 2012. On the next page, 7399, we have the notes concerning the  
12 deceased pregnant woman, and then on the next page, that's 7401, we have a  
13 judgment dated 9 November 2012.

14 Mr President, your Honours, the link is missing. There is no link between this case,  
15 this document and what was heard later in the year, and the date of 7 May. The  
16 Prosecution made an arbitrary connection between one item and another without any  
17 foundation to do so. And this is emblematic of their approach to evidence and their  
18 approach to the charges.

19 The Prosecution's next attempt to place Mr Al Hassan at the police in May is based on  
20 evidence from P-0114, concerning an alleged account of Al Hassan that supposedly  
21 took place on 19 May 2012. But once again, the link is missing. The attempt fails at  
22 the first hurdle, because when P-0114 testified under oath, he explicitly said that he  
23 did not remember the date of this alleged meeting.

24 The Prosecution then claim that this meeting is tied to a judgment dated 21 May, but  
25 again, the link is missing.

1 In his evidence, P-0114 describes seeing Tuaregs speaking Tamasheq at the BMS.  
2 The judgment of 21 May relates to Ould Mohamed Lamine, Khalid Ould Ihmidat,  
3 Zein El Abidine, Bou Bakr Ould Ihmid and Issa Ould Ould el Radi. These are Arab  
4 names and Arabs and Tuaregs are not the same.  
5 This judgment does not have any proven connection to P-0114's account. P-0114's  
6 account is also fundamentally lacking in credibility. When he testified, P-0114 was  
7 unable to identify Al Hassan. He was even unsure of his ethnicity. When he was  
8 first interviewed by the Prosecution, he even failed to mention that he met Al Hassan.  
9 When asked on the stand to explain why he had failed to mention this interaction, he  
10 claimed it was because he didn't know the name of the person he had met and it had  
11 slipped his mind because it was a trivial encounter.  
12 P-0114 only remembered this name he didn't know, after he looked up information  
13 about the case on the internet, after Al Hassan's arrest. And after this exposure to  
14 the Prosecution's allegations against Al Hassan, P-0114 also changed his evidence to  
15 pin the title of police commissioner on Al Hassan, even though he previously told the  
16 Prosecution that it was Adam.  
17 There's more to this tale. Towards the end of 2012, P-0114 had described an Algerian  
18 commissioner called Hassan who had only just replaced Adam. When asked in  
19 court to explain why he had described Hassan as Algerian, P-0114 testified that at that  
20 time, he had not yet met Hassan. So this means that seven months after this alleged  
21 encounter at the BMS, P-0114 had still not met Al Hassan, the defendant in this case.  
22 And ultimately when he testified, P-0114 conceded that it was indeed possible that  
23 the person he had met at the BMS was not the defendant, Al Hassan. And that, your  
24 Honours, is the only reasonable conclusion you can reach based on these twists and  
25 turns that P-0114 did not meet Al Hassan at the BMS.

1 Mr President, your Honours, you can use P-0114's evidence to agree with the Defence  
2 that pretrial publicity has contaminated the reliability of evidence concerning  
3 Mr Al Hassan's role and position, but you cannot rely on his unreliable account for  
4 the truth of its contents.

5 I'm turning now to the mosquito net case.

6 Now, this case, dated towards the end of May, concerns disciplinary measures taken  
7 against a member of the group, a security guard, that stole mosquito nets from the  
8 hospital. You heard evidence that a member of the Islamic tribunal was present  
9 when this case was investigated. So Mr Al Hassan's alleged conduct took place  
10 under superior supervision. The related judgment also gave the doctor at the  
11 hospital the power to forgive the offender, and there is no proof, no indication that  
12 the thief actually received corporal punishment.

13 Indeed, to reach such a conclusion, you would need to make a positive finding that  
14 the local doctor approved it, and there is, your Honours, no evidence to that effect.

15 And if there's no proof of punishment, there's no proof of any crime.

16 The report does not demonstrate a culpable link between Mr Al Hassan and the  
17 commission of charged crimes. It does, however, show Ansar Dine working hand in  
18 hand with the locals to ensure the health of the local population and the proper  
19 functioning of key institutions, like the hospital.

20 I'm turning now to June. And in June, and for the entire period when Adam was the  
21 emir, the evidence shows that Al Hassan acted as an interpreter and administrative  
22 clerk. Each evidential item or incident relied upon by the Prosecution concerning  
23 this month, either fails to establish the contrary, or fails to demonstrate that  
24 Mr Al Hassan made a culpable contribution to the charged incidents.

25 And I'll start with the video that was filmed around 11 June at the police station.



1 This video is a wholly unreliable foundation for factual findings. It was taken by  
2 someone who never testified. So we have no evidence concerning the circumstances  
3 on which it was filmed, and there is no evidence concerning the identity of the  
4 persons in the video. The transcript of the video is blank; so we don't even know  
5 what is being said or in which language.

6 By introducing this decontextualised video, the Prosecution is asking you to speculate  
7 about what is being said and why it's being said. In the absence of a transcript, in  
8 the absence of any evidence concerning what was happening, you cannot conclude  
9 that this video shows Al Hassan settling a dispute. We simply don't know. A  
10 conviction cannot be based on a guess or a mere hunch.

11 It is possible to see from the video that the two individuals are not handcuffed. It's  
12 being filmed from another room, so the door is open. The person alleged to be  
13 Al Hassan is not armed. This is not an arrest, it is not a detention, and there is no  
14 apparent link to charged crimes.

15 At its highest, this is a video of someone alleged to be Al Hassan and two unidentified  
16 persons who were engaged in a consensual conversation. It shows that locals chose  
17 to bring issues to the Islamic police, showing that the local population considered the  
18 presence of the police to be a positive contribution to their security and to their  
19 welfare.

20 I will turn now to the debt document, dated 19 June 2012.

21 This document also is not what the Prosecution claims it to be. As explained in our  
22 brief, the Prosecution's description does not match reality; the stamp is not signed, the  
23 stamp is upside down, leading to the more reasonable inference that it bled through  
24 from another document.

25 The judgment concerning the debtor also refers to the creditors coming forward to the

1 tribunal. That's MLI-OTP-0078-0197. This wording that they came forward to the  
2 tribunal, along with the evidence of a key Prosecution witness, buttresses the  
3 reasonable conclusion that the debtor brought this matter himself to the tribunal.  
4 The fact that this matter was brought to the tribunal also shows that the police did not  
5 have the power to resolve disputes in such matters.  
6 At its highest, this debt document only indicates that two individuals witnessed a  
7 contractual agreement to repay a debt, and after the debtor failed to pay, the creditor  
8 toddled off to the tribunal. The tribunal then approved a repayment plan between  
9 the complainant and the debtor. And you can see that repayment plan in  
10 MLI-OTP-0078-0476.  
11 Mr President, your Honours, this debt document does not prove any culpable link  
12 between Mr Al Hassan and the crimes set out in the Rome Statute. At its highest, it  
13 does, however, show the system of Islamic law being used to resolve disputes in a  
14 manner that avoided violence and in a manner that had been used before, during and  
15 after 2012.  
16 I'm turning now to the events of 20 June, which concerns the flogging of two  
17 individuals at Place Sankoré. The Prosecution has not produced any evidence that  
18 Mr Al Hassan played a role in the circumstances that led to this event or its execution.  
19 There is simply no culpable link between him and the charged event.  
20 Now, the confirmed charges have asserted that he played a role in securing the event,  
21 but this assertion is not supported by evidence, nor does it satisfy the requirements of  
22 Article 25(3)(d). The Prosecution has relied on three videos to support this allegation,  
23 but none of them show Al Hassan playing the security role or making a culpable  
24 contribution.  
25 The first video is MLI-OTP-0018-0285. The person alleged to be Al Hassan appears

1 in a blink and you could miss it cameo. The video is 15-seconds long. At the  
2 5-second mark, the person alleged to be Al Hassan can be seen for less than a second.  
3 He is not walking in the direction of the person who is flogged. He is not facing the  
4 local population. He does not have a weapon or any means for ensuring security.  
5 His actions are non sequitur. There is no link between them and the actions of the  
6 persons committing the flogging.

7 The second video, which ends in 0252, is 18-seconds long. Locals can be seen sitting  
8 down on the ground, and the person alleged to be Mr Al Hassan is also sitting in the  
9 sand. And that is all we see for five seconds. He doesn't walk or talk to anyone.  
10 He just sits in the sand. This is not a security pose. It's the pose of an irrelevant  
11 bystander, someone whose presence had no measurable impact on the actions that  
12 took place.

13 The third video is a French 2 documentary, *Sous les règnes des islamistes*, and you have  
14 heard evidence that this documentary was edited to demonise the Islamists and my  
15 colleague, Maître Pradhan, will elaborate on this.

16 But your Honours, this is a court. It shouldn't rely on fake news. But yesterday,  
17 that's what the Prosecution tried to feed you. First, they took a screenshot of  
18 Al Hassan with his hand up, and they claim that he was hiding his face. But if you  
19 watch the video at the 2.50 mark, you will see he's not hiding his face; he's actually  
20 waving in a friendly manner at a journalist.

21 But of greater concern, they played the soundtrack from the documentary where you  
22 hear a French female voice saying, "*Arrête. Arrête.*" And they claim that this is what  
23 Al Hassan heard. The soundtrack, the sounds of this French female voice, these  
24 were fabricated and laid over the footage without any consultation with the person  
25 who shot the film.

1 And what is worse, is that the Prosecution knew the soundtrack is flawed. And they  
2 know that because we told them time and time again in our objections. And you can  
3 see this, your Honours, explained and written in full in filing 1808, at footnote 61.  
4 Mr President, your Honours, please don't let this fabricated soundtrack cloud your  
5 judgment. When you heard the source footage played in court with P-0150, what  
6 you heard was Radwan's voice, a male voice, and he was saying, "It's finished, it's  
7 finished." It was transcript 98, at page 54.  
8 And when you look at the footage without the fabricated overlay, you will see that  
9 the person alleged to be Al Hassan is simply standing in the background, not  
10 interacting with the persons who were conducting the flogging. He is not facing the  
11 local population and, again, his presence had no impact on security.  
12 At 5.53 of the documentary, the flogging ends. The locals all walk wherever they  
13 want. Some towards the Islamists; some in the other direction. And there was no  
14 security barricade directing or controlling them. None of these videos show the  
15 person alleged to be Al Hassan making a meaningful contribution to the flogging that  
16 took place.  
17 The Chamber heard evidence that Talha and his security officers were in charge of  
18 security that day. The Chamber also heard evidence that the head of *Hesbah* was in  
19 charge of overseeing the floggings, ensuring they complied with Islamic law.  
20 The highest member of the Timbuktu High Islamic Council, Grand Imam Essayouti,  
21 attended the flogging, sitting next to Houka Houka. As P-0150 testified, the locals  
22 freely attended as if they were in agreement.  
23 In this backdrop, Mr Al Hassan is, at most, a fly on the wall. The flogging would  
24 have taken place in exactly the same manner if he was there or not. There's no basis  
25 to conclude beyond reasonable doubt that he made a meaningful and measurable

1 contribution to the incident.

2 The presence and oversight conducted by *Hesbah* does, however, create a reasonable  
3 foundation for someone in his shoes to believe that the punishment was properly  
4 decided and issued in accordance with Islamic law.

5 I'm moving on to late June. And we have explained in our response why the claim  
6 that Al Hassan drove an unarmoured car through a metal gate to check for mines is  
7 completely implausible and controverted by the body of evidence before you. The  
8 claim was not probative of guilt. It's just an example of throwing lots of random  
9 claims at the wall and hoping something sticks.

10 So this brings us to July, and it's important to pause and focus on context. After the  
11 MNLA left the airport, many former members of the MNLA joined Ansar Dine, and  
12 you heard evidence they did so because there was no other choice for Tuaregs in or  
13 around Timbuktu.

14 In July, Al Hassan's wife would have given birth to their daughter, Leila, making it  
15 practically impossible to traverse the dangerous route to Mauritania. Prosecution  
16 witness P-0582 gave evidence that demonstrates that once you started working with  
17 Ansar Dine, leaving the group was not an option.

18 P-0582 had arrived in Timbuktu at this point, and joined the Islamic police. When he  
19 asked to leave after a couple of weeks, he was advised that the Malian army would  
20 arrest him; a sure pathway to torture or death. When he asked a bit later if he could  
21 leave to collect his family, his request was denied and he was forced to do military  
22 training.

23 The prospect of being tortured or killed by the Malian army, this wasn't hypothetical.  
24 This prospect existed from the beginning until the end of the charged events. And  
25 throughout this trial, the Prosecution heard multiple Prosecution and Defence

1 witnesses describe what P-0065 termed, the ethnic cleansing of Tuaregs.  
2 Even civilian Tuaregs who were fleeing Mali were targeted. P-1086 described to you  
3 the torture of two Tuareg companions who were captured by pro-government militia  
4 while attempting to reach refugee camps. The Chamber also heard evidence that  
5 even if Al Hassan managed to avoid the army, even if he managed to survive this  
6 dangerous route, he would not have been allowed access to the refugee camps as a  
7 former member of Ansar Dine.  
8 Fleeing Timbuktu with his newborn daughter was not an option at this point in time  
9 for Al Hassan. The Prosecution has not shown Al Hassan freely contributed to the  
10 commission of crimes in this month. They've also not shown that his alleged  
11 involvement in what took place increased the level of harm to the local population.  
12 Now yesterday, the Prosecution once again showed a heavily edited and spliced  
13 video of a flogging of two males, and they have asked you to reach a conclusion  
14 based on speculation.  
15 Now, you've heard evidence from P-0065 that what you see in these videos is a puzzle,  
16 where all the pieces have been rearranged -- and, you don't have the original unedited  
17 footage to see what has changed and what is missing -- and after almost 10 years of  
18 investigations, the Prosecution has not brought you any untainted evidence that  
19 would allow you to reliably reconstruct these events. We don't have a report. We  
20 don't have a judgment. The Prosecutor still hasn't ascertained the names of the  
21 people who were flogged; so there's no foundation to ascertain whether they were  
22 civilians or Islamists or persons who accepted the Sharia.  
23 And when describing this flogging in his notebook, P-0004 seemed to characterise the  
24 event as having been purposefully constructed. He wrote that Al Jazeera journalists  
25 were in town and were there to fix activities and show that Sharia was an application.

1 P-0004 further wrote that the Islamists gave the two flogged individuals a significant  
2 sum of 50,000 CFA. And that's at page 0678 of the transcript of his notebook.  
3 Now, rather than conducting an independent and impartial investigation into this  
4 incident, the Prosecution has, instead, based their case entirely on broken-up footage  
5 and broken memories from a broken man. And I'm speaking here about their  
6 continued reliance on the interviews they conducted with Mr Al Hassan, while he  
7 was held at the *Sécurité d'État*, in Bamako.  
8 The Prosecution investigators asked him about this incident on 2 October. It was a  
9 two-day session. At the start of these sessions, he told the Prosecution he was still  
10 held incommunicado. He tells them he's still being interrogated by security services  
11 from the prison. He tells them he can be tortured at any time.  
12 Al Hassan asks them, given that his psychological state doesn't allow him to function,  
13 given that he doesn't have rights, is it lawful to be interviewed like this? The  
14 Prosecution investigators tell him it is; that the judges knew of the conditions and  
15 approved it.  
16 So moving forward to the -- day 2 of the session, 6 October, it's the fourth session of  
17 that day, starting at 2 p.m. At the end, he is so desperate that he begs the  
18 Prosecution to intervene, to transfer him to a lawful prison, one under the ministry of  
19 justice. But they refuse. They tell him he has no right to even ask for such things.  
20 This is the interview session that the Prosecution relies on. And when they do so,  
21 they pick and choose from these tainted transcripts while ignoring pertinent details.  
22 Specifically, in this interview, he tells the Prosecution that the two individuals were  
23 convicted and sentenced by the tribunal for public drunkenness; that it was treated by  
24 the tribunal as a *hudud* punishment. There's no evidence Al Hassan played a role in  
25 the arrest or the proceedings of the tribunal itself.

1 He also tells them that he was designated by the emir of the police or Abou Dhar to  
2 execute the tribunal's order, and, as Dr Gerry will elaborate, it was inconceivable for  
3 someone in Mr Al Hassan's position to refuse to execute such an order.

4 And you saw at the scene of the punishment, Abou Dhar is present, acting as a  
5 deputy for Adama. You heard evidence that Abou Jabar, a close associate of  
6 Abou Zeid, was present to enforce the punishment in accordance with the tribunal's  
7 order. If Al Hassan had not been there, another person would have stepped in and  
8 taken his place.

9 The individuals were also punished in a manner that conformed to Sharia, using a  
10 technique that was designed to avoid disproportionate pain or suffering, and there  
11 was no evidence regarding injuries sustained by the individuals. Given that  
12 corporal punishment for alcohol is practiced in several Islamic and non-Islamic  
13 jurisdictions, the superior order was not manifestly unlawful for someone from  
14 Mr Al Hassan's milieu.

15 Turning to the next cog in the Prosecution's flawed plan, the Prosecution relies on an  
16 encounter between P-0004 and Al Hassan at the BMS on 11 July to describe Mr Al  
17 Hassan as a deputy. The evidence concerning this encounter, nonetheless, shows  
18 that he was still functioning as an interpreter. And when testifying, P-0004  
19 confirmed that Adam used Al Hassan as an interpreter, in particular in relation to the  
20 French and Songhai languages, which is a language that P-0004 spoke.

21 The call data records also show a pattern of conduct from this day, where you see an  
22 individual, who is complaining about his car, first call Adam. There's a brief  
23 conduct -- a brief contact, and then shortly after, the same individual calls the number  
24 attributed to Al Hassan. So this call pattern is consistent with someone who received,  
25 interpreted or recorded information for the emir with different interlocutors who



1 could not speak the same language.

2 The interaction in question also concerned efforts by the police to identify the owner  
3 of the vehicle. And, according to P-0004, once the police realised they had made a  
4 mistake, the car was returned to the rightful owner with an apology and an offer to  
5 repair damage. The encounter thus shows Al Hassan's day-to-day activities were  
6 directed towards assisting the local population. His presence, as someone who  
7 facilitated dialogue between members of the group and locals, made a positive  
8 contribution to civilian welfare.

9 The Prosecution have also attempted to boost Mr Al Hassan's alleged seniority by  
10 claiming that the emir of Timbuktu, Abou Zeid himself, was seen leaving Al Hassan's  
11 office at this time. First, this isn't what P-0004 actually wrote or said. He wrote that  
12 Abou Zeid left the office of the *commissaire*, and, when he testified, he confirmed that  
13 it was Adam. Second, we don't know why Abou Zeid was there or what he was  
14 doing. He could have been paying a parking fine for all we know. The claim  
15 demonstrates nothing.

16 I'm turning now to Mr Al Hassan's alleged presence at a public punishment on  
17 14 July. The event concerned a member of the group punished for theft. It's not a  
18 charged incident and it doesn't concern crimes committed against civilians or the local  
19 population.

20 His alleged presence does, however, provide a platform for you to make findings that  
21 he was acting under duress. You will also see from the video that he's -- in the scene  
22 -- an irrelevant little fish; someone following orders, not a decision maker. And  
23 you've heard evidence that this member of the group was convicted by the Islamic  
24 tribunal.

25 You've also heard evidence that the head of *Hesbah* was present to oversee the correct

1 application of Sharia. And in this blurry video, the person alleged to be Al Hassan is  
2 again standing in the background. He's not participating in the punishment; he's not  
3 supervising it; he's not ordering it. He's unarmed and he could be seen clutching his  
4 boubou as if he were afraid.

5 And it's reasonable to infer he was afraid. P-0582 gave evidence that when members  
6 of the group were punished, the police were made to watch to give the police a lesson.  
7 This video doesn't show that Al Hassan had the power or the position to make  
8 culpable contributions, but it does, however, show that he knew he would be  
9 punished severely if he failed to follow superior orders.

10 I'm moving now to the report of 16 July, and this refers to an individual who was  
11 found in the act of selling contraband.

12 Now, after eight years of investigation, three years of trial, this is what the  
13 Prosecution has not established:

14 First, they have not adduced any evidence as concerns who arrested this person.

15 There is, moreover, no proven link between his arrest and Mr Al Hassan.

16 Second, apart from the tainted interviews with Al Hassan, the Prosecution has not  
17 adduced any evidence as concerns who conducted the interrogations of this

18 individual. The report itself does not state that the individuals were arrested,

19 interrogated or tortured by members of the Islamic police. There's also no indication  
20 that the report was written at the same time of the interrogation and, indeed, given its

21 short summary nature and the fact it doesn't contain any quotes or details, the

22 reasonable inference is that it was prepared afterwards and not in tandem with the  
23 interrogation.

24 There is, however, no factual allegation or description of what was done to the person  
25 when he was interrogated. This makes it impossible for you to conclude whether the

1 way he was interrogated actually fulfils the criteria for torture. There is simply  
2 insufficient detail to make reliable findings of fact concerning the link between this  
3 interrogation and Mr Al Hassan's personal responsibility.

4 This missing link also can't be found in Mr Al Hassan's statements. And he was  
5 questioned about this report when he was clearly exhibiting signs of psychological  
6 distress and impairment. His evidence also does not show any blameworthy  
7 participation on his part.

8 The Prosecution investigators questioned Mr Al Hassan about this report on  
9 8 December and 16 January – and, I'll deal with each interview in turn, starting with  
10 8 December. At this point in time, your Honours, Mr Al Hassan had been  
11 incommunicado for 8 months. He was in cell 6, a cell shared with around 20 people.  
12 The Chamber has heard evidence that the floors' tiles in the cell were about one-third  
13 of a metre and each person had about a tile and a half for space.

14 Desperate, the detainees staged a protest, tapping on their doors to ask for better  
15 conditions and the guards responded brutally. The Chamber heard evidence that  
16 each detainee was taken out, including Al Hassan. Al Hassan was then forced to lie  
17 on his stomach while the guards beat him with whips and sticks. A witness saw  
18 blue bruises on Al Hassan's body afterwards, particularly on his buttocks.

19 The already meagre food rations were then reduced to a third for three days, and the  
20 guards refused to empty the toilet pots for three days.

21 Imagine this beaten, bruised man crammed into a space that was about the size of an  
22 A3 piece of paper, this size, starving, overwhelmed with the stench of urine and  
23 faeces. These were Al Hassan's experiences and conditions in the lead-up to his  
24 December interview with the Prosecution.

25 And when Mr Al Hassan's lawyer raised what happened to him with the Prosecution,

1 they claimed it wasn't relevant. Mr Al Hassan's lawyer gave him a paracetamol and  
2 the interviews continued.

3 The investigator gave Al Hassan the 16 July report and asked him to read it,  
4 questioning him repeatedly, trying to pin him down. During the interview,  
5 Al Hassan tells the investigator he doesn't know how the suspect was interrogated.  
6 He tells them that the interrogation did not take place in the police station and he  
7 doesn't know where it took place. He also expresses his belief that the suspect was  
8 only condemned to two months in prison and then released, that is, that he was never  
9 flogged.

10 The Prosecution then interrogated him again on 16 January. The interview starts,  
11 Al Hassan says, "I have a small ask, *une petite demande*." He tells the Prosecution he's  
12 fallen ill; he's suffering from psychological exhaustion described by the interpreter as  
13 depression. He has enormous pain in his head. He has fever and pain in his teeth.  
14 He's received no medication. And at this point, he's still incommunicado; he's still in  
15 cell 6 where he was a human sardine in a tin.

16 There are clear indicia that he was not physically or psychologically fit to be  
17 questioned, but the two investigators, who have no medical background, took no  
18 steps to test his competence or cure his ailments. Instead, they promise him after  
19 they finish the interview, they will speak to the Malian prosecutor and they offer to  
20 take pauses in the meantime. Faced with this promise of help, a quasi lifeline  
21 dangled in his face, Al Hassan agrees to continue the interview.

22 Let's look at what he said.

23 He states that this type of interrogation was not within his functions. It was only  
24 something he'd heard about. Therefore, it wasn't something he had seen or been  
25 present for. When the Prosecution asked follow-up questions, he repeatedly states

1 he does not know how such interrogations unfolded.

2 He also tells the Prosecution that such interrogation could only be ordered by the  
3 Islamic tribunal. And Mr President, your Honours, this is consistent with the  
4 Prosecution witness who testified that if such an interrogation took place, it would  
5 have been authorised by the tribunal in accordance with Sharia principles. That was  
6 transcript 95, page 140.

7 Al Hassan also tells the Prosecution that if someone had been tortured or threatened  
8 with torture and they didn't confess, then based on his understanding, the tribunal  
9 would free them.

10 Now, this is what the Chamber can reasonably conclude from what Al Hassan said.  
11 First, Al Hassan was not present and did not participate in interrogations involving  
12 torture. Second, it was his reasonable understanding that a person who had been  
13 tortured without confessing would be released by the tribunal. That is, at the time  
14 that the report was written, Al Hassan had no knowledge or awareness that the  
15 person would be subjected to future treatment amounting to a crime.

16 Third, Al Hassan believed that after two weeks in detention, the person was released.  
17 This shows that Al Hassan had no knowledge and no involvement in the alleged  
18 flogging of this person, which has not been proven to have taken place.

19 Now, this is what the Chamber cannot conclude on the basis of what Al Hassan said  
20 to the investigators. Even if you disbelieve Al Hassan's account that he was not  
21 involved in the interrogation, you have not received any evidence from any witness  
22 with personal knowledge of this interrogation. You either have Al Hassan's account  
23 or you have nothing. And you can't go from disbelief of one proposition to belief of  
24 a different evidentially unsubstantiated proposition. That's not how the burden of  
25 proof works.

1 I would like to refer the Chamber to the legal authority set out at footnote 245 of our  
2 confirmation submissions. That's filing number 394. I refer in particular to the  
3 ICTY Nobile appeals judgment, at paragraph 47.

4 Ultimately, the police had no power not to write a report. After all, this was a case  
5 concerning a serious *hudud* offence. The report would have been written and  
6 transmitted to the tribunal whether Mr Al Hassan was there or not. The fact that the  
7 report expressly recorded the mistreatment of the suspect did, however, make it more  
8 likely the suspect would receive lenience. It made it more likely that he would be  
9 released. So, if anything, Al Hassan's alleged involvement in relation to actions that  
10 occurred independently of him diminished rather than increased the harm  
11 experienced by the suspect.

12 Moving on to August. The Prosecution closing brief simply claims for the month of  
13 August that Al Hassan continued his activities, and they refer to one theft report he  
14 allegedly signed. This report concerns the arrest of an individual who was  
15 deliberately sabotaging the electricity and water supply in Kabara -- that is, around  
16 the airport. The individuals were causing severe harm to the local population.  
17 There's no indication who they were or who arrested them. The report describes the  
18 theft as relating to public property. The *hudd* penalty does not apply to such acts.  
19 There's no evidence concerning the judgment that was issued.

20 Mr Al Hassan's alleged act in drafting or signing this report is not probative of  
21 intentional involvement or contribution to the commission of charged crimes.

22 In later sections of their brief, the Prosecution also relies on a police report or what  
23 they describe as a police report concerning Halimah Samak, and it's dated 28 August.

24 There is, your Honour, no evidence that this document is, in fact, a police report.

25 And when you draft your judgment, it's important to look at the original language

1 version, because you will see that on this document there's no stamp and no signature  
2 on the document. When shown this document and asked about the handwriting,  
3 P-0150 stated that he did not recognise it. It's transcript 98, page 21.

4 The related judgment also does not mention the police. To the contrary, it states that  
5 the case was brought by Abdallah Qarb to the tribunal, and this, your Honours, is  
6 consistent with evidence that locals could bring complaints directly to the tribunal,  
7 and Maître Youssef will address this as well.

8 So there's no link between this incident and the police. There's absolutely no link  
9 with Mr Al Hassan. There is, therefore, no basis for a conviction.

10 Turning to September. The Prosecution starts the month of September by relying on  
11 crisis committee notes written by one person who did not testify in relation to a  
12 meeting conducted by another person who did not testify. The precise contents of  
13 the meeting, the degree of specificity of the matters raised during the meeting are  
14 unknown. The identity of the agents discussed during the meeting is unknown.

15 And although the notes are dated 9 September, we actually have no idea when the  
16 meeting took place.

17 This remote secondhand hearsay does not form a reliable basis to reach findings of  
18 fact concerning Al Hassan's knowledge or his alleged contribution to charged acts of  
19 mistreatment. Even if the Chamber were to assume that Mr Al Hassan was at this  
20 meeting, and even if you were to assume that the locals had correctly identified the  
21 agents as police officers and not members of *Hesbah*, this note, this remote  
22 secondhand hearsay does not prove that Al Hassan played any role in their alleged  
23 misconduct; nor does it prove that he had knowledge of future acts of misconduct.

24 The Chamber has received evidence that Mr Al Hassan was with his family in Zorho  
25 from 14 to 20 August. This includes the 27th day of Ramadan, and this is a date

1 which, according to the Prosecution, locals complained that members of the group  
2 acted improperly. So Al Hassan was not in Timbuktu at the time.

3 The Chamber has also heard evidence that the emir, Abou Zeid, and Sanda received  
4 these complaints. The emir apologised. He provided compensation and he issued  
5 specific directives to the police and the *Hesbah* to ensure the proper treatment and  
6 protection of the local population. The offending officers were also disciplined.

7 So the Prosecution has not demonstrated that Al Hassan participated in or  
8 contributed to the alleged events on the 27th day of Ramadan, and, afterwards, given  
9 that the leaders responded positively to complaints, given that the offending agents  
10 were disciplined, there is no foundation to conclude that Al Hassan knew that it was  
11 virtually certain that police officers would commit exactions against locals in the  
12 future. And there is, Mr President, your Honours, no evidence that members of the  
13 Islamic police, as compared to *Hesbah*, did commit abuses after this point. Once  
14 again, the link is missing and there is no basis for a conviction.

15 Moving on, the Prosecution refers to Mr Al Hassan's alleged actions in signing a  
16 convocation asking someone to come to the Islamic police. This convocation is not  
17 related to a charged incident, but it does, however, demonstrate that individuals and  
18 witnesses were requested to come to the police by a slip of paper, not by force, and  
19 Maître Youssef will elaborate further on this point.

20 So I'm turning now to the elephant in the room. September was the month where  
21 the only amputation took place -- that is, the amputation of Dedeou Maiga. The  
22 Prosecution's claim that Al Hassan was involved in the first arrest of Dedeou Maiga is  
23 founded entirely on torture-tainted evidence. Their characterisation of this  
24 torture-tainted evidence is wrong and there is, moreover, no culpable link between  
25 this first arrest and the ultimate outcome.



1 So let's look at these torture-tainted interviews. Mr Al Hassan was questioned about  
2 this incident on 11 September 2017. At this point he'd been held incommunicado for  
3 four and a half months. And, just a reminder of the human rights law, anything  
4 longer than 10 days is considered akin to psychological torture.  
5 When he met the Prosecution on 6 September, they asked him how he was, and he  
6 told them his situation had not changed. He had no rights. He had no right to  
7 contact his family, to receive information from the outside world, even to see the sun.  
8 None of those rights existed for him.  
9 On 11 September, he was in a cell with 12 persons in cell 2. This was the same cell in  
10 which a detainee called Said had died. Said arrived in good health, but a few days  
11 later, after being beaten by guards, he died. This death happened just before  
12 Al Hassan was brought into cell 2. And the Chamber has received evidence that  
13 when detainees arrived at the *Sécurité d'État*, they were told about other detainees  
14 who had died from torture. P-0582 told the Prosecution that the *Sécurité d'État* was a  
15 cemetery, a place where you died or became crazy.  
16 Al Hassan was literally held in a graveyard at the point, where he gave the only  
17 evidence relied upon by the Prosecution to establish his involvement in the charges  
18 related to Dedeou Maiga.  
19 Now my colleague, Maître Pradhan, will explain why the Chamber can't rely on this  
20 evidence. But even if you were to examine it, you will see that it does not create a  
21 culpable link. The case was not initiated by the police, nor did Al Hassan play an  
22 intentional role in its *dénouement*.  
23 As he explained to the investigators, on the day in question, Adam passed by  
24 Mr Al Hassan's to take him to work. They then came across a group of locals who  
25 complained that a house had been robbed. The locals themselves were trying to

1 catch the thief, and the thief was easily found because he had stolen bags of rice from  
2 his neighbour and left a trail of rice behind him before going to sleep.

3 When Al Hassan accepted Adam's offer of a lift to work, there is no way he could  
4 have known that it was a virtually certain occurrence that would result in Dedeou's  
5 arrest or his amputation. The chain of events was initiated by the local population.  
6 He was present by happenstance, and, yet, the Prosecution has not established that  
7 his presence made the arrest more likely. Given the persistence of the locals,  
8 Dedeou Maiga would have been found and arrested whether Al Hassan was there or  
9 not.

10 At this point in time, there had been seven judgments for theft issued by the Islamic  
11 tribunal and none of them had resulted in an amputation or serious punishment.

12 Al Hassan is not a religious scholar, and there's no evidence that he knew that it was a  
13 virtually certain consequence that the tribunal would issue a completely different  
14 punishment than it had done so on all prior seven occasions.

15 There was also a rupture in the chain of causation between the civilian-initiated arrest  
16 and the ultimate punishment. This rupture, this intervening act, relates to Dedeou's  
17 escape from prison with the rapist, Bocar. And you've heard evidence that the local  
18 population was up in arms about Bocar's arrest -- escape. A local journalist even  
19 complained that it wasn't the first time that prisoners had escaped from the Islamists.  
20 Following pressure from locals, leaders posted a reward for the arrest of Bocar, the  
21 rapist. It turns out that Dedeou Maiga continued to associate with this wanted rapist  
22 and was then caught by a local. The local population then arranged for him to be  
23 rearrested. You have this evidence.

24 Mr Al Hassan's alleged presence during the first arrest had no impact on the  
25 circumstances of his capture and no impact on his second arrest. There's not even

1 any evidence Al Hassan was working or present in Timbuktu when the second arrest  
2 occurred. And according to the call data records, he was in Zorho between 9 and  
3 10 September, returning on the 10th.

4 There is also no evidence Al Hassan contributed to the proceedings before the  
5 tribunal in any shape or form. There's, in fact, no police report concerning this case.  
6 The judgment states the defendant confessed before the tribunal. It also states that  
7 the tribunal conducted its own inquiry into the circumstances. The judgment makes  
8 no reference to the police or a police report.

9 The subsequent punishment also has no proven link to Mr Al Hassan. He was not  
10 present and the Prosecution has not proved that he played any role in its organisation  
11 or execution.

12 Now, the Prosecution's closing brief claims that Adam and members of the police  
13 were present, but this claim is not correct or reliable.

14 First, Adam wasn't even a member of the police at this point.

15 Second, the reference to other police being present is based on the testimony of P-0654  
16 who only identified one individual in a video. The presence of one alleged police  
17 officer in a scene of over 24 persons constitutes a negligible presence with no proven  
18 personal link to Mr Al Hassan.

19 There are also reasonable grounds to conclude that P-0654 was mistaken as concerns  
20 what he saw. This video forms part of a series of videos apparently shot on the same  
21 day. I refer you to transcript 128, page 85.

22 Now, when a video from this series was shown to Prosecution witness P-0150, he  
23 claimed to recognise himself in the video. P-0150 also testified that these images  
24 were filmed on the day of Moussa's execution, not the amputation. That's transcript  
25 89, page 128.

1 They can't both be right. Either P-0150 provided incorrect testimony when he  
2 claimed to be absent on the day of the amputation, or these scenes relate to a  
3 completely different uncharged event.

4 There were also no amputations after this case. Locals, as Maître Youssef will  
5 explain, continued to bring theft cases to the police and the police, in turn, were  
6 obliged to transmit them to the tribunal. But as we set out at paragraph 79 of our  
7 response, each subsequent police report set out grounds that allowed the tribunal to  
8 avoid imposing the amputation. And P-0582 explained to the Prosecution, this was  
9 not incidental. The police did not support this form of punishment and tried to  
10 frame information in a way that meant that the criteria for imposing an amputation  
11 were not met.

12 P-0582 gave the example of someone who was accused of stealing a weapon, and  
13 since the theft of public property doesn't result in amputation, the police claimed the  
14 stolen weapon was theirs. And when this didn't work, Al Hassan suggested that  
15 they help the individual escape.

16 And the Prosecution has, of course, attempted to downplay Mr Al Hassan's  
17 considerable efforts to help the population by claiming he only helped this individual  
18 because this individual was a member of the group. But this claim does not match  
19 reality or the evidence in the case. The Chamber has evidence from P-0582 that  
20 Al Hassan suggested that when P-0582 interpreted for locals, he should interpret in a  
21 way that helped or favoured the locals over the group.

22 The Chamber also heard from D-0605 that Al Hassan helped locals to obtain reduced  
23 penalties, in particular in the case concerning someone who was technically a slave.

24 D-0272 also explained the assistance Al Hassan provided to a local member of the Kel  
25 Inorkandar tribe.

1 Mr President, your Honours, the evidence shows that Al Hassan's presence, his  
2 involvement in the Islamic police in September, continued to make a positive  
3 contribution to civilian welfare and not a culpable contribution to crimes.  
4 For the month of October, the Prosecution tries to rely on a video interview filmed at  
5 the *gouvernorat* to establish his alleged involvement in incidents. But if you watch  
6 the video in context, if you read the transcripts closely, the evidence will actually lead  
7 you to the opposite result.

8 The video is one of a series of videos. And while the Prosecution report from P-0075  
9 states the video ending with 3710 was filmed on 5 October, the report also states the  
10 linked videos ending with 3712, 3714, and 3716, were filmed on 6 October, at around  
11 10:59, 11:50 and 11:58. And since the person in the video is wearing the same clothes,  
12 there's a reasonable foundation to conclude that the videos were all filmed on  
13 6 October.

14 Now, this date is important for a number of reasons. In particular, I'll start first with  
15 a video that was filmed on 5 October; that's video ending with 3724. When you  
16 listen and watch this video, you will see the person, the filmmaker in question, he was  
17 camped outside the *gouvernorat*. He was trying to bag an interview, and he runs into  
18 Sanda. They discuss the fact that they have drafted questions. The speakers  
19 mention the press office, and they also mention the word or name Ahmed.

20 Now, the Chamber has heard evidence that an individual called Ahmed, that is,  
21 Ahmed Al Faqi, was supposed to be the key subject of a documentary focusing on the  
22 role of *Hesbah*. And in the documentary proposal, *Hesbah* was described erroneously  
23 as the Islamic police.

24 The Chamber has also heard evidence that because of a car accident, Ahmed, the star,  
25 was convalescing, and the media office had been asked to propose a local Tuareg

1 substitute, one who could presumably speak Arabic, which was the language of the  
2 original interviews conducted with Ahmed Al Faqi, and then, Hey! *Voilà!* The  
3 person identified as Al Hassan is trotted out to speak about issues that would  
4 normally be dealt with by the convalescing star, Ahmed.

5 Turning to the videos themselves, let's look at the video ending with 3710. It's  
6 filmed in an office and there's a desk with two chairs in front of the computer -- two  
7 chairs, not one chair. So it's two, one for the emir and one for the interpreter who  
8 assists him. If this was Al Hassan's desk as opposed to one that was being borrowed  
9 for a staged film, there would be no need for two chairs behind this desk.

10 In this call -- in this video, you hear the person receiving a call in Tamasheq, and this  
11 was confirmed by P-0150 at transcript 94, page 7. But unfortunately, when the  
12 Prosecutor prepared their transcripts, they left out these Tamasheq components. But  
13 these components are elucidated in the linked video, ending with 3712, and,  
14 specifically, you can hear that after receiving this call in Tamasheq from locals in the  
15 first video, the person identified as Al Hassan calls Khaled in Arabic, and he tells him  
16 what he has heard, that is, that locals have caught a thief in Ber and want to hand him  
17 over.

18 So in these videos, he is relaying information he received from one language into  
19 another language. He's acting as a human equivalent of Google translate. He then  
20 asks Khaled to come to the office, saying that it was important for Khaled to return  
21 immediately.

22 He is then asked about the type of cases they are dealing with at this point, and he  
23 says, "Mostly social cases, mostly, for the most part, disputes between neighbours and  
24 such." The type of disputes that were brought to them by the locals themselves.

25 Critically he states, "The police does not have the power to make decisions on such

1 matters." He states that they were obliged to send them to the tribunal. And, in the  
2 linked video, 3710, he further states that the group worked hand in hand with the  
3 local imams and local religious scholars; that there was a perfect cooperation between  
4 them.

5 This view concerning the constructive synergy between Ansar Dine and local imams  
6 was shared by key notables. I refer to transcript 107, page 79, and also at paragraph  
7 113 of P-0114's first statement, where he gave evidence that according to the ulema of  
8 Timbuktu, they considered Abdallah Al Chinguetti to be preaching in a non-violent,  
9 moderate manner.

10 Your Honours, if you choose to rely on these videos, even though the person who  
11 filmed them did not testify, and even though you don't have the full context, these are  
12 the reasonable conclusions you can draw:

13 One, theft cases were brought to the police by locals, and this shows that the local  
14 population supported the existence of the police and the existence of a system  
15 regulating law and order.

16 Two, when these cases were brought to the police, Mr Al Hassan is unable to deal  
17 with the cases themselves. He's neither the emir in name, nor in practice. And this  
18 conclusion is corroborated by P-0582, who gave evidence that Al Hassan refused to  
19 take decisions whenever Khaled was absent.

20 Three, it's reasonable to conclude that the majority of police work was social cases  
21 brought by the locals, and this shows that the local population supported the work of  
22 the police.

23 Now, yesterday the Prosecution told you the rules were enforced through violence  
24 and threats. But here, you see the opposite: the locals freely chose to bring these  
25 cases to the police. The fact that the police were preoccupied with such social and

1 civil cases, it also shows that there was no nexus between Mr Al Hassan's daily work  
2 and the alleged armed conflict.

3 Four, the police did not have the power to make decisions or determinations in such  
4 matters. When locals freely brought them to the police, the police acted as a  
5 letterbox; they received them and transmitted them to the tribunal, which did have  
6 the power.

7 And five, the person identified as Al Hassan expresses the belief that the group was  
8 working collaboratively in perfect cooperation with local religious leaders and  
9 notables. So this shows that Al Hassan did not intentionally contribute to a system  
10 he knew to be contrary to local values or local wishes.

11 Mr President, I'm looking at the time. Is this a --

12 PRESIDING JUDGE MINDUA: [13:01:28](Interpretation) You're correct, Ms Taylor.  
13 It's 1:01 and time for the break, I believe. We shall suspend the hearing now for the  
14 lunch break and resume at 2:30, as usual.

15 The hearing is adjourned.

16 THE COURT USHER: [13:01:56] All rise.

17 (Recess taken at 1.02 p.m.)

18 (Upon resuming in open session at 2.30 p.m.)

19 THE COURT USHER: [14:30:25] All rise.

20 Please be seated.

21 PRESIDING JUDGE MINDUA: [14:30:52](Interpretation) The hearing is resumed.

22 And Defence has the floor for further closing statements.

23 MS TAYLOR: [14:31:04] Thank you very much, Mr President.

24 Continuing on the month of October, this was also the month where we had an  
25 incident that's been referred to as the women's march. The march itself was not



1 a charged incident. It was not a march against Ansar Dine, and it was not a march  
2 against the Islamic police. And as my colleague, Maître Beaulieu Lussier, will  
3 elaborate, it was also not a march protesting rape.

4 In their brief, the Prosecution relied on three items of evidence: one, a *message porté*,  
5 and the evidence of P-0603 and P-0582. None of these items substantiate their  
6 account.

7 The *message porté*, that's MLI-OTP-0012-0975, we have no information where  
8 the information in this document came from, whether it's first, second or even  
9 fifth-hand hearsay. It's anonymous hearsay squared. The reliability of the source  
10 of the content of this document is further called into question by the fact that the  
11 source describes Mohamed Moussa, who is the head of *Hesbah*, or was, it describes  
12 him as the *commissaire de la Police islamiste*.

13 And here, your Honours, we come to the crux of the problem with this case. That  
14 Al Hassan is in the dock here today because Prosecution witnesses and  
15 the Prosecution itself confused the Islamic police with the *Hesbah*.

16 The Islamic police was in the BMS before going to the *gouvernorat*, but you've heard  
17 evidence that after the *Hesbah* moved in, the Islamic police sign remained for a period.  
18 And, your Honours, you have heard multiple Prosecution witnesses concede they  
19 wrongly assumed that the persons working at the BMS at this point were the Islamic  
20 police.

21 The Prosecution also confused and conflated the two functions of these distinct  
22 organs, an issue that will be addressed by Maître Youssef. Mr Al Hassan did not  
23 work for *Hesbah*. He had no authority over *Hesbah* or *Hesbah* members and this is not  
24 a case of co-perpetration. A link between Mr Al Hassan and the acts committed by  
25 independent organs and independent agents cannot be forged from erroneous

1 conflation of the two.

2 The *message porté* also says that the march took place between 10 o'clock and  
3 12 o'clock on 6 October. P-0603 testified that she marched at around 11 a.m. As  
4 we've just discussed, the Prosecution relies on evidence that on 6 October, between 10  
5 and 12 o'clock, Mr Al Hassan was allegedly filmed sitting in the *gouvernorat*, and in  
6 these videos, these films, we hear the calls he receives and we hear the calls he makes.  
7 None of them relate to the women's march.

8 In fact, we hear Khaled being asked "*Quoi de neuf?*" What's new? To which Khaled  
9 responds "*Rien.*" Nothing. Al Hassan is clearly not present at the women's march  
10 and he's clearly not involved in what is happening there.

11 Let's circle back to P-0603, who testified about the march. When asked why she had  
12 never mentioned Al Hassan's name in interviews or reports that took place before  
13 Al Hassan's arrest, she conceded point-blank to your Honours: "Hassan didn't do  
14 anything to us. He didn't even speak to us. He didn't do anything bad to us."

15 Mr President, your Honours, the people of Timbuktu, even those who demonstrated,  
16 don't believe that Al Hassan did anything bad; nor is there any basis for you to reach  
17 a contrary conclusion.

18 Since P-0603 herself did not believe there was a foundation to convict Al Hassan, I'll  
19 move on to P-0582. The Prosecution claimed in their brief, at paragraph 285, that  
20 Mr Al Hassan was present at the demonstration. Except that's not what P-0582 said.  
21 He actually told the Prosecution that Al Hassan was not present when the march was  
22 taking place. And I refer you to the document 0062-4185 at 4190.

23 P-0582, in the same interview, told the Prosecution that four women came to  
24 the police on 5 October to obtain authorisation to march. The police gave them this  
25 authorisation. That's at 4180.

1 P-0582 also explained that the next day, the women came to the *gouvernorat* to assist  
2 them to find out what had happened, to be listened to. His account does not suggest  
3 in any way that the women were brought to the *gouvernorat* against their will.  
4 P-0582 also told Prosecution investigators that the Islamic police did not arrest or  
5 detain women.  
6 In sum, the Chamber has heard evidence that following this consensual meeting at  
7 the *gouvernorat*, a meeting was convened on 9 October with the crisis committee to  
8 discuss Hamed Moussa. According to P-0150, during this meeting, the crisis  
9 committee did not give details, nor did they present the matter as an actual accusation  
10 that they wanted to resolve. That's transcript 112, page 75. And  
11 Maître Beaulieu Lussier will elaborate that on this precise date, 9 October, a member  
12 of the crisis committee publicly stated in the same *Jeune Afrique* article cited  
13 yesterday by the Prosecutor, they said that they had no evidence of rape.  
14 Mr Al Hassan did not work at the BMS at this point. He didn't have eyes and ears  
15 everywhere in Timbuktu; so there's no basis to conclude that Mr Al Hassan knew of  
16 specific incidents of rape and sexual-based violence when others, other people with  
17 greater access to either Hamed Moussa or the locals did not have this knowledge.  
18 There's also no foundation to conclude that after this meeting, Al Hassan knew that  
19 there was a virtually hundred percent chance that future acts of mistreatment would  
20 occur. To the contrary, you heard from P-0150 that following the 9 October meeting,  
21 the Shura council issued further instructions specifying that the *Hesbah* could no  
22 longer issue *tazirs* directly. They were required instead to submit such cases to  
23 the tribunal.  
24 And you have seen in the evidence that after this point, Mohamed Moussa's powers  
25 were in fact reined in. Specifically, in November, you can see *Hesbah* reports signed

1 by Abou Abdallah Al Souki, Mohamed Moussa, and this was because he was  
2 required to refer matters to the tribunal, rather than dealing with them directly.  
3 And as Maître Youssef will explain, that's why you see *Hesbah* reports from that  
4 period and not before.

5 D-0551 also testified that after this October meeting, he and his associates did not see  
6 Mohamed Moussa or his men making problems for women on the streets or at the  
7 markets. And that's transcript 200, page 83.

8 Your Honours, the principle of *in dubio pro reo* does not allow you to conclude, based  
9 on an assumption, that Mr Al Hassan had actual awareness that exactions were  
10 committed by *Hesbah* officers when individuals with greater proximity to the local  
11 community had no such knowledge.

12 Finally for October, the Prosecution relies on a report concerning an individual called  
13 Mohamed Moussa who was arrested at the airport checkpoint with suspicious items.  
14 My colleague Maître Youssef will explain that in this case, it is incident 20, again,  
15 the police were no more than a neutral letterbox and this does not suffice to trigger  
16 responsibility.

17 Turning to November, the Prosecution has attempted to create *mens rea* by referring to  
18 the contents of another scripted interview stage directed by Abdallah Al Chinguetti.  
19 Now, we've addressed the fact that such scripted interviews lack probative value.  
20 And you can see that it's scripted, because the words attributed to Al Hassan are  
21 almost identical to those of Abou Dhar who was filmed at the same time.

22 Yesterday, the Prosecution tried to inflate their empty *mens rea* casket by claiming that  
23 Al Hassan laughed after referring to the amputation. Your Honours, this laugh  
24 doesn't exist. It's not in the video; it's not in the transcript. It's yet another example  
25 of conjuring something from nothing. His remark that thefts had reduced following

1 the amputation is also purely observational. It does not demonstrate *mens rea* to  
2 knowingly contribute to crimes. It simply repeats or reflects common chatter on  
3 the street.

4 And we have concrete examples of local chatter to this effect. And if you go to  
5 the video 0069-3735, you will hear a local shopkeeper thank God that the number of  
6 thefts has decreased since the amputation. He says, God has saved them from  
7 thieves.

8 In a different interview, a local notable was filmed describing the reduction of thefts  
9 and rape due to Sharia, and he describes it as a positive development. That's  
10 transcript 133, page 39.

11 Turning back to the contents of the November interview, the person states, "Thus far,  
12 there had been a total of five floggings, including two for alcohol." So it's reasonable  
13 to conclude from this interview that as of 7 November, if this is Mr Al Hassan, then he  
14 only had knowledge of the June flogging of the couple at Place Sankoré, the two  
15 unidentified individuals who were given 40 lashes, and the flogging of the Islamist,  
16 Housseyn Ould Badi.

17 The video disproves the Prosecution case that Al Hassan had any knowledge or  
18 involvement in other floggings occurring before this point.

19 Turning to the end of November, the Prosecution has tried to convict Mr Al Hassan in  
20 a manner that goes beyond the scope of the confirmed charges by relying on blurry  
21 photographs and his torture-tainted interviews, but neither body of evidence can be  
22 relied upon to prove the charge concerning the November flogging.

23 And I'll start first with the photos. We don't know who took these photos.

24 The person who gave them to the Prosecution couldn't even recall how the photos  
25 were created or when they were created. He also acknowledged he wasn't present

1 when the photos were taken.

2 The Prosecution itself did not call any witnesses who were present on this day.

3 The basic threshold of authentication has not been met. And in terms of the photos

4 themselves, there are serious irregularities concerning their digital properties.

5 The person who gave them to the Prosecution sent them in an email to a colleague

6 along with a report, and the photo attached to this email was 0018-2590. The report

7 attached to the email was created at 13:33 on 29 November and later modified at 14:21.

8 The email was sent at 16:08. The photo shows a women in a black veil. It does not

9 show Al Hassan and it does not show anyone being flogged.

10 The Prosecution has then relied on three other photos with a different woman. And

11 the creation and modification dates of these photos is 29 November at 16:57. This

12 means that they were created or obtained after the first photo and after the email was

13 sent. And according to Prosecution expert P-0075, there are indicia that the three

14 later photos were accessed or modified by external software, Adobe Media Encoder

15 or Adobe Photoshop for Windows. And the report is 0062-2399 at 2449.

16 The information concerning this event was published. It was considered

17 newsworthy, but the photos, however, were not. Now, if a media organisation

18 declines to publish images from a newsworthy event, it's reasonable to infer that they

19 had concerns regarding the reliability of such products.

20 And this inference is corroborated by the following. We have a chat dated

21 3 December between the person who obtained the photos and an Ansar Dine media

22 office. And in this chat, the person is trying to obtain footage of a flogging

23 concerning the stepbrother and the sister. And you've heard evidence, your Honour,

24 that this person would not have approached the media office; he would not have been

25 searching for the event if he had already obtained it at this point. Transcript 48,

1 page 63.

2 And this person agreed that the most probable scenario was that he was not present  
3 at this punishment or the punishment of the stepbrother and sister on 29 November,  
4 and that he had not obtained footage of it as of 3 December.

5 Now, if he didn't have footage of it as of 3 December, he clearly didn't have it on  
6 29 November when the email was sent. This means that there is more than  
7 reasonable doubt that these modified photos from an unknown person on an  
8 unknown date are what the Prosecution claims that they are.

9 Mr President, your Honours, you can't pin a conviction concerning one event on  
10 photos that appear to concern something entirely different.

11 Now, of course, the Prosecution has also tried to use Mr Al Hassan's torture-tainted  
12 statements to shore up their case, and the way that Mr Al Hassan was led to answer  
13 their questions on this topic was dealt with extensively by Dr Morgan, and  
14 Maître Pradhan will elaborate, no credible justice institution can conclude that his  
15 answers were not tainted by his experience of prolonged and continuous forms of  
16 torture.

17 Apart from the absence of reliable and credible proof that Mr Al Hassan participated  
18 in the charged flogging, there's no basis to conclude that he made a culpable  
19 contribution to the judgment that ordered this punishment. According to  
20 MLI-OTP-0018-1035, the stepbrother and sister came to Timbuktu the Thursday  
21 before, following a complaint filed by the woman's father. The call data records  
22 indicate that the number attributed to Mr Al Hassan was pinging cell towers in  
23 Timbuktu ville during this period and the days before and after. You can also see  
24 from these records that there were separate antennae in Goundam and that when he  
25 was in Goundam, the antenna would be pinged. The antenna in Goundam were not

1 pinged during this period. This means that following a complaint filed by the father,  
2 the two individuals were brought to Timbuktu most probably by persons from  
3 Goundam.

4 The report concerning this case was also framed as a rape case. It records the father's  
5 account that his daughter had been drugged and forced to commit adultery; it also  
6 records her account that her mother and stepfather had tolerated her prolonged rape  
7 by her half-siblings. The report seeks accountability for allegations of rape, and  
8 since this was a complaint alleging a serious crime, the police were obliged to  
9 transmit it to the tribunal.

10 The police were again acting as a letterbox. The judgment itself makes no reference  
11 to the police report. It records that the tribunal conducted its own investigation and  
12 obtained confessions directly, and this led to a result that was different from the  
13 outcome of the prior judgment in the Bocar case. The outcome was thus not  
14 virtually certain.

15 Mr President, your Honours, it's reasonable to conclude that the Islamic police and  
16 Mr Al Hassan took rape allegations seriously, ensuring they were documented, and  
17 this is what happened in the Bocar case and this is what happened here. It is not,  
18 however, reasonable to conclude in this instance that Mr Al Hassan's personal actions  
19 had a measurable impact on the decision that was made by the tribunal. Nor can  
20 you conclude that his personal actions intentionally increased the degree of harm that  
21 resulted.

22 Moving to December, the events of this month disclose no basis to conclude that  
23 Mr Al Hassan intentionally contributed to charged crimes before, during or after  
24 the month. The tribunal issued no *hudud* punishments in December or January and  
25 there are only two reports from this period -- a theft report and another concerning



1 cigarette trading. The theft report is addressed at paragraph 79 of the Defence  
2 response. The cigarette trading report appears to relate to smuggling by traffickers.  
3 Now, this is contraband that was within the purview of security. It was a type of  
4 offence that could also not be dealt with by the police directly. The judgment  
5 concerning the case indicates that the tribunal examined the case itself. The tribunal  
6 ordered the destruction of tobacco and the tribunal ordered the defendants to be  
7 released after one week in detention after pledging not to offend. All of these actions  
8 took place at the level of the tribunal, not the police. Once again, the police simply  
9 acted as a neutral letterbox.

10 The penalty was also mild. And, your Honours, this is consistent with the fact that  
11 none of the judgments concerning the sale of cigarettes imposed flogging as a penalty.  
12 For example, in November, when a defendant was caught with eight dozen cartons,  
13 he was only sentenced to pay a fine, and this was based on the profit he would have  
14 made. That's 0078-1626.

15 This report -- this judgment should put to rest the ridiculous story concocted by  
16 P-0580 and his wife, P-0642, that all of Al-Qaeda, all of Ansar Dine were pursuing him  
17 to the ends of the earth, subjecting him to various outlandish punishments because  
18 his non-existent shop sold cigarettes.

19 And when you read the transcripts of this outlandish, incoherent, this controverted  
20 account from P-0642, we suggest you heed the words of P-0608, a local from  
21 Timbuktu, and these are: "the people from Timbuktu, sometimes they have a habit of  
22 inventing things."

23 In terms of other actions attributed to Al Hassan in this month, the Prosecution has  
24 placed misplaced significance on an accreditation letter for a journalist that was  
25 allegedly signed on 11 December. You heard evidence that even though this letter

1 related to one subject, it allowed the journalist to report on anything in Timbuktu.  
2 You also heard evidence that Al Hassan's involvement was helpful, a positive  
3 contribution that facilitated the person's ability to report without fear of pressure.  
4 And these are both in transcript 132, page 32.  
5 The conditions set out in the letter also came from the media commission, not  
6 the Islamic police and not Al Hassan. You also heard evidence that when the person  
7 concerned took the slip to be signed, Al Hassan himself could not sign it or approve it  
8 without first speaking to a supervisor.  
9 Once again, far from demonstrating blameworthy conduct, this letter demonstrates  
10 Al Hassan's ongoing efforts to assist and facilitate requests from the local population.  
11 It also does not support the Prosecution's case that Al Hassan was acting as a *de facto*  
12 chief.  
13 Now, the Chamber doesn't need a crystal ball to see what would have happened if  
14 Al Hassan was not present. The Chamber can simply review the evidence  
15 concerning Gao where journalists, who had reported freely in Timbuktu, were  
16 obstructed and under risk of arrest. And I refer you to D-0246.  
17 Finally for December, the Prosecution rely on yet another scripted interview, a video  
18 montage. As explained in our closing brief, the montage was filmed in the context of  
19 national reconciliation, and additional scenes not filmed originally were recorded  
20 separately and spliced into the footage.  
21 The video has no probative value and no demonstrated linkage to the case.  
22 Actions also speak louder than scripted words. Mr Al Hassan played no role in  
23 the military activities in Konna and Diabaly. He didn't go to training exercises, and  
24 witnesses have confirmed that when Al Hassan was actually working, rather than  
25 acting in films, he didn't have a weapon. And I refer to transcript 133, page 90.

1 And when the Chamber looks at Mr Al Hassan's actions in December, they will also  
2 see him doing everything he can to help and protect the local population. You heard,  
3 Mr President, your Honours, D-0554's testimony that as soon as Al Hassan was  
4 contacted by D-0554, Al Hassan roped in Adama, who was in security at this point, to  
5 help 0554's wife leave the BMS, where she had been taken by Hamed Moussa and  
6 *Hesbah*.

7 D-0554 was not a Tuareg. He wasn't a relative of Al Hassan, he was just another  
8 local that Al Hassan helped by staying there. Things for him, things for his wife  
9 would have been worse if Al Hassan had not stayed and used his position to help.  
10 Coming now to January, the last month. According to the Prosecution, this month  
11 represented the apex of Al Hassan's responsibility. We dispute the allegation, but  
12 even if you were to accept the highly unreliable foundation for the claim, let's look at  
13 what the police actually did in these last weeks.

14 No police reports were issued or drafted in January. Indeed, the last dated police  
15 report is 4 December. D-0551 also gave evidence that the police cancelled his  
16 appointment. So at the apex of Al Hassan's alleged responsibility in the police,  
17 the police itself did nothing to contribute to the alleged common purpose of applying  
18 Sharia.

19 Although there was an alleged flogging at the very beginning of January, there's no  
20 culpable link between this event and Al Hassan. Maître Youssef will address you  
21 further concerning the fact that this incident was prompted by locals, pursued by  
22 *Hesbah* and then ordered by the tribunal.

23 When the Prosecution started this trial, they tried to create this missing link by  
24 claiming that Al Hassan was not only present when the woman was flogged, but he  
25 could be seen flogging her. And they made this claim to you even though they had

1 evidence from P-0582 that the person in question was not Al Hassan, it was a Peul,  
2 and it was not a Tuareg. It was likely Ismael Diallo. This detail was omitted from  
3 the fanfare of their opening statements. When the video was shown at trial, all  
4 the Defence had to do was enlarge the image and it became abundantly clear that it  
5 looked nothing like Al Hassan.

6 The Prosecution's highly prejudicial error shows why the Chamber cannot rely on  
7 the Prosecution's assumptions. You cannot follow them down the garden path to  
8 a conviction based on speculation because they haven't laid the groundwork. Even  
9 to this day, they continue to ignore the lack of certainty in their own case, asserting,  
10 for example, that individuals were brought to the flogging location by a police vehicle,  
11 even though, first, P-0065 testified that the vehicle could be used by *Hesbah* or  
12 the police, and, second, the person who was flogged was held at the *Hesbah*  
13 headquarters at the BMS, not by the police.

14 This is not the international court for convictions. It's a court dedicated to justice,  
15 and it would be unjust to convict Mr Al Hassan for incidents where they have not  
16 even demonstrated that he knew of the event and there is no evidence of contribution  
17 on his part. Since we have no evidence of knowledge, no evidence of intent and no  
18 evidence of contribution, there can be no conviction for these incidents.

19 To finish their allegations against Al Hassan, the Prosecution rely on diary notes  
20 concerning a meeting that took place in January, and it's between members of  
21 the local population and Adam to discuss the rapidly deteriorating security situation.  
22 You've heard evidence that the local Arabs and Tuaregs were afraid. They knew  
23 that once Ansar Dine left, they would be targeted for reprisals, and they knew this  
24 because this is what happened to them in the 1960s, 1970s, 1980s, 1990s and 2000s,  
25 and it's what actually did happen to them when Ansar Dine left.

1 After conducting a peaceful march that failed to attract the support of local notables,  
2 members of the local Arab population threatened that they would take matters into  
3 their own hands to defend their property. I refer to transcript 135, pages 41 to 42.  
4 And this is the context in which the meeting occurred. You've heard different  
5 accounts of this meeting, but what P-0654 and P-0004 both agreed was that eventually,  
6 a joint decision was taken by all those present that there should be no settling of  
7 scores or any actions that could threaten peaceful cohabitation.  
8 P-0004 testified that at the meeting he attended, Mr Al Hassan repeated in French  
9 what others said in Arabic as the meeting was attended by Arab traders. D-0551  
10 further clarified that there were two meetings at this era; one which concerned  
11 the protection of Arab shopkeepers, where Al Hassan was present; and the other,  
12 where the local population were warned not to insult the Islamists, and Mr Al Hassan  
13 was not present at the second meeting.  
14 For this first meeting, D-0551 testified that Mr Al Hassan was not in charge and did  
15 not speak on behalf of the group, he was just present. D-0551 also explained in his  
16 words that at that type of meeting, Al Hassan would not have much to say.  
17 There are only two conclusions that you can draw from this body of evidence. First,  
18 even at the very end, even at the apex of his alleged responsibility, Mr Al Hassan is  
19 still acting as an interpreter or bystander. He doesn't have the authority to speak in  
20 his own name. He doesn't have a say in what transpires.  
21 Second, until the very end, Al Hassan was associated with efforts to achieve dialogue  
22 between the Islamists and the local population, to reduce tensions, to reduce harm.  
23 I have now gone through each month of the charged time period and the different  
24 actions attributed to Al Hassan, and whether the Chamber views these events  
25 holistically or on an individual basis, the conclusion is the same: the link of

1 culpability is missing.

2 In 2019, I appeared before the Pre-Trial Chamber and asked them to throw this little  
3 sardine back into the sea, and there has been no developments, no evidence that has  
4 been heard since then that changes this request or changes this conclusion.

5 Mr President, your Honours, the people who stayed in Timbuktu, who lived it,  
6 you've heard today that they don't consider Mr Al Hassan to be responsible for  
7 the acts described to you by the Prosecution. The highest authorities of Timbuktu  
8 have confirmed what I said to you today, that by staying, Al Hassan helped them and  
9 his conduct does not warrant punishment.

10 The local community of Timbuktu, Songhai, Arabs, Tamasheq and Tuareg, they want  
11 him home, and we ask you to let this happen and to acquit Mr Al Hassan in full.

12 I'll now turn over to Maître Pradhan.

13 PRESIDING JUDGE MINDUA: [15:05:17](Interpretation) Thank you very much,  
14 Ms Taylor. The Chamber is now ready to hear from your colleague.

15 MS PRADHAN: [15:05:28](Interpretation) Thank you, your Honour.

16 (Speaks English) As it is the first time I'm addressing the Chamber during this session,  
17 I would like to greet the Chamber and everyone here, and our guests in the gallery as  
18 well.

19 As Ms Taylor outlined, I will make submissions addressing the Prosecution's failure  
20 to prove *chapeau* requirements regarding situations of armed conflict and crimes  
21 against humanity, as well as discussing the fatally flawed evidentiary foundations in  
22 this case.

23 I would like to begin with our submissions regarding the existence of and nexus to an  
24 armed conflict. We submit to you that accepting the Prosecution's arguments here,  
25 would not only contravene the evidence before the Court and the previous case law

1 of this Court, but it would seriously weaken the ability to identify and litigate armed  
2 conflicts around the world, according to the prevailing legal standards.

3 Yesterday, the Prosecution told a story that some may find compelling on the surface,  
4 but which contained no reference to the law and precious little reference to facts in  
5 support of the law. The reason is because neither facts nor law support  
6 the prosecution of this man, these crimes, in this Court.

7 As my colleague, Ms Taylor, did, I'd like to start with the law and the legal standards  
8 and then focus on the facts in evidence before this Chamber.

9 The Prosecution failed to prove beyond a reasonable doubt the threshold legal  
10 standard for jurisdiction whether an armed conflict existed at all. There's  
11 a longstanding distinction in international humanitarian law between an armed  
12 conflict and less serious forms of internal violence that may be harmful, but cannot  
13 rise to the level of armed conflict. And in order to prove the existence of an armed  
14 conflict, as the Chamber is aware, the Prosecution must prove sufficient organisation  
15 of the groups and intensity of violence.

16 I'd like to start with the Prosecution's attempt to show organisation of the groups.

17 At paragraph 704 of the Ntaganda trial judgment, the Chamber provides a  
18 non-exhaustive list of roughly 18 factors and indicators to be analysed in order to find  
19 sufficient organisation of an armed group. These include details related to a  
20 command structure, a unified military strategy, implementation of Common Article 3,  
21 and the ability to speak with one voice.

22 Under Ntaganda and its predecessors, the Prosecution have the burden to prove  
23 beyond a reasonable doubt that some combination of these factors existed with  
24 respect to the groups in Mali. But what the Prosecution asks this Chamber to find,  
25 for the first time in an international court or tribunal, is that a single factor can be

1 individually determinative; in the Prosecution's words, "the ability to conduct  
2 complex military operations, including to take and hold territory."  
3 Nowhere in the Prosecution's arguments, either oral or written, is reference to the rest  
4 of the factors with respect of any of the individual groups in Mali whose acts  
5 the Prosecution later seeks to aggregate. And I'll speak about that in a moment.  
6 In Ntaganda, the Trial Chamber went through each of these categories methodically  
7 and in turn, over six paragraphs -- paragraphs 704 to 709. In the present case, we  
8 submit that this Chamber would be unable to provide the same analysis in a trial  
9 judgment that the Ntaganda chamber provided, not only because of a lack of  
10 argument by the Prosecution, but because of the lack of evidence on the necessary  
11 criteria.

12 The Prosecution yesterday and in their response to the Defence final brief, specifically  
13 refer in passing to Al-Qaeda and Ansar Dine as possessing sufficient organisation for  
14 an armed conflict. And so with respect to those two groups, we submit  
15 the following. With regards to AQIM, from January 2012 to January 2013, according  
16 to P-0099, AQIM was composed of disparate brigades without unified leadership,  
17 with many of those individual parts remaining uninvolved in the conflict.  
18 According to P-0004, AQIM had no unified strategy, nor was there any clear  
19 command structure. And these were Prosecution witnesses.

20 Critically, the evidence has shown that Timbuktu was administered by AQIM, not  
21 after complex military operations, but, rather, after abandonment by the FAMA. And  
22 prior to their entry into Timbuktu, there is no probative evidence that AQIM  
23 exercised territorial control over any specific areas in northern Mali.

24 So the single organisational factor set forth by the Prosecution to establish an armed  
25 conflict did not exist prior to April 2012. The Prosecution here attempts to use



1 the holding of territory as a single factor in isolation to retrospectively claim an armed  
2 conflict for the purpose of jurisdiction here.

3 With regards to Ansar Dine, there's, likewise, no evidence that shows that Ansar Dine  
4 promulgated military regulations during this period or had any system to discipline  
5 its members. According to one Prosecution witness, Ansar Dine lacked sufficient  
6 strength to face a conventional army, which the Trial Chamber in Boškoski found  
7 significant to its lengthy analysis of whether --

8 I apologise, your Honours, should I pause? Okay.

9 I alluded to the fact that the --

10 PRESIDING JUDGE MINDUA: [15:12:40](Interpretation) Please continue on.

11 MS PRADHAN: [15:12:43] (Overlapping speakers) Thank you, your Honours.

12 I alluded to the fact that the Trial Chamber in Boškoski found a group's strength to  
13 face a conventional army significant to its analysis of whether the Albanian National  
14 Liberation Army possessed the requisite organisation in that case. The Prosecution  
15 has the burden of proof on this point, and even in their response, they fail to carry it.  
16 Moving to intensity, the second factor, the Prosecution tried to show the intensity of  
17 a purported armed conflict by adding together everything that all the groups present  
18 in Mali were allegedly responsible for to try and reach that threshold. Now, groups  
19 can, of course, act in concert, but there is a legal standard for when you can combine  
20 the acts of different groups, which the Prosecution has entirely disregarded, because  
21 it means not only that they have to prove the organisation of each individual group,  
22 but that they have to prove intra-group organisation of some sort.

23 The ICRC states that proving coordination and cooperation among groups in  
24 a non-international armed conflict requires the showing of a number of factors,  
25 including, for example, establishment of a joint centralised command, allocation of

1 areas of responsibilities, sharing of operational tasks, the existence of common  
2 standard operating procedures or rules of engagement, and the existence of an  
3 umbrella platform dealing with political issues and communication in the names of  
4 the members of the coalition.

5 The evidence in this case shows that to attempt an argument that these groups were  
6 acting in concert would contravene the facts that we have about the distinct  
7 methodologies and philosophies of the groups. Prosecution witnesses testified  
8 regarding, for example, the opposition of AQIM and Ansar Dine to the rapes and  
9 pillaging conducted by the MNLA.

10 My learned colleague yesterday highlighted that Ansar Dine and Al-Qaeda, quote,  
11 "chased out the MNLA", end quote, from Timbuktu. How would they have done so  
12 if the groups were working in concert? The evidence overwhelmingly illustrates  
13 how fractured and even at odds the various groups were, and their acts cannot  
14 possibly be grouped together to qualify them as a combatant side fulfilling the  
15 intensity standard of an armed conflict.

16 The Prosecution cannot show an armed conflict and they certainly cannot show that  
17 any purported armed conflict continued after the FAMa left Timbuktu.

18 You heard the Prosecution refer yesterday to the internal military *coup d'état* in  
19 Bamako and tried to tie that coup to the proposition that Ansar Dine and AQIM took  
20 Timbuktu. The reality is quite different. As mentioned, the FAMa collapsed due to  
21 defections following the coup, as detailed by the international community, including,  
22 for example, the International Crisis Group, and confirmed by Prosecution witnesses,  
23 including P-1086.

24 Now, if your Honours, despite evidence to the contrary, this Chamber finds that an  
25 armed conflict may have existed among scattered groups and over sporadic periods

1 of time, there is simply no nexus shown between the armed conflict itself, as  
2 purported, and the acts with which Mr Al Hassan is charged, which are based on  
3 the application of civilian regulations.

4 The Prosecution has stated in its response to the Defence final brief that, quote:  
5 "the ICRC has long argued that situations where a non-State armed group establishes  
6 control over territory, and then seeks to impose its own rules upon the civilian  
7 population, are precisely those in which international humanitarian law should  
8 apply." End quote.

9 In reality, ICRC has long argued no such thing. In fact, the single article by a legal  
10 scholar that the Prosecution provides for this statement, at footnote 78 of their  
11 response, in that article several authorities are cited for the opposite proposition that,  
12 in fact, with regard to everyday life, including interactions among civilians, human  
13 rights law is the more appropriate and protective legal framework that should apply.  
14 The author himself, Dr Rodenhauer notes that, quote: "the interpretation of  
15 the nexus requirement as presented in this article" his own article, "has been criticised  
16 as a one-sided approach to civil war that does not sit well with the fundamental  
17 principles of IHL by which all parties to a conflict are regarded as equal."

18 That principle of equality is, in fact, one that has not only been long argued by  
19 the ICRC, but long resolved and applies to the civilian administration of Timbuktu  
20 during the charged period.

21 In armed conflict, the law enforcement paradigm exclusively governs the exercise of  
22 administrative, disciplinary and judicial authority over occupied territory and  
23 the civilian population and persons deprived of their liberty.

24 In Timbuktu after April 2012, the evidence shows that there was a complete vacuum  
25 of governance. When FAMa left, the civilians were left without police or judges or

1 infrastructure to regulate anything and the population was left vulnerable.  
2 This was the point at which AQIM and Ansar Dine stepped in to form an  
3 administration, not by their own rules, but in fact implementing widely accepted  
4 elements of the Maliki school of Islamic law, which is prevalent in North and  
5 West Africa and countries including Kuwait, Bahrain, Qatar, Dubai and north-eastern  
6 parts of Saudi Arabia.  
7 As my colleagues Mr Youssef and Dr Gerry will also discuss, the Maliki approach  
8 was established as policy prior to Mr Al Hassan joining the Islamic police, and as  
9 evident from its prevalence, is consistent with international law and cannot be read to  
10 be inherently inconsistent with international law.  
11 The neutral status of police and law enforcement, unconnected to any existing armed  
12 conflict, was given special consideration during the drafting of  
13 the Geneva Conventions. Regardless of varied opinions of the establishment of  
14 Sharia and the administration of Timbuktu by AQIM, it seems that those facts alone  
15 underpin the Prosecution's insistence that an armed conflict existed from April to  
16 December 2012 for the purpose of prosecuting Mr Al Hassan in this Court.  
17 Even more troubling, while policing civilian activity, again, is generally unrelated to  
18 armed conflict, it seems that the mere addition of the word "Islamic" to the title of  
19 the police makes Mr Al Hassan some sort of combatant, even though the Islamic  
20 police, as you've heard from my colleague, Ms Taylor, played the same role within  
21 Timbuktu as virtually any other police force in the world.  
22 If individual excesses occurred within the governments of Timbuktu, they occurred in  
23 the same way that incidences of murder, rape and assault are found to be committed  
24 by members of, for example, the New York City Police Department, and handled  
25 under regular criminal law, even though the United States has been in a purported

1 armed conflict since 2001.

2 And, of course, the preponderance of the crimes in Timbuktu, outlined by  
3 the Prosecution yesterday, were not even committed by the Islamic police, but by  
4 other governing agencies. Distortions of humanitarian law like those proposed by  
5 the Prosecution, simply cannot be the basis for war crimes charges in an international  
6 court, and could have serious consequences for the universality of international  
7 humanitarian law.

8 We submit that a proper application of the law in existence at the time of the charged  
9 acts results in a conclusion that no nexus existed between the police functions in  
10 Timbuktu and any purported armed conflict.

11 I'd like to move to a discussion of the *chapeau* requirements of crimes against  
12 humanity. A fact-based inquiry shows just how difficult and complex the situation  
13 was on the ground in 2012. We do not envy our learned colleagues in this respect,  
14 but they have the burden to prove, under Article 7 of the Rome Statute, that AQIM or  
15 Ansar Dine actively promoted or encouraged an attack against the civilian population  
16 as an organisational policy.

17 As you've heard, Islamic tribunal judgments were instigated through complaints  
18 submitted by civilians and concerned a range of issues, much of it essentially  
19 magistrate work. Such civilian-triggered functions cannot logically constitute an  
20 attack or a crime against a civilian population at large.

21 According to witnesses D-0605 and P-0654, the judgments themselves were issued by  
22 tribunal members who were not all affiliated with either AQIM or Ansar Dine and  
23 who made independent judgments that sometimes conflicted with Ansar Dine or  
24 AQIM policies.

25 Prosecution witnesses P-0152 and P-0150 described how Ansar Dine and AQIM

1 leaders, such as, Droukdel, actually disapproved of severe punishments during  
2 the charged period, and that compensation was paid to individuals.  
3 Now, does this mean that no crimes took place during this period? Certainly not.  
4 And we have heard from the victims of some of those crimes committed by  
5 individuals who were not Mr Al Hassan. And while terrible in many respects, they  
6 do not fall within what this Court categorises as atrocity crimes.  
7 Regarding those individual crimes, I heard reference by the Prosecution yesterday to  
8 Mohamed Moussa, but what was left out was that we know that Mohamed Moussa  
9 was a member of the MNLA for the first part of 2012, when, according to Prosecution  
10 witnesses and the United Nations, the MNLA was involved in mass rape and  
11 pillaging.  
12 Mohamed Moussa later led the *Hesbah*, after which he was individually responsible  
13 for crimes against women and other civilians and encouraged others to commit such  
14 crimes. But we also know from witnesses, including D-0605, that the organisation  
15 opposed Mohamed Moussa's illegal acts and that the situation improved once he was  
16 replaced, as Ms Taylor just discussed.  
17 We also know from D-0202 and D-0605 that Ansar Dine investigated rape complaints  
18 and punished perpetrators. And throughout, the 40 men of the Islamic police were  
19 distinct from the *Hesbah*, and it is that critical distinction that the Prosecution is trying  
20 to obfuscate again and again in characterising Mr Al Hassan and his role here.  
21 We submit that nothing in the evidence before this Chamber about the punishments  
22 suggests that they were widespread or systematic as required by Article 7(1).  
23 As tragic as many of us find such uses of force, the single amputation and handful of  
24 punishments over nine months cannot constitute an attack, much less a widespread  
25 or systematic one against a civilian population in Timbuktu of 780,000 people.

1 The Prosecution yesterday tried to extrapolate from the crimes that actually took  
2 place to a generalised atmosphere of abuse in Timbuktu. To the contrary, even  
3 the United Nations in a report issued in November 2012, in the record at  
4 MLI-OTP-0001-2113 at 2117, the United Nations there characterised the number of  
5 abuses in November 2012 as "not high".

6 The seriousness of the individual events is still not the same as the weight that must  
7 be given by this Chamber to the legal standard in assessing a prosecutable crime  
8 against humanity. There are two clear conclusions here. The first is that  
9 Mr Al Hassan himself has tenuous, if any, connection to the crimes that took place in  
10 Timbuktu in 2012, and no oversight responsibility for them. He was one man of 40  
11 in a subordinate agency.

12 The second conclusion is that there was no policy to commit crimes constituting a  
13 widespread or systematic attack on civilians that was promoted by any particular  
14 organisation, including Ansar Dine or AQIM.

15 I'd like to turn now to the contamination of evidence in this case. It is our  
16 submission that there are four factors affecting the evidence here. The first is race  
17 and ethnicity; the second is pervasive public bias promulgated by media and NGOs;  
18 the third is the sheer passage of time; and the fourth is torture, and cruel, inhuman  
19 and degrading treatment affecting the probative value of evidence.

20 I will address each of these in turn.

21 First, we submit that race and ethnicity is a huge factor in this case. Mr Al Hassan is  
22 a Tuareg, a member of the minority in Mali, and P-0060 -- P-0160, for example,  
23 admitted that Tuaregs were, quote, "automatically associated", end quote, with  
24 Ansar Dine or the MNLA, which is problematic because, in fact, as I mentioned,  
25 the MNLA was the group largely responsible for rapes, not Ansar Dine.

1 This morning, my learned colleague from the legal representation of victims said that  
2 victims, quote, "use words, such as, 'jihadist' or 'Tuareg'", and he called such words,  
3 quote, "keywords" seemingly interchangeably. I cannot think of a better illustration  
4 of this pervasive bias.

5 Arabs collectively were sometimes baselessly associated with MUJAO or AQIM.

6 P-0160 also conceded that individuals in Timbuktu found it difficult to distinguish  
7 between responsibility of individuals. They blamed groups as a whole, and if they  
8 knew the identity of a perpetrator, they would blame the group associated with that  
9 ethnicity.

10 The second factor that I'd like to address is bias. And NGOs and the media sadly  
11 played a key role in shaping false narratives throughout 2012 and after, regardless of  
12 intention. We heard evidence concerning the way in which, for example,  
13 the WiLDAF project, one of several NGOs on the ground in Mali, how that project  
14 unfolded with highly questionable documentation processes.

15 Another NGO that shaped the bias on the ground was the FIDH. P-0642, for  
16 example, testified that the FIDH led witnesses to believe that they would result -- they  
17 would receive aid as a result of their claims. And the evidence shows that several  
18 Prosecution witnesses changed and aggravated key points in their accounts after  
19 speaking to FIDH and France 2, as detailed in paragraphs 168 to 173 of the Defence  
20 final brief.

21 On the media side, the evidence also reveals that France 2, AFP and RFI were three of  
22 several media outlets whose reporting contributed to what became an extraordinarily  
23 biased narrative during this period. A key example of this is the France 2 video  
24 shown by the Prosecution yesterday, as Ms Taylor just alluded to.

25 The Chamber has heard witness evidence about this documentary from Prosecution



1 witness P-0065, (Redacted)  
2 (Redacted) that my learned colleague read out as  
3 "*Arrête. Arrête*", commentary from audio that P-0065 confirmed, quote, "was added  
4 later". And that's found at transcript 52, page 10.  
5 P-0065 testified regarding the many inaccuracies in France 2's coverage, even  
6 explaining that France, quote, "used its media to mobilise as much international  
7 support as possible at the time." End quote.  
8 (Redacted) footage sold by Sahara Media to France 2, thereby giving it  
9 a much broader international platform, was all material tailored for Western  
10 consumption to cast local groups in as unfavourable a light as possible. And that's  
11 transcript 47 at page 26.  
12 Prosecution expert P-0152 agreed that it was necessary to be, quote, "extremely  
13 careful", end quote, with media articles concerning the north of Mali, including those  
14 published by AFP and RFI, due to the difficulties verifying biased sources,  
15 the difficulties in speaking to both sides.  
16 And P-0608 testified that RFI accounts contained false reports about the local groups.  
17 And that's at transcript 152, page 80.  
18 We heard this morning an extraordinary statement, again, from my colleague in  
19 the legal representation of victims, who stated: "The locals, the identity of their  
20 occupiers was at one point unclear, they mixed ideas on it. Now [those] things are  
21 totally clear to them at the end of this trial." That's at page 18 of the transcript from  
22 this morning.  
23 This statement actually forms a bridge between the factor of public bias and the third  
24 factor, the passage of time. Witnesses were testifying nine years after the events,  
25 which already affects memory to a certain extent. We know that Prosecutors told

1 P-0522 and P-0524 in 2016, that they did not want to take certain witness statements at  
2 that point, even though they would likely be more accurate closer in time to the  
3 events, and the reason the Prosecution gave for not taking statements at that point  
4 was simply to avoid triggering disclosure obligations. And that record is  
5 MLI-OTP-0037-1249-R1.

6 Now, it does not take a memory expert to find clear tension between the Prosecution's  
7 priority and the quality of the evidence. In the same document, there's an  
8 uncomfortable section describing how the Prosecution team, quote, "is reviewing  
9 the victims' *procès-verbaux* and finding ways to improve the quality of these  
10 *procès-verbaux* in terms of getting the type of information required to prove these  
11 specific crimes." End quote.

12 So, in 2016, three years after the events charged in this case, and one year before  
13 Mr Al Hassan was captured and interrogated, the Prosecution just didn't have  
14 sufficient evidence to elucidate crimes committed that are prosecutable by this Court.

15 And now, in 2023, we submit that the process as now completed by the Prosecution  
16 has been so flawed through witness influencing - and the factors that I have just  
17 mentioned - that the probative value of the evidence has been stripped.

18 Turning finally to the last factor, contaminating evidence in this case, the torture and  
19 coercion affecting the probative value of the evidence under Article 69(4). In the  
20 words of one Prosecution investigator, Mr Al Hassan's conditions of confinement  
21 during ICC interviews were, quote, "the same as Guantanamo Bay", end quote. That  
22 is a phrase that causes recoil, because everyone knows what Guantanamo Bay  
23 represents: torture and arbitrary detention as found over and over again by  
24 the United Nations.

25 That statement, caught on recording from the Prosecution, was an admission. It was

1 an admission that, first, Mr Al Hassan was a victim of horrific abuse and torture.  
2 And, second, that the ICC Prosecution team was very aware of it. They did not  
3 torture Mr Al Hassan personally, but they still seek to benefit from the fruits of his  
4 torture in a court created in part to prosecute the crime of torture. And this is  
5 disallowed under Article 69(4).

6 The Court heard evidence, confirmed by Prosecution and Defence witnesses, that  
7 upon arrest Mr Al Hassan was kept in a one-metre by half-metre room. He was  
8 waterboarded; he was threatened with electrocution and mock executions;  
9 interrogated while hooded; and subjected to additional techniques in combination.

10 When transferred from French to DGSE custody, he was beaten until he lost  
11 consciousness, threatened with death and death to his family if he didn't answer  
12 questions to his torturer's satisfaction. He was subjected to *falaka*, beatings on  
13 the soles of his feet, stress positions, including being suspended from a metal rod for  
14 hours, and forced to relieve himself in his own clothes.

15 For nine months, as the Prosecution interviewed Mr Al Hassan in the horrific  
16 conditions described by Ms Taylor, he was being held arbitrarily, abused regularly  
17 and, other than the Prosecution interviews, was incommunicado from anyone,  
18 including his family, and from any regular judicial process.

19 The Chamber heard expert testimony which confirmed that Mr Al Hassan's torture  
20 and coercion affected the probative value of his statements when he was interviewed  
21 by ICC Prosecutors to obtain evidence they relied upon during this trial.

22 The Chamber heard from Drs Katherine Porterfield and Juliet Cohen, who are  
23 world-renowned in recognition of the sequelae of torture and from Dr Charles  
24 Morgan, who is an expert on memory and the creation of false memories.

25 Now, a quick note regarding these three experts. The Prosecution has in their brief

1 several times complained baselessly about what they call flawed methodologies and a  
2 lack of neutrality regarding the Defence experts.

3 Now, in fact, the Prosecution had the opportunity to cross-examine each of these  
4 experts on their methodologies and objectivity, and the expert opinions all held firm  
5 through such scrutiny. Each expert testified that they had all the information  
6 necessary to arrive at their conclusions, based on their considerable professional  
7 experience. They explained how and why they disregarded certain evidence as  
8 unscientific. And, as specifically discussed by these experts, particularly by Dr  
9 Porterfield, who conducted extensive in-person evaluations of Mr Al Hassan,  
10 Mr Al Hassan was specifically tested for malingering, exaggeration -- or fabrication  
11 with negative results.

12 The testimony and reports of Drs Porterfield, Cohen and Morgan should be afforded  
13 the weight and credibility of experts with extensive experience in highly technical  
14 fields, and the conclusions that they reached all cast serious doubt on the probative  
15 value of Mr Al Hassan's evidence, as well as the prejudice that his evidence may  
16 cause to a fair trial.

17 Dr Porterfield testified that even in her evaluation, years after the abuse,  
18 Mr Al Hassan showed signs of cognitive impairment that would have affected his  
19 interviews in 2012 and 2013. In response to the Prosecution's argument that they  
20 informed Mr Al Hassan of his rights, including the right to remain silent during those  
21 interviews before obtaining his statements, Dr Porterfield testified the affirmation of  
22 detainee rights by the Prosecution was, quote, "overpowered", end quote, by  
23 the reality of the abusive and torturous conditions of confinement at the DGSE.  
24 These conditions created the environment by which Mr Al Hassan's evidence was  
25 impermissibly compromised.

1 Dr Morgan, independently, upon review of Mr Al Hassan's interview transcripts,  
2 walked the Chamber through his step-by-step analysis of false memories created by  
3 the Prosecution's interview methodology.

4 Now, false memories are not rare. They are well-documented phenomena in  
5 psychology, wherein over 85 per cent of people subjected to uncontrollable stress, as  
6 all the experts agreed Mr Al Hassan was, agreed to narratives that are untrue.

7 One of the incidences that the Prosecution leans on in this trial is Mr Al Hassan's  
8 so-called admission to Prosecutors that he personally participated in one particular  
9 man's flogging. In painstaking detail, following review of Mr Al Hassan's interview  
10 transcripts, Dr Morgan described how that specific memory came to be created. He  
11 said, quote: "I note this section of Mr Al Hassan's interviews because the process of  
12 OTP's questioning, quote, 'is like a recipe of what we would do in research to create  
13 a false memory.'" End quote.

14 The detailed analysis is laid out in paragraphs 297 to 303 of the Defence final brief.  
15 But in Dr Morgan's words, quote:

16 "I highlight it because [...] as you follow the course of the interview" - regarding this  
17 particular flogging - the "progression [is] from [Mr Al Hassan] saying 'I don't  
18 remember', getting him to [generally] recognise and acknowledge [that] he recognises  
19 a place, he perhaps recognises an individual. And then [by] showing him  
20 photos - and [if] we find that photo[graphs] or videos are very effective ways of  
21 influencing someone's memory and adding in the narrative of how many people were  
22 being whipped and flogged, and including [the phrase], 'you were there' [...] This is  
23 a direct example of how we believe we get false confessions from people in an  
24 interview process, whether or not it was intended on the part of the questioners."  
25 And that's T-179, pages 47 to 51.

1 Dr Morgan found overall that the conditions of the Prosecution interviews with both  
2 Mr Al Hassan and P-0626 were so pernicious that, quote, "it is within a reasonable  
3 degree of medical and scientific certainty that the information each of these witnesses  
4 provided [...] during their sessions with the ICC investigation team is subject to  
5 substantial error."

6 We submit that at an absolute minimum, there is reasonable doubt as to the probative  
7 value of Mr Al Hassan's answers to the Prosecution's questions during this period of  
8 his abuse. His answers cannot be relied upon by this Chamber under Article 69(4).  
9 The witness testimony heard by this Chamber may change the course of a man's life,  
10 and so we submit that the veracity of it, regardless of intention, is what this Chamber  
11 must examine. And upon examination of these four factors, it is clear that  
12 the Prosecution's witnesses again and again conveyed inconsistencies and sometimes  
13 false, verifiably incorrect information that eviscerates the Prosecution's case against  
14 Mr Al Hassan.

15 Now the Prosecution makes an interesting statement in their response to the Defence  
16 final brief, and this is at paragraph 124 of their response. They state, quote:  
17 "Corroboration does not mean that two pieces of evidence must be identical in every  
18 particular, but [it] rather implies a fact sensitive comparison of salient points based on  
19 the *compatibility* of two pieces of evidence with regard to the same or linked facts."  
20 Now, the long established exception to that statement is that the testimonies to be  
21 compared must be *prima facie* credible. That's why the ICTR in the Gatete appeals  
22 judgment, which is cited by the Prosecution in support for that particular statement,  
23 made the distinction at paragraph 125 of that judgment, that two testimonies  
24 corroborate each other when, quote: "One *prima facie* credible testimony is  
25 compatible with another *prima facie* credible testimony regarding the same fact or a

1 [series] of linked facts."

2 We submit that unreliable memories, created in witnesses shown to have experienced  
3 uncontrollable stress, as Dr Morgan highlighted, in circumstances presenting a real  
4 risk that torture occurred, which is the legal standard, are not *prima facie* credible and  
5 therefore cannot corroborate each other.

6 It is our submissions, as you have heard, your Honours, that the evidence is clear that  
7 there was no armed conflict under IHL at the time of the charged events and, in  
8 the alternative, any conflict had ended and had no nexus to the charged events.

9 The *chapeau* requirements of crimes against humanity instituted by this Court were  
10 not met by the Prosecution. And the Prosecution yesterday, placed emphasis on  
11 courts needing to have the safeguards generally recognised as being indispensable for  
12 a fair trial. I am sorry to say those safeguards have not all been present in this  
13 prosecution. Among the safeguards that my learned colleague mentioned as  
14 indispensable were the following:

15 First, people having access to a court or a judge to contest pretrial detention.

16 Mr Al Hassan had no access to a court or a judge to contest his detention at the time  
17 that the OTP interviewed him.

18 Second, respect of the right not to incriminate oneself. In pursuing interviews under  
19 conditions that they themselves acknowledged to be coercive, the OTP violated this  
20 right of Mr Al Hassan. When he stated repeatedly that he was not able to remember  
21 facts or was unwell and suffering from his treatment, they continued to violate that  
22 right.

23 And third, among the safeguards, is prohibition of the use of torture, which includes  
24 the prohibition on torture-derived evidence that cannot be reliable or probative.

25 The Prosecution knew of Mr Al Hassan's torture and conditions of confinement at the

1 DGSE. They never once ordered an investigation. They simply pressed on with  
2 their questioning.

3 Mr Al Hassan's right against the use and exploitation of his torture may yet be  
4 safeguarded by this Chamber through recognition that the taint that has attached to  
5 the evidence in this case is too heavy to be considered justifiable in any case, and it  
6 strips the evidence of its probative value.

7 The International Criminal Court cannot ignore or benefit from injustice in the course  
8 of pursuing justice. Neither the intention, nor control of the Prosecution regarding  
9 any of the factors I've just outlined can excuse the procedural and substantive  
10 shortcomings in this case in a court of this consequence.

11 And, at this time, I'd like to hand the podium to my colleague, Maître Melissa  
12 Beaulieu Lussier.

13 I note that I lost time.

14 PRESIDING JUDGE MINDUA: [15:58:26](Interpretation) Ms Pradhan, sorry, I don't  
15 think that you can give the floor to your colleague, because it's almost time. We do  
16 have two more minutes to go, and, in two minutes, I don't think we can do much.

17 Ms Pradhan, I want to very sincerely thank you for your very excellent presentation.

18 I also extend my thanks to Ms Taylor for her excellent statement as well.

19 We have come to the end of our day for today. And I don't see anybody asking for  
20 the floor.

21 Well, I see the Prosecutor is on his feet.

22 Mr Duterte.

23 MR DUTERTRE: [15:59:11](Interpretation) Thank you, Mr President. Just for

24 the record, I want to point out that Marie-Jeanne Sardachti, Mousa Allafi and

25 Sandra Schoeters joined us in the second session of this morning. May this appear



1 on the record, Mr President, as required. Thank you.

2 PRESIDING JUDGE MINDUA: [15:59:34](Interpretation) Very well, Mr Prosecutor.  
3 Thank you very much. It is very important for this to appear on the record. And I  
4 take advantage of this time to cross-check with the other teams so -- that they've been  
5 any changes. (Overlapping microphones)  
6 Maître Taylor.

7 MS TAYLOR: [15:59:48] (Microphone not activated) No, Mr President. Thank you.

8 PRESIDING JUDGE MINDUA: [15:59:50](Interpretation) Thank you very much,  
9 Ms Taylor.

10 Mr Nsita.

11 MR LUVENGIKA: [15:59:55](Interpretation) There have not been any changes on  
12 the team of the legal representatives. But allow me, Mr President, to ask about  
13 the planning for tomorrow, how much time does the Defence intend to use? I ask  
14 simply so that we can organise our diaries accordingly.

15 PRESIDING JUDGE MINDUA: [16:00:16](Interpretation) Thank you very much,  
16 Mr Nsita. You are right.

17 Let me turn to the Registrar. Court officer, please, the Defence is entitled to four  
18 hours ordinarily; is that correct? How much more time do we have?

19 The Registrar, the court officer is quite vigilant and so, Ms Taylor, you have one hour  
20 and six minutes' remaining.

21 Do you agree?

22 MS TAYLOR: [16:00:51] Thank you, Mr President.

23 PRESIDING JUDGE MINDUA: [16:00:55](Interpretation) I see no objection from  
24 Ms Taylor, thank you very much.

25 Now, before we call it a day for today, as usual, I would like to very sincerely thank

1 the parties and participants for their cooperation and the cordiality obtaining in the  
2 courtroom. Thank you very much.

3 I also want to thank our interpreters and our stenotypists -- court reporters, our  
4 security officers, without forgetting the public gallery. Thank you. And I wish  
5 everybody an excellent evening. See you tomorrow morning at 9.30.

6 I'll adjourn the sitting for today.

7 THE COURT USHER: [16:01:46] All rise.

8 (The hearing ends in open session at 4.01 p.m.)