

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date of original version:
23 April 2020

Date of corrected version:
1 May 2020

Date of public redacted
version: **8 May 2020**

PRE-TRIAL CHAMBER I

Before:

**Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou**

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR *v.***

AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG MAHMOUD

**Public redacted version of the
"Corrected Version of the *Décision portant modification des charges confirmées
le 30 septembre 2019 à l'encontre d'Al Hassan Ag Abdoul Aziz Ag Mohamed
Ag Mahmoud, 23 avril 2020, ICC-01/12-01/18-767-Conf*"**

**With a Public Redacted Annex Containing the Full List of Charges
Confirmed against the Accused**

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

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**Other
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Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”), acting pursuant to article 61(9) of the Rome Statute (“Statute”), issues this decision concerning the Prosecutor’s request to amend the charges against Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”), born in Hangabera in the Timbuktu Region of the Republic of Mali (“Mali”) on 19 September 1977, a member of the Tuareg/Tamasheq tribe, currently in custody at the seat of the Court.

I. Procedural history

1. On 30 September 2019, the Chamber confirmed that there were substantial grounds to believe that Mr Al Hassan is responsible, pursuant to article 25(3)(a) and/or 25(3)(c) and/or 25(3)(d) of the Statute, for the commission of the crimes against humanity of torture under article 7(1)(f) of the Statute, other inhumane acts under article 7(1)(k) of the Statute, rape and sexual slavery under article 7(1)(g) of the Statute, other inhumane acts in the form of forced marriages under article 7(1)(k) of the Statute and persecution under article 7(1)(h) of the Statute, and of the war crimes of torture under article 8(2)(c)(i) of the Statute, cruel treatment under article 8(2)(c)(i) of the Statute, outrages upon personal dignity under article 8(2)(c)(ii) of the Statute, passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable, under article 8(2)(c)(iv) of the Statute, attacking protected objects under article 8(2)(e)(iv) of the Statute, and rape and sexual slavery under article 8(2)(e)(vi) of the Statute¹ (“Confirmation of Charges Decision”).

¹ “Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, dated 30 September 2019, corrected version filed on 8 November 2019, ICC-01/12-01/18-461-Conf-Corr, with a confidential annex (Explanatory Note).

2. On 18 November 2019, the Chamber dismissed the Defence's request for leave to appeal against the Confirmation of Charges Decision and ordered that the record of the *Al Hassan* case be transmitted to the Presidency in accordance with rule 129 of the Rules of Procedure and Evidence ("Rules").²

3. On 21 November 2019, the Presidency of the Court constituted Trial Chamber X and assigned the present case to it.³ On 6 January 2020, Trial Chamber X set the date of commencement of the trial in the case for 14 July 2020.⁴ On 31 January 2020, the Prosecutor filed a request entitled "Prosecution Request for corrections and amendments concerning the Confirmation Decision"⁵ ("Request").

4. On 5 February 2020, the Defence filed a motion seeking *inter alia* that the Prosecutor's Request and the new evidence tendered by the Prosecutor also be filed in Arabic and for time-limits to be set for responding to the Prosecutor's Request⁶ ("Defence Motion of 5 February 2020").

A public redacted version of the decision was filed on 13 November 2019 (ICC-01/12-01/18-461-Corr-Red).

² "Décision relative à la requête de la défense aux fins d'autorisation d'interjeter appel de la Décision relative à la confirmation des charges et transmission du dossier à la présidence en vertu de la règle 129 du Règlement de procédure et de preuve", 18 November 2019, ICC-01/12-01/18-498-Red2.

³ Trial Chamber X, "Decision constituting Trial Chamber X and referring to it the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*", ICC-01/12-01/18-501.

⁴ "Decision Setting the Commencement Date of the Trial", 6 January 2020, ICC-01/12-01/18-548.

⁵ "Prosecution Request for corrections and amendments concerning the Confirmation Decision", dated 30 January and registered on 31 January 2020, ICC-01/12-01/18-568-Conf, and four annexes ICC-01/12-01/18-568-Conf-AnxA, ICC-01/12-01/18-568-Conf-AnxB, ICC-01/12-01/18-568-Conf-AnxC and ICC-01/12-01/18-568-Conf-AnxD. On 17 February 2020, the Prosecutor filed a corrected version of Annex B – ICC-01/12-01/18-568-Conf-AnxB-Corr and ICC-01/12-01/18-568-Conf-AnxB-Corr-Anx – and a public redacted version of her request, ICC-01/12-01/18-568-Red.

⁶ "Defence motion for clarification relating to the time-limits applicable to filing ICC-01/12-01/18-568-Conf", ICC-01/12-01/18-580-Conf, and three annexes ICC-01/12-01/18-580-Conf-Exp-AnxA, ICC-01/12-01/18-580-Conf-Exp-AnxB and ICC-01/12-01/18-580-Conf-Exp-AnxC. A public redacted version was filed on 20 February 2020, ICC-01/12-01/18-580-Red.

5. On 17 February 2020, the Arabic translation of the Prosecutor's Request was filed.⁷

6. On 21 February 2020, the Chamber issued a decision dismissing the Prosecutor's requests for correction and reconsideration of the charges set out in Parts I and II of her Request⁸ ("Decision of 21 February 2020"). As regards Part III of the Request, seeing that no new charge had been presented and that the Prosecutor was not seeking to substitute more serious charges for those already confirmed, the Chamber determined that a hearing under article 61(9) of the Statute was unnecessary.⁹ The Chamber also directed the Prosecutor to file additional submissions on the circumstances and reasons for taking statements from Witnesses [REDACTED] after her document containing a detailed description of the charges ("DCC") was filed.¹⁰ The Chamber also directed the Legal Representatives of Victims to file their response to Part III of the Request by 28 February 2020 and the Defence to file its response by 16 March 2020. Lastly, the Chamber directed the Prosecutor to disclose, by 24 February 2020, in accordance with the procedure laid down, evidence cited in support of her request for amendment of the charges in Part III of her Request that might not already have been disclosed during the pre-trial phase.¹¹

⁷ ICC-01/12-01/18-568-Conf-tARB.

⁸ "Decision on the Applicable Procedure following the Prosecutor's Filing of Her Request for Corrections and Amendments of the Decision to Confirm the Charges", 21 February 2020, ICC-01/12-01/18-608-Conf-tENG. A public redacted version was issued the same day, ICC-01/12-01/18-608-Red-tENG.

⁹ Decision of 21 February 2020, paras. 44 and 51. The Chamber will not revisit those points, which have already been adjudicated upon in a decision against which, moreover, the Defence has not sought leave to appeal. See Response, paras. 1, 28 and 29.

¹⁰ Decision of 21 February 2020, para. 55, p. 23.

¹¹ Decision of 21 February 2020, p. 28, referring to the disclosure procedure introduced in the "Decision on the Evidence Disclosure Protocol and Other Related Matters", 16 May 2018, ICC-01/12-01/18-31-tENG and its public annex, ICC-01/12-01/18-31-Anx-tENG.

7. On 24 February 2020, the Prosecutor disclosed the evidence as ordered by the Chamber in its Decision of 21 February 2020.¹²
8. On 4 March 2020, in accordance with the Chamber's instructions, the Prosecutor filed her observations¹³ ("Prosecutor's Observations").
9. On 16 March 2020, the Defence filed its response to the Request¹⁴ ("Response").

II. Applicable law

10. The Chamber bases its decision on articles 7, 8, 21(1)(a) and (b), 21(2), 21(3), 25(3)(a) to (d), 30 and 61 of the Statute and on rules 63, 64, 68, 70, 71, 76, 77, 78, 121, 122 and 128 of the Rules.

11. Article 61(9) of the Statute provides as follows:

After the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held. After commencement of the trial, the Prosecutor may, with the permission of the Trial Chamber, withdraw the charges.

12. Rule 128 of the Rules provides as follows:

1. If the Prosecutor seeks to amend charges already confirmed before the trial has begun, in accordance with article 61, the Prosecutor shall make a written request to the Pre-Trial Chamber, and that Chamber shall so notify the accused.

¹² Email to the Chamber on 24 February 2020 at 17.29.

¹³ "Prosecution's further observations regarding its request for corrections and amendments concerning the Confirmation Decision", 4 March 2020, ICC-01/12-01/18-625-Conf-Exp with confidential annexes A (ICC-01/12-01/18-625-Conf-AnxA) and B (ICC-01/12-01/18-625-Conf-AnxB). The Prosecutor filed a confidential version of her written submissions the same day (ICC-01/12-01/18-625-Conf-Red). On 17 April 2020, the Prosecutor filed a public redacted version (ICC-01/12-01/18-625-Red2).

¹⁴ "Defence response to Prosecution Request for Corrections and Amendments concerning the Confirmation Decision", 16 March 2020, ICC-01/12-01/18-664-Conf, with two confidential annexes A (ICC-01/12-01/18-664-Conf-AnxA) and C (ICC-01/12-01/18-664-Conf-AnxC) and one confidential annex *ex parte* Defence and Prosecutor (ICC-01/12-01/18-664-Conf-Exp-AnxB). On 17 April 2020, the Defence filed a public redacted version (ICC-01/12-01/18-664-Red).

2. Before deciding whether to authorize the amendment, the Pre-Trial Chamber may request the accused and the Prosecutor to submit written observations on certain issues of fact or law.

3. If the Pre-Trial Chamber determines that the amendments proposed by the Prosecutor constitute additional or more serious charges, it shall proceed, as appropriate, in accordance with rules 121 and 122 or rules 123 to 126.

13. The Chamber also points out that, as regards the law applicable to the examination of new cases and issues pertaining to the standard of proof, there is no difference between the procedure conducted under article 61(7) of the Statute and that under article 61(9), since both aim to determine whether there are substantial grounds to believe that Mr Al Hassan is responsible for the crimes alleged by the Prosecutor.

14. For the purposes of this decision, the Chamber therefore refers to its survey of the applicable law and previous decisions (relating to articles 7, 8 and 25 of the Statute and the standard of proof) set out in its Confirmation of Charges Decision.¹⁵ It will return to that survey only if necessary in order to elaborate on a matter not already addressed in the Confirmation of Charges Decision.

III. Purpose of the present decision

15. The Chamber will proceed as follows. First, it will examine the Prosecutor's arguments for presenting, at this stage of the proceedings, amendments sought to the charges in the Request and evidence in support. Next, if it regards such presentation warranted at this stage of the proceedings, the Chamber will examine whether there are substantial grounds to believe that the additional criminal acts alleged against Mr Al Hassan are established to the standard of proof required. Then the Chamber will, if applicable, examine the criminal responsibility of Mr Al Hassan for those acts.

¹⁵ Confirmation of Charges Decision, paras. 29-40, 141-170, 193-203, 229-263, 357-389, 533-562, 662-671 and 937-953.

IV. New evidence and the examination of new cases by the Chamber at this stage of the proceedings

16. Having dismissed, in its Decision of 21 February 2020, Parts I and II of the Request, the Chamber will, in this decision, examine only Part III of the Request in relation to amendment of the charges. In Part III the Prosecutor explains that since the Hearing, she has interviewed Witnesses [REDACTED], who are either victims themselves or have provided evidence regarding new victims.¹⁶ The Prosecutor submits copies of those statements in Annexes A¹⁷ and B¹⁸ to her Request ("New Evidence"). The Chamber points out that in Part III of the Request the Prosecutor moves the Chamber, on the basis of the New Evidence, to amend the confirmed charges by including additional criminal acts.

17. In its Decision of 21 February 2020, the Chamber rehearsed the previous decisions of the Appeals Chamber which has taken the view that "ideally, it would be desirable for the investigation to be complete by the time of the confirmation hearing", even if the Statute does not so require.¹⁹ In its Decision of 21 February 2020, the Chamber also recalled that it has been consistently held that if the evidence collected by the Prosecutor after the confirmation of charges was subsequently used to support a request to the Pre-Trial Chamber for amendment of the charges, then the Prosecutor must set out why such evidence could not have been collected before confirmation.²⁰ Accordingly, the Chamber, taking the view that the date of filing of

¹⁶ Request, para. 24.

¹⁷ ICC-01/12-01/18-568-Conf-AnxA.

¹⁸ ICC-01/12-01/18-568-Conf-AnxB.

¹⁹ Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, "Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Confirmation of Charges Decision'", 30 May 2012, ICC-01/04-01/10-514, para. 54. See also *The Prosecutor v. Thomas Lubanga Dyilo*, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence'", 13 October 2006, ICC-01/04-01/06-568, para. 44.

²⁰ Decision of 21 February 2020, para. 53.

the DCC was the most appropriate reference date,²¹ directed the Prosecutor to file additional submissions on the circumstances and reasons for taking statements from Witnesses ██████████ after her DCC was filed.²²

18. The Chamber will now turn to the merits of the Prosecutor's Observations and of the Defence's Response as regards why the Prosecutor could not collect the New Evidence before the DCC was filed.

19. When examining the submissions of the parties, the Chamber will be mindful of the following holding to which it would again draw attention and which, in its view, lays down the test to be applied:

[...] the continued investigation should be related only to such essential pieces of evidence which were not known or available to the Office of the Prosecutor prior to the confirmation hearing or could not have been collected for any other reason, except at a later stage. In these circumstances, the Prosecutor is expected to provide a proper justification to that effect in order for the Chamber to arrive at a fair and sound judgment regarding any request for amendment put before it. In the context of the present case, the Prosecutor managed to furnish the Chamber not only with evidence supporting the existence of the factual allegation, but also with a reasonable justification for the continuation of her investigation subsequent to the confirmation hearing. The Prosecutor's justification can be summarized in the following points: 1) lack of cooperation; 2) security concerns; 3) incidents pointed out in the Prosecutor's observations regarding intimidation of witnesses, some of which were reported to the Chamber during the pre-trial phase; and 4) the difficulty in approaching insider witnesses to provide information to the Court. This is the core reason weighing in favour of granting the Request.²³

20. In line with that authority, the Chamber will, in the case at hand, therefore endeavour to determine whether the Prosecutor has provided sufficient justification regarding the fact that the New Evidence was not known or available before the DCC was filed or could not be collected for any other reason beyond the Prosecutor's control.

²¹ Decision of 21 February 2020, para. 55, p. 23.

²² Decision of 21 February 2020, para. 54.

²³ Pre-Trial Chamber II, *The Prosecutor v. Uhuru Muigai Kenyatta*, "Decision on the 'Prosecution's Request to Amend the Final Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute'", 21 March 2013, ICC-01/09-02/11-700 ("*Kenyatta Decision*"), paras. 37-38.

(A) [REDACTED]

21. The Prosecutor contends that the New Evidence could not be collected before her DCC was filed because only [REDACTED] did Witness [REDACTED] agree to testify for the Prosecutor before the Court and because thereafter the witness was only available for interview [REDACTED], on account of [REDACTED] [REDACTED] in particular.²⁴ As to [REDACTED], the Prosecutor states that she obtained the that witness's identity and contact details only on [REDACTED]; for [REDACTED] [REDACTED] reasons [REDACTED], [REDACTED] testimony could then not be taken [REDACTED].²⁵ As regards [REDACTED], the Prosecutor avers that she obtained that witness's identity and contact details only on [REDACTED].²⁶ In respect of [REDACTED], the Prosecutor explains that she obtained that witness's identity and contact details only on [REDACTED], that she was able to make contact with the witness only on [REDACTED] and that [REDACTED] testimony then could not be taken [REDACTED].²⁷ In general terms, the Prosecutor explains that a certain amount of time is needed between taking a witness statement and disclosing it as evidence, because a number of intermediate steps are necessary (including assessing the witness's credibility and security situation, the witness's agreement to testify at trial and translations), hence, justifying, in her view, why she filed her request several months after taking those witness statements.²⁸

22. The Chamber notes first of all the Defence's claim that by redacting a number of her submissions on key points which remain unsettled, in particular on the timing and manner in which she collected the New Evidence, the Prosecutor has contravened the principle that each party be afforded the opportunity to be heard

²⁴ Prosecutor's Observations, paras. [REDACTED].

²⁵ Prosecutor's Observations, paras. [REDACTED].

²⁶ Prosecutor's Observations, paras. [REDACTED].

²⁷ Prosecutor's Observations, paras. [REDACTED].

²⁸ Prosecutor's Observations, paras. [REDACTED].

and to know the other's case.²⁹ The Chamber has reviewed whether those redactions are justified and regards them as consistent with how redactions have been applied in the case *sub judice* thus far and considers, moreover, that they are genuinely intended to protect the witnesses. Furthermore, in the Chamber's view, the content, nature and extent of that information do not affect the Defence's ability nevertheless to set out a line of argument in response to the Prosecutor's Observations. Accordingly, the Defence's submission is rejected.

23. The Defence also contends that the Chamber should decline to entertain a number of "[TRANSLATION] new cases" because the Prosecutor was already aware of them at the time the DCC was filed, given that they are referred to in a number of items of evidence and that the Prosecutor should therefore have included them in her DCC at that time. The victims in question are [REDACTED].³⁰ In all those cases described above [REDACTED], the Chamber observes that the Prosecutor relies on at least one or more items of the New Evidence (not in her possession at the time the DCC was filed) that sometimes serve to corroborate other evidence which had already been disclosed at the time the DCC was filed.

24. The Chamber believes however that it is for the Prosecutor, at the time the DCC is filed, to assess whether she has sufficient evidence to establish substantial grounds to believe that a criminal act within the jurisdiction of the Court was committed and that the person charged is criminally responsible for that act. It seems reasonable, in the view of the Chamber, for it be open to the Prosecutor, provided that that possibility is not abused, not to submit certain facts at the time her DCC was filed, given the small amount of evidence available to her, but to elect to submit it later if she obtains what she regards as additional evidence capable of

²⁹ Response, para. 4.

³⁰ Response, paras. [REDACTED].

establishing those facts before the Chamber to the standard of proof applicable at that stage of the proceedings. As explained above, it will then be for the Prosecutor to provide sufficient justification for not being able to collect that evidence before her DCC was filed. The Chamber will also ascertain whether the evidence thus collected is in reality of value to supplementing the evidence already in the Prosecutor's possession before her DCC was filed, in support of the requested amendment to the charges.

25. In any event, the Chamber points out that, in this instance, each new case [REDACTED] is in fact supported by one of the items of New Evidence, which are all witness statements, in some cases statements from eye witnesses, and therefore potentially have a high degree of probative value. This appears to justify the submission of those cases at this stage of the case *sub judice*, provided, however, that the New Evidence was not available at the time the DCC was filed.

26. The Defence goes on to argue that the Prosecutor could have filed the evidence collected in May and June 2019 pursuant to rule 121(4) and (5) of the Rules, or could even have moved the Chamber to postpone the confirmation hearing in accordance with rule 121(7) of the Rules.³¹ The Chamber points out that the "[TRANSLATION] evidence collected in May and June 2019" in fact relates only to the statement of [REDACTED], which was taken [REDACTED].³² The Chamber underscores that the confirmation hearing was held on 8, 9, 10, 11 and 17 July 2019.³³ It does not consider that fault can be found with the Prosecutor for not filing in June

³¹ Request, para. 7.

³² See [REDACTED].

³³ Scheduling order of 24 June 2019 and "*Ordonnance modifiant l'Ordonnance portant calendrier aux fins de l'audience de confirmation des charges*", 27 June 2019, ICC-01/12-01/18-390. Transcript of Hearing of 8 July 2019, ICC-01/12-01/18-T-003-Red-FRA; Transcript of Hearing of 9 July 2019, ICC-01/12-01/18-T-004-Red-FRA; Transcript of Hearing of 10 July 2019, ICC-01/12-01/18-T-005-Red-FRA; Transcript of Hearing of 11 July 2019, ICC-01/12-01/18-T-006-Red-FRA; Transcript of Hearing of 17 July 2019, ICC-01/12-01/18-T-007-Red-FRA.

2019 evidence which was being collected [REDACTED]³⁴ or for not requesting a postponement of the Hearing in order to add just one witness statement. Accordingly, the Defence's submissions on this point are rejected.

27. As to the Defence's further submissions specific to each witness, the Chamber sees that, as regards [REDACTED], the Prosecutor explains that [REDACTED] did the witness formally agree to testify for the Prosecutor before the Court and that for reasons relating to that witness's availability, the interview could take place only [REDACTED]. The Chamber observes that fault cannot be found with the Prosecutor for decisions that rest with the witness alone and that go to his or her willingness to testify or the date when he or she might become available to be interviewed by the Prosecutor. Accordingly, the other submissions set out by the Defence in relation of that witness are rejected.

28. The Defence submits, on the basis of an email from the Prosecutor, that the Prosecutor had "obtained" the contact details for Witness [REDACTED] [REDACTED].³⁵ The Chamber nevertheless notes that this document mentions several names of witnesses and does not prove that the Prosecutor actually received a response to her request in relation to Witness [REDACTED]. The Chamber also notes the Prosecutor's assertion that she only obtained that information on [REDACTED].³⁶ The Chamber does not find the document to which the Defence refers capable of casting doubt on the Prosecutor's assertion and, accordingly, rejects the Defence's submission.

29. The Chamber also rejects the Defence's submissions regarding Witness [REDACTED] because, in its view, the Prosecutor has sufficiently explained the approach taken in respect of this witness and the reasons why the testimony was not taken earlier.³⁷ The Prosecutor explains that, initially, [REDACTED] was not regarded as a witness of prime

³⁴ See also the Prosecutor's explanations about the time needed between taking a witness statement and disclosing it as evidence. See above, para. 21.

³⁵ Response, [REDACTED].

³⁶ Request, paras. [REDACTED].

³⁷ Request, paras. [REDACTED].

32. The Chamber sees that, with the exception [REDACTED],⁴² all the new cases included in the Request are supported by one or more items of New Evidence, thus warranting their consideration at this stage of the proceedings. In that connection, it is, in the Chamber's view, not obvious that any of the New Evidence lends only superficial support to a case and that the evidentiary basis consists essentially only of the other evidence available at the time the DCC was filed.

33. Lastly, the Chamber has given consideration to the fact that the procedure for amending the charges already confirmed will have no impact on the ongoing trial proceedings and, in particular, will not delay commencement of the trial. In the Chamber's view, the fact that the new cases (or victims) are relatively small in number and, most importantly, fall within the ambit of charges already confirmed, reduces the albeit real and undeniable impact on the Defence's organization of its work in this trial preparation phase.⁴³ In striving to strike a balance between the rights of the defence and the necessary pursuit of the truth by the Prosecutor, the Chamber does not regard that impact to be so great as to warrant a refusal to include new cases, supported by new testimonies, in support of charges already confirmed.

34. Accordingly, with those various factors in mind, in particular the Prosecutor's Observations, the rights of the defence and the impact on the trial proceedings, the Chamber considers it appropriate to examine the substance of the Prosecutor's request to amend the charges under article 61(9) of the Statute. Therefore, after [REDACTED], the Chamber will turn its attention to the new cases supported by the testimonies of [REDACTED].

⁴² See [REDACTED].

⁴³ See Response, para. 6.

(B) [REDACTED]

35. The Chamber sees that in her DCC the Prosecutor did not request confirmation of the case of [REDACTED]. However, the Chamber notes that the Prosecutor was already aware of that incident, since the evidence presented in support of that case was already in her possession and had been disclosed to the Defence at the time the DCC was filed.⁴⁴ The Chamber notes that in her Request the Prosecutor has not presented any new evidence in support of the case.⁴⁵ In that connection, the Chamber emphasizes that the Prosecutor has filed her DCC after analysing the facts and evidence in her possession and that at that point she made a choice about the facts she wished to put before the Chamber for consideration. In the Chamber's view, at the time the DCC was filed, the Prosecutor must have completed her analysis of those facts and the evidence already collected. Therefore, and in the light of the principles set out above, article 61(9) of the Statute does not allow the Prosecutor to put facts before the Chamber which were already known to her at the time her DCC was filed but which she chose not to include in her DCC, unless those facts are supported by new evidence that was not available or could not be collected at the time the DCC was filed. That being so, the Chamber will not examine the case of [REDACTED].

⁴⁴ [REDACTED] item of evidence [REDACTED]

[REDACTED]

⁴⁵ Request, paras. [REDACTED]. The Chamber notes that in relation to document [REDACTED] the Prosecutor refers to a new translation and states that the translation filed previously was incorrect. Upon verification, the Chamber sees that the translation is almost identical and the document cannot be treated as new evidence.

V. General considerations on the standard of proof

36. The Chamber refers to its considerations on matters relating to the standard of proof.⁴⁶ Those considerations apply in their entirety to the Chamber's findings in this decision and the Chamber will not therefore make findings of any facts that come from anonymous sources unless the source is a statement – that is found to be credible – given by the victim him or herself or by a direct witness to the facts or, if the source is both anonymous and indirect, unless those facts are corroborated by another source.

37. As to the issue of those victims not identified in the Request, the Chamber notes that on several occasions the Defence refers to the fact that a victim is not identified as a ground for moving the Chamber to find that facts concerning those victims are not established.⁴⁷ The Chamber recalls in this regard that it has already held in the case *sub judice* that the degree of specificity in identifying victims depended on the nature of the crime⁴⁸ and that, in the Decision on the Confirmation of Charges, it made findings of fact in relation to victims whose identity was unknown.⁴⁹ The Chamber is of the view that in judicial proceedings relating to mass crimes it is not always possible to identify each victim by name and that precise

⁴⁶ Confirmation of Charges Decision, paras. 46-68; see also para. 630.

⁴⁷ Response, para. 52.

⁴⁸ "Decision on the Defence Request concerning the Time Limit for the Prosecutor to File the Document Containing a Detailed Description of the Charges", 5 October 2018, ICC-01/12-01/18-143-tENG, para. 30 ("[...] the Chamber is of the view that the degree of specificity expected from the Prosecutor in her description of the facts depends on the nature of the crimes in question and the circumstances of the case brought by the Prosecutor before the Chamber. Where crimes such as torture or rape are concerned, the Prosecutor must describe the criminal acts in issue, stating the date and place of the acts, along with the number of victims, or at the very least a clear estimate of that number, and their identities as far as at all possible. However, where by their nature the crimes are directed against a group or collectivity of people, as in the case of the crime of persecution, a like degree of specificity cannot be expected of the Prosecutor's description of the facts; nonetheless, the Prosecutor must endeavour to pinpoint as much as possible places, times and approximate numbers of victims and to provide the necessary particulars to make out the elements of the crimes").

⁴⁹ See, e.g., Confirmation of Charges Decision, paras. 278-280.

identification of the victims must not be a precondition for the Chamber to make factual findings.

38. Lastly, as regards the redactions made by the Prosecutor to the various items of evidence and the Defence's submissions on that subject,⁵⁰ the Chamber underscores that it makes findings of fact on the basis of "the version of evidence that was communicated to the Defence".⁵¹ The Chamber has noticed that, as the Defence observes, some of the summaries of the facts made by the Prosecutor in her Request are underpinned by evidence that is so heavily redacted that it is impossible to reconstruct the same account or to find that the circumstances as described by the Prosecutor are made out – in all likelihood the redactions are masking the information that the Prosecutor is nevertheless asking the Chamber to find has been established. Where that occurs, the Chamber has found facts to be made out only where it was possible to do so from the redacted version of the evidence and has even rejected some evidence in its entirety because the redactions did not allow a link to be established between the case concerned and the evidence in question. The Defence also underscores that, since filing the Request, the Prosecutor has disclosed the identity of ██████ to the Defence.⁵² In determining whether the facts alleged by the Prosecutor in her Request are made out the Chamber has nevertheless relied only on the statements as disclosed before this Chamber in accordance with the applicable procedure.

⁵⁰ Response, para. 4 and footnote 4.

⁵¹ "Decision on the Evidence Disclosure Protocol and Other Related Matters", 16 May 2018, ICC-01/12-01/18-31-tENG, para. 32.

⁵² Response, para. ██████.

VI. Recapitulation of the material facts found in the Confirmation of Charges Decision

39. The Chamber refers to the Confirmation of Charges Decision for the facts found, including the facts relating to:

- the context of the *Al Hassan* case and the structure of the regime introduced in Timbuktu by the armed groups Ansar Dine and AQIM;⁵³
- the contextual elements of the crimes against humanity;⁵⁴
- the contextual elements of the war crimes;⁵⁵
- the crimes falling within those charges whose amendment the Prosecutor is seeking;⁵⁶
- the time frame in which Mr Al Hassan contributed to the events which took place in Timbuktu and the Timbuktu Region between 1 April 2012 and 28 January 2013;⁵⁷
- the duties performed and powers exercised by Mr Al Hassan in the Islamic Police between 1 April 2012 and 28 January 2013;⁵⁸ and
- Mr Al Hassan's contributions to the crimes under counts 1 to 13, pursuant to article 25 of the Statute, specifically article 25(3)(a) (as a direct perpetrator), 25(3)(c) and 25(3)(d).⁵⁹

⁵³ Confirmation of Charges Decision, paras. 69-140.

⁵⁴ Confirmation of Charges Decision, paras. 171-192.

⁵⁵ Confirmation of Charges Decision, paras. 204-226.

⁵⁶ Confirmation of Charges Decision, paras. 264-356, 390-516, 583-660 and 672-707.

⁵⁷ Confirmation of Charges Decision, paras. 710-723.

⁵⁸ Confirmation of Charges Decision, paras. 724 and 786.

⁵⁹ Confirmation of Charges Decision, paras. 912-913, 916, 919, 921-923, 926-929, 962-975 and 955-1010.

VII. Findings of fact

40. In this section the Chamber will examine the evidence tendered by the Prosecutor and the submissions of the parties in order to determine whether the additional facts alleged by the Prosecutor are established to the standard of proof required.

(A) Findings of fact concerning individuals

1. Case of P-1134⁶⁰

41. The Chamber finds the following facts to be established to the standard required, on the basis of the evidence,⁶¹ its consistency and the submissions of the parties.

42. Between November 2012 and January 2013,⁶² [REDACTED], [REDACTED]-year-old P-1134 was violently arrested by armed men for not wearing a veil. They took her to the BMS,⁶³ the “[TRANSLATION] women’s

⁶⁰ Request, paras. 30-33, 36 and 39; Response, para. 52.

⁶¹ As regards whether P-0636 is testifying about P-1134, even though she does not refer to P-1134 by name (see Statement of P-0636, [REDACTED]), the Chamber is of the view that [REDACTED]. Specifically, several other items of evidence refer to [REDACTED]

Although the accounts contained in those various items of evidence contradict each other in places as regards the exact sequence of events when [REDACTED] the Chamber takes the view that, because they all refer to the case [REDACTED] all those items of evidence relate to P-1134. See also Response, para. 52 (concerning “Allegation 1”).

⁶² [REDACTED]

⁶³ Statement of [REDACTED]; [REDACTED]

47. Between [REDACTED],⁷⁸ P-0636, who at the time was [REDACTED] years old,⁷⁹ was arrested at gunpoint when she had gone out [REDACTED] [REDACTED]⁸⁰ by members of the armed groups⁸¹ who took her to the headquarters of the Islamic Police, in the Hamma Bangou neighbourhood.⁸² In the vehicle taking her to the headquarters of the Islamic Police, the members of the armed groups [REDACTED] face [REDACTED] [REDACTED] “[TRANSLATION] a type of veil” and was see-through.⁸³ The chief of police, an old man with a long beard, ordered her to be put [REDACTED] [REDACTED].⁸⁴ [REDACTED]

[REDACTED] (and therefore it cannot be attributed to Mr Al Hassan because the Prosecutor has not provided evidence that he had joined the armed groups by that time) [REDACTED]

[REDACTED]. In some items of evidence she even dissociates that event [REDACTED] from her detention at the “[TRANSLATION] police station” ([REDACTED] [REDACTED]).

The Chamber cannot however rule out that those inconsistencies might be the result of the traumatic experiences or translation errors or attributable to those who took the statement rather than to the victim herself. The Chamber notes moreover that it has before it the statement P-0636 gave to the Prosecutor, that she is not an anonymous witness, that her account seems to be specific and detailed and that the accounts given in the other items of evidence provided by the Prosecutor are for their part consistent with her statement [REDACTED]

[REDACTED]. Having regard to the standard applicable at the pre-trial stage of the proceedings and to the fact that evidence is available to it only in written form, the Chamber will make findings of fact and confirm charges on the basis of those items of evidence that are consistent with one another, even though there may be inconsistencies between those items and other items of evidence. It will fall to the Trial Chamber to explore those potential inconsistencies in greater detail and to assess the credibility of the witness’s account. For the probative value of the evidence entitled [REDACTED]

⁷⁷ Request, paras. 36-42.

⁷⁸ Statement of P-0636, [REDACTED]

⁷⁹ Statement of P-0636, [REDACTED]

⁸⁰ Statement of P-0636, [REDACTED]

⁸¹ Statement of P-0636, [REDACTED]

⁸² Statement of P-0636, [REDACTED]

⁸³ Statement of P-0636, [REDACTED]

⁸⁴ Statement of P-0636, [REDACTED]

[REDACTED].⁸⁵ P-0636 was detained [REDACTED] [REDACTED] who had been arrested [REDACTED], in a dirty room and after being told that while she was detained [REDACTED] [REDACTED].⁸⁶ The first night, [REDACTED] armed men took her to another room where there was a [REDACTED] [REDACTED] armed man.⁸⁷ The [REDACTED] men forced her to undress at gunpoint, spitting on her and trying to tear off her clothes.⁸⁸ [REDACTED] then forced her to have sexual relations with him, at gunpoint, [REDACTED] men was in the room.⁸⁹ The [REDACTED] men also forced her to have sexual relations with them.⁹⁰ Afterwards they took her back to her cell and then took out the other girl who was being held with her, who returned later, crying, and told P-0636 she had been subjected to the same thing as her.⁹¹ They slept on the ground.⁹² [REDACTED] no one gave her anything to eat while she was detained.⁹³ She was released the next morning.⁹⁴

48. P-0636 [REDACTED] when the Malian troops entered Timbuktu; she [REDACTED] [REDACTED] [REDACTED] [REDACTED].⁹⁵ [REDACTED] [REDACTED] [REDACTED] [REDACTED].⁹⁶ [REDACTED]

⁸⁵ Statement of P-0636, [REDACTED]

⁸⁶ Statement of P-0636, [REDACTED]

⁸⁷ Statement of P-0636, [REDACTED]

⁸⁸ Statement of P-0636, [REDACTED]

⁸⁹ Statement of P-0636, [REDACTED]

⁹⁰ Statement of P-0636, [REDACTED]

⁹¹ Statement of P-0636, [REDACTED]

⁹² Statement of P-0636, [REDACTED]

⁹³ Statement of P-0636, [REDACTED]

⁹⁴ Statement of P-0636, [REDACTED]

⁹⁵ Statement of P-0636, [REDACTED]

⁹⁶ Statement of P-0636, [REDACTED]

[REDACTED]

[REDACTED].⁹⁷

4. Case of P-1674⁹⁸

49. The Defence submits that the sole item of evidence presented by the Prosecutor is insufficient to establish the facts alleged in relation to P-1674. In particular, the Defence underscores that the Prosecutor relies exclusively on the statement of P-0636 and that this witness's account of the case of P-1674 is based on partial knowledge of the facts and on hearsay. The Defence goes on to say that P-1674's name has not been disclosed to it.⁹⁹

50. The Chamber notes that the evidence presented by the Prosecutor comes from a known source, that is to say, P-0636, whose identity has been disclosed to the Defence. The Chamber also points out that [REDACTED]

[REDACTED], P-0636 [REDACTED]

[REDACTED]

[REDACTED] The Chamber therefore finds this witness to be credible and her statement about P-1674 to be reliable. As regards the victim's identity,¹⁰⁰ the Chamber notes that P-0636 describes P-1674 as a neighbour¹⁰¹ and [REDACTED]

[REDACTED].¹⁰²

51. Accordingly, having regard to the standard applicable at the pre-trial stage of the proceedings,¹⁰³ the Chamber finds the following facts to be established to the standard required on the basis of P-0636's statement and after considering the submissions of the parties.

⁹⁷ Statement of P-0636, [REDACTED]

⁹⁸ Request, paras. 43-44; Response, para. 52 (concerning "Allegation 13").

⁹⁹ Response, para. 52 (concerning "Allegation 13").

¹⁰⁰ See above, para. 37.

¹⁰¹ Statement of P-0636, [REDACTED]

¹⁰² Statement of P-0636, [REDACTED]

¹⁰³ See in particular rule 63(4) of the Rules.

52. During the takeover of Timbuktu by the “[TRANSLATION] Islamists”, “[TRANSLATION] in 2012 or 2013”,¹⁰⁴ “[TRANSLATION] Islamists” arrested P-1674, [REDACTED], took her away and held her for less than a week.¹⁰⁵ As soon as P-1674 was released by the “[TRANSLATION] Islamists”, she returned to her family [REDACTED].¹⁰⁶ The “[TRANSLATION] Islamists” wanted P-1674 to get married [REDACTED].¹⁰⁷ P-0636 states that, a few months after that incident, “[TRANSLATION] it was known” that P-1674 was [REDACTED] and [REDACTED].¹⁰⁸ P-0636 [REDACTED].¹⁰⁹

5. Case of P-1728¹¹⁰

53. The Chamber finds the following facts to be established to the standard required, on the basis of the evidence¹¹¹ and, specifically, the detailed nature of the statement of P-0636, an eyewitness whose identity has been disclosed to the Defence, and the submissions of the parties.

54. P-1728, a “[TRANSLATION] lady”, was beaten with a stick in the street in Timbuktu, by a “[TRANSLATION] young Islamist”. [REDACTED]

¹⁰⁴ Statement of P-0636, [REDACTED]

¹⁰⁵ Statement of P-0636, [REDACTED]

¹⁰⁶ Statement of P-0636, [REDACTED]

¹⁰⁷ Statement of P-0636, [REDACTED]

¹⁰⁸ Statement of P-0636, [REDACTED]

¹⁰⁹ Statement of P-0636, [REDACTED]

¹¹⁰ Request, paras. 45-46; Response, para. 52.

¹¹¹ Statement of P-0636, [REDACTED]

A number of “[TRANSLATION] other Islamists” got out of a vehicle and also trained their weapons on them. [REDACTED].¹¹²

6. Case of P-1707¹¹³

55. The Chamber notes that the heavily redacted version of [REDACTED]’s statement does not allow the account as set out in the Request to be reconstructed.¹¹⁴ In this regard, the Chamber points out that it makes findings of fact only on the basis of the version of the evidence as disclosed to the Defence and that it cannot therefore make findings on the basis of information that has been redacted.

56. The Chamber notes that [REDACTED] states that during an interrogation “[TRANSLATION] at the police”, [REDACTED] [REDACTED], Mr Al Hassan threatened P-1707 [REDACTED] [REDACTED] if he did not tell the truth. P-1707 was then allegedly released [REDACTED].¹¹⁵

57. The Chamber notes that in support of her request for confirmation of the charges in the case of P-1707 the Prosecutor has supplied only the heavily redacted statement of an anonymous witness ([REDACTED]) concerning an anonymous victim (P-1707), whereas this statement is not corroborated by any other evidence and it is not even known from the evidence how the witness obtained the information [REDACTED] recounts (that is to say, whether [REDACTED] is a direct or an indirect witness).¹¹⁶ The Chamber observes furthermore that the Prosecutor states that [REDACTED] was not a direct witness who was present at the scene.¹¹⁷ The Chamber finds that the evidence brought by the

¹¹² The Chamber notes that contrary to the Prosecutor’s assertion (Request, para. 45) the item of evidence cited does not state that the “Islamists” then arrested P-1728.

¹¹³ Request, paras. 48-50; Response, para. 52.

¹¹⁴ See Request, para. 49 and Statement of [REDACTED]

¹¹⁵ Statement of [REDACTED]

¹¹⁶ See Request, para. [REDACTED] and footnotes [REDACTED]. See also Response, para. [REDACTED] (concerning “Allegation [REDACTED]”).

¹¹⁷ Request, para. 49.

Prosecutor in support of this case is too weak to establish the facts to the standard required.¹¹⁸

7. Case of P-1710 and P-1711¹¹⁹

58. The Chamber finds the following facts to be established to the standard required, on the basis of ██████'s statement, its consistency with the other accounts of the methods used by Ansar Dine/AQIM,¹²⁰ and the submissions of the parties.

59. Mohamed Moussa arrested P-1710 and P-1711 and held them in the "[TRANSLATION] ATM area" of the BMS for not wearing veils.¹²¹ One was released later during the day and the other at dusk.¹²²

8. Case of P-1712¹²³

60. The Defence submits that the sole item of evidence presented by the Prosecutor is insufficient to establish the facts alleged in relation to P-1712. The Defence underscores that the Prosecutor relies exclusively on the statement of ██████ and that this witness's account of the case of P-1712 is based on partial knowledge of the facts and on hearsay. The Defence goes on to say that the passage of ██████'s statement relating to the case of P-1712 is heavily redacted and it points out that P-1712 is an anonymous victim whose name is not known.¹²⁴

61. The Chamber notes however that ██████ has provided a sufficiently detailed account of the facts that occurred during the time frame in question and, in

¹¹⁸ See above, para. 36.

¹¹⁹ Request, paras. 51, 52 and 56.

¹²⁰ See the synopsis of the facts relating to P-1134, P-0636 and P-0609, paras. 42, 47-48, 59 and 81-82. See also the synopsis of the facts relating to P-0574, P-0542, P-0570 and P-0547 (Confirmation of Charges Decision, paras. 283, 331, 334 and 337).

¹²¹ Statement of ██████. The Chamber points out that ██████ saw P-1710 and P-01711 being held at the BMS and accordingly finds that he was present for part of the incident.

¹²² Statement of ██████.

¹²³ Request, paras. 51, 53 and 56; Response, para. 52 (concerning "Allegation 7").

¹²⁴ Response, para. 52 (concerning "Allegation 7").

particular, of the case of P-1712.¹²⁵ The Chamber also notes that [REDACTED]
[REDACTED]
[REDACTED] was therefore present for at least part of the events concerning P-1712.¹²⁶

62. Accordingly, having regard to the standard applicable at the pre-trial stage of the proceedings, the Chamber finds the following facts to be established to the standard required, on the basis of the evidence and the submissions of the parties.

63. Towards the end of Ansar Dine/AQIM's takeover of Timbuktu, Mohamed Moussa arrested P-1712, [REDACTED], and held her at the BMS, for not being veiled.¹²⁷ P-1713 went to the BMS [REDACTED]²⁸ and asked Mohamed Moussa to release her.¹²⁹ Mohamed Moussa refused to release her and threatened to imprison P-1713.¹³⁰ P-1712 spent the night at the BMS.¹³¹

9. Case of P-1721¹³²

64. The Defence submits that the evidence presented by the Prosecutor is insufficient to establish the facts alleged in relation to P-1721, an anonymous victim. Specifically, the Defence underlines that the Prosecutor relies on two statements from [REDACTED] and [REDACTED] which, according to them, contradict each other as regards [REDACTED]'s knowledge of what P-1721 was subjected to.¹³³

65. The Chamber underlines that the heavily redacted version of [REDACTED]'s statement does not allow the account as set out in paragraph 54 of the Request to be reconstructed. The Chamber once again draws the Prosecutor's attention to the fact

¹²⁵ Statement of [REDACTED].

¹²⁶ Statement of [REDACTED].

¹²⁷ Statement of [REDACTED].

¹²⁸ Statement of [REDACTED].

¹²⁹ Statement of [REDACTED].

¹³⁰ Statement of [REDACTED].

¹³¹ Statement of [REDACTED].

¹³² Request, paras. 51, 54-55 and 56; Response, para. 52 (concerning "Allegation 8").

¹³³ Response, para. 52 (concerning "Allegation 8").

that, in arriving at a finding of fact, it relies solely on the version of the evidence as disclosed to the Defence and provided to the Chamber and that it cannot therefore make findings on the basis of information that has been redacted.¹³⁴ That notwithstanding, contrary to the Defence's contention, the Chamber is of the view that, even if ██████ is mistaken in stating that ██████ was ██████ present during the incident involving P-1721,¹³⁵ the basic facts concerning the first part of that incident agree with each other – ██████, whose identity has been disclosed to the Defence, giving a more detailed version of the incident.¹³⁶ The Chamber is also of the view that ██████'s statement is reliable regarding what P-1721 was subjected to, noting that the incident occurred at the home of a ██████ ██████¹³⁷ and considering that ██████'s statement corroborates what was said by ██████. The Chamber notes however that ██████ does not refer to P-1721 being detained and finds therefore that this part of the facts cannot be established on the basis of ██████'s statement alone.¹³⁸

¹³⁴ See Request, para. 54 and Statement of ██████. ██████ statement as disclosed to the Defence does not support a finding that ██████ attacked by the "[TRANSLATION] Islamists" ██████.

¹³⁵ Compare Statement of ██████ with Statement of ██████.

¹³⁶ First of all, the Chamber notes that ██████. The Chamber sees that ██████ (See ██████ ██████). In order to verify that both accounts relate to the same incident, the Chamber highlights that both ██████ describe events that occurred at the house of ██████ and that it was a woman who was beaten for being in breach of the dress code imposed by Ansar Dine/AQIM (Statement of ██████). The Chamber takes the view that that evidence is sufficient at this stage of the proceedings to conclude that both the aforementioned accounts relate to the same incident.

¹³⁷ Statement of ██████

¹³⁸ For anonymous, indirect testimony relating to an anonymous victim, see above, para. 36. See also Confirmation of Charges Decision, paras. 67 and 630 and references therein.

The Chamber also considers that the statements of [REDACTED] and [REDACTED] agree with the other accounts of the methods used by Ansar Dine/AQIM in relation to women.¹³⁹

66. Accordingly, having regard to the standard applicable at the pre-trial stage of the proceedings, the Chamber finds the following facts to be established to the standard required, on the basis of the evidence and the submissions of the parties. It will be for the Trial Chamber to explore any possible discrepancies between the witnesses in greater detail and to assess their credibility and the reliability of their statements.

67. Just as P-1721 [REDACTED] [REDACTED], Mohamed Moussa, who headed “[TRANSLATION] the morality police” and others (“[TRANSLATION] they”) were driving past. [REDACTED] [REDACTED]. Mohamed [REDACTED] [REDACTED]. [REDACTED] [REDACTED]. [REDACTED] Mohamed Moussa then beat her [REDACTED] without sufficiently covering her head with a veil.¹⁴⁰ [REDACTED] states that [REDACTED] “[TRANSLATION] would have” noticed the injuries P-1721 sustained.¹⁴¹

10. Case of P-1708¹⁴²

68. The Defence submits that the sole item of evidence presented by the Prosecutor is insufficient to establish the facts alleged in relation to P-1708, an anonymous victim. In particular, the Defence underscores that the Prosecutor relies

¹³⁹ See the synopsis of the facts relating to P-1134, P-0636 and P-0609, paras. 42, 47-48, 59 and 81-82. See also the synopsis of the facts relating to P-0574, P-0542, P-0570, P-0547 (Confirmation of Charges Decision, paras. 283, 331, 334 and 337).

¹⁴⁰ Statement of [REDACTED]; Statement of [REDACTED].

¹⁴¹ Statement of [REDACTED].

¹⁴² Request, paras. 57-58; Response, para. 52 (concerning “Allegation 9”).

exclusively on the statement of [REDACTED] and that this witness's account of the case of P-1708 is based on partial knowledge of the facts.¹⁴³

69. The Chamber is nevertheless of the view that [REDACTED] has given a sufficiently specific description of what P-1708 was subjected to and [REDACTED] [REDACTED],¹⁴⁴ which, in the Chamber's view, indicates that [REDACTED] knowledge of the facts is reliable.

70. Accordingly, having regard to the standard applicable at the pre-trial stage of the proceedings, the Chamber finds the following facts to be established to the standard required, on the basis of the statement of [REDACTED] and the submissions of the parties.

71. One Friday, Mohamed Moussa was going round the market in Timbuktu, ordering the traders to close because it was time for prayer.¹⁴⁵ During his round, he arrested P-1708, [REDACTED], and held him at the BMS.¹⁴⁶ [REDACTED]

[REDACTED].¹⁴⁷ [REDACTED]

[REDACTED].¹⁴⁸

[REDACTED]

[REDACTED].¹⁴⁹ Mohamed Moussa released P-1708 [REDACTED]

[REDACTED].¹⁵⁰

¹⁴³ Response, para. [REDACTED] (concerning "Allegation 9").

¹⁴⁴ See above, para. 36. See also Confirmation of Charges Decision, paras. 67 and 630 and references therein.

¹⁴⁵ Statement of [REDACTED]

¹⁴⁶ Statement of [REDACTED]

¹⁴⁷ Statement of [REDACTED]

¹⁴⁸ Statement of [REDACTED]

¹⁴⁹ Statement of [REDACTED]

¹⁵⁰ Statement of [REDACTED]

11. Case of P-1717¹⁵¹

72. The Prosecutor states that P-1717 was arrested by Mohamed Moussa [REDACTED] and that he received lashes of the whip in front of the BMS.¹⁵²

73. The Chamber notes that in support of her request for confirmation of the charges in the case of P-1717 the Prosecutor has supplied only the heavily redacted statement of an anonymous witness ([REDACTED]), from which it cannot be discerned whether the person is a direct or an indirect witness and which concerns an anonymous victim (P-1717) and is not corroborated by any other evidence.¹⁵³ The Chamber finds that the evidence brought by the Prosecutor in support of this case is too weak to establish the facts to the standard required.¹⁵⁴

12. Case of P-0641¹⁵⁵

74. The Defence submits that the sole item of evidence presented by the Prosecutor, that is to say, [REDACTED]'s statement, is insufficient to establish the facts alleged in relation to this victim.¹⁵⁶

75. The Chamber sees however that the evidence presented by the Prosecutor comes from an anonymous witness [REDACTED]
[REDACTED].¹⁵⁷

76. Accordingly, the Chamber finds the following facts to be established to the standard of proof required.

¹⁵¹ Request, paras. 59-60; Response, para. 52 (concerning "Allegation 10").

¹⁵² Request, para. [REDACTED].

¹⁵³ See Request, para. [REDACTED] and footnote [REDACTED]. See also Response, para. [REDACTED] (concerning "Allegation 10").

¹⁵⁴ See above, para. 36. See also Confirmation of Charges Decision, paras. 67 and 630 and references therein.

¹⁵⁵ Request, paras. 61-62; Response, para. 52 (concerning "Allegation 11").

¹⁵⁶ Response, para. 52 (concerning "Allegation 11").

¹⁵⁷ See above, para. 36. See also Confirmation of Charges Decision, paras. 67 and 630 and references therein.

77. A “[TRANSLATION] young Islamic”, [REDACTED], was harassing P-0641, [REDACTED]

[REDACTED], and [REDACTED].¹⁵⁸

78. P-0641 was arrested [REDACTED] in about [REDACTED].¹⁵⁹

[REDACTED].¹⁶⁰

[REDACTED].¹⁶¹ He was released

[REDACTED].¹⁶²

79. P-0641 was rearrested by [REDACTED]

[REDACTED].¹⁶³

13. Case of P-0609¹⁶⁴

80. The Chamber finds the following facts to be established to the standard required, on the basis of the evidence and the submissions of the parties.

81. Between April 2012 and January 2013,¹⁶⁵ P-0609 was arrested at her home by light-skinned men who wore turbans and spoke Arabic and taken to the

¹⁵⁸ Statement of [REDACTED].

¹⁵⁹ The Chamber notes that the Prosecutor has redacted information which establishes the time frame during which P-0641’s first arrest took place. In the Chamber’s view there was [REDACTED] reason for not redacting that information [REDACTED].

¹⁶⁰ Statement of [REDACTED].

¹⁶¹ Statement of [REDACTED].

¹⁶² Statement of [REDACTED].

¹⁶³ Statement of [REDACTED].

¹⁶⁴ Request, paras. 64-69; Response, para. 52 (concerning “Allegation 15”).

¹⁶⁵ The Chamber notes that although the evidence relating to this case establishes the sequence of events, it does not, conversely, establish the exact date on which each event occurred. Compare

[REDACTED]

“[TRANSLATION] morality brigade” at the BMS.¹⁶⁶ [REDACTED]
[REDACTED].¹⁶⁷ [REDACTED] other women were also detained.¹⁶⁸ They were all forced to undress
[REDACTED] and were whipped on various parts of their
bodies until they bled.¹⁶⁹ They were also beaten; P-0609 received blows [REDACTED]
[REDACTED].¹⁷⁰ The members of the armed groups then left and the women were able to get
dressed.¹⁷¹ The same sequence [REDACTED].¹⁷² P-0609 still
bears scars from that ill-treatment.¹⁷³ P-0609 was released [REDACTED].¹⁷⁴

82. A few days later,¹⁷⁵ [REDACTED] “[TRANSLATION] other rebels”¹⁷⁶ went to P-0609’s
home to put pressure on her and her father to make her agree to marry one of them,
although they did not specify whom.¹⁷⁷ Following repeated refusals by P-0609 and
her father, the members of the armed groups [REDACTED] and so
he gave in and, under duress, “[TRANSLATION] agreed” to P-0609’s marriage.¹⁷⁸
Members of the armed groups, declaring that they had held the religious marriage
ceremony in a mosque, then took P-0609 to a house in [REDACTED]

166 [REDACTED]

167 [REDACTED]

168 [REDACTED]

169 [REDACTED]

170 [REDACTED]

171 [REDACTED]

172 [REDACTED]

173 [REDACTED]

174 [REDACTED]

175 [REDACTED]

176 [REDACTED]

177 [REDACTED]

178 [REDACTED]

84. In determining whether the facts alleged by the Prosecutor in relation to P-0957 are made out, the Chamber has relied primarily on the following two documents: [REDACTED] and [REDACTED]. In the Chamber's view those two items of evidence have sufficient probative value at this stage of the proceedings to establish the facts relating to P-0957 because they contain [REDACTED] [REDACTED] and because that statement was taken [REDACTED] [REDACTED].¹⁸⁹

The Chamber also notes that those two items of evidence corroborate each other. In second place, the Chamber has also consulted the statement of [REDACTED] which gives a similar version of the facts to that of Victim P-0957. Lastly, the Chamber is mindful of [REDACTED]'s observations about the difficulties that victims of sexual violence experience in testifying about what happened to them.¹⁹⁰

85. Accordingly, having regard to the standard applicable at the pre-trial stage of the proceedings, the Chamber finds the following facts to be established on the basis of all the evidence presented by the Prosecutor and after considering the submissions of the parties.

86. About [REDACTED] after the arrival "[TRANSLATION] of the Islamists", in 2012-2013,¹⁹¹ an individual named [REDACTED] asked to marry P-0957, which she and

¹⁸⁹ [REDACTED]; [REDACTED]. The Chamber notes that document [REDACTED] was [REDACTED] [REDACTED] See Statement of [REDACTED] [REDACTED] and [REDACTED]. For document [REDACTED], see Statement of [REDACTED] [REDACTED]

¹⁹⁰ Statement of [REDACTED]. See also, above, para. 36. See also Confirmation of Charges Decision, paras. 67 and 630 and references therein.

¹⁹¹ [REDACTED] ("[TRANSLATION] movement which has the black flag with white writing", "[TRANSLATION] the Islamists"); [REDACTED] ("[TRANSLATION] When the regions of the North fell into the hands of Ansar Dine, AQIM, MLA and other movements", the "[TRANSLATION] Islamists", "[TRANSLATION] Ansar Dine, AQIM and the other movements all have the same reactionary thinking

her parents refused several times.¹⁹² [REDACTED] a light-skinned “[TRANSLATION] jihadi” who spoke Arabic,¹⁹³ belonged to the groups Ansar Dine/AQIM¹⁹⁴ and always carried a weapon.¹⁹⁵ P-0957’s parents finally gave in¹⁹⁶ as they could not hold out any longer.¹⁹⁷ A [REDACTED] marriage [REDACTED] was then solemnized despite P-0957’s objections, [REDACTED].¹⁹⁸ A marriage payment was made [REDACTED].¹⁹⁹

87. After the wedding ceremony P-0957 reluctantly moved in [REDACTED].²⁰⁰ P-0957 tried to flee [REDACTED].²⁰¹ [REDACTED]

on Islam that they wanted to impose on the population of Timbuktu”). As regards the date, the Chamber finds that it can be determined on the basis of the following evidence that the acts to which P-0957 was subjected occurred about [REDACTED] after the arrival of Ansar Dine/AQIM. The Chamber notes that P-0957 states that her marriage lasted [REDACTED] ([REDACTED] [REDACTED] and [REDACTED]) and that the person [REDACTED] ended their “[TRANSLATION] marriage” [REDACTED] ([REDACTED]). It can be concluded from those details that the events occurred between 1 April 2012 and 28 January 2013, the time frame during which those groups committed crimes.

¹⁹² [REDACTED]; [REDACTED], [REDACTED]; Statement of [REDACTED].

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED]
[REDACTED]

¹⁹⁶ [REDACTED].

¹⁹⁷ [REDACTED]; [REDACTED]
[REDACTED]. Document [REDACTED] states that [REDACTED]
[REDACTED]

[REDACTED] The Chamber has not relied upon that information because it does not appear in the other two items of evidence [REDACTED] ([REDACTED] [REDACTED]; [REDACTED])

¹⁹⁸ [REDACTED]; [REDACTED]
[REDACTED]; Statement of [REDACTED]. The Chamber notes that [REDACTED] refers to the person whom P-0957 married as [REDACTED]. The Chamber concludes from the evidence that [REDACTED] denote the same person, whom P-0957 married.

¹⁹⁹ [REDACTED].

²⁰⁰ [REDACTED]; Statement of [REDACTED]
[REDACTED].

²⁰¹ [REDACTED]; [REDACTED]
[REDACTED]; Statement of [REDACTED].

belonging to Ansar Dine/AQIM and that the acts found above to be established occurred in Timbuktu and/or the Timbuktu Region during the time frame in question, that is to say, between 1 April 2012 and 28 January 2013.²¹²

VIII. Legal conclusions

93. In the following paragraphs the Chamber will examine the evidence brought by the Prosecutor and the submissions of the parties in order to determine whether there are substantial grounds to believe that the acts relating to P-1134, P-0636, P-1674, P-1728, P-1710, P-1711, P-1712, P-1721, P-1708, P-0641, P-0609 and P-0957 can be characterized as crimes against humanity under article 7(1)(k), (g) and (h) of the Statute and war crimes under article 8(2)(c)(i), (ii) and (iv) and 8(2)(e)(vi) of the Statute. The Chamber believes that it is worth highlighting at the outset a number of points concerning the Prosecutor's chosen legal characterization of the facts in relation to the cases of P-1134, P-0636 and P-1674.

(A) Remarks on the Prosecutor's chosen legal characterization of the facts in relation to the cases of P-1134, P-0636 and P-1674

94. The Chamber notes that in her DCC, the Prosecutor elected not to include the acts of rape committed in detention against Victims ██████████ ██████████ under counts 1 to 5 or counts 11 and 12²¹³ but included them only as underlying acts of persecution under count 13.²¹⁴ The Chamber notes that, in this regard, the Prosecutor's principal line of argument was predicated on Mr Al Hassan's responsibility as a direct or indirect co-perpetrator under

²¹² Accordingly, the Chamber again rejects the Defence's submissions on this point (Response, paras. 41-44). See also, below, paras. 175 and 176.

²¹³ "Prosecution's final written observations regarding confirmation of the charges", 24 July 2019, ICC-01/12-01/18-430-Conf ("Prosecutor's Final Written Submissions"), ██████████. See also Confirmation of Charges Decision, footnotes ██████████.

²¹⁴ Confirmation of Charges Decision, para. ██████████.

article 25(3)(a) of the Statute²¹⁵ and that, with that in mind, the reason underlying the decision not to include those facts under counts 1 to 5 and 11 and 12 is probably that, in the Prosecutor's view, the evidence did not establish that the acts of rape [REDACTED], unlike those committed in the context of the forced marriages, were foreseeable consequences of the implementation of the common plan.²¹⁶

95. The Chamber therefore did not consider the acts of rape under counts 1 to 5,²¹⁷ but nevertheless drew attention to the fact that the elements of the crime against humanity of rape within the meaning of article 7(1)(g) of the Statute and of the war crime of rape within the meaning of article 8(2)(e)(vi) of the Statute were satisfied to the standard required in respect of the rapes to which [REDACTED] [REDACTED] were subjected whilst in detention under the control of members of Ansar Dine/AQIM.²¹⁸ The Chamber nevertheless confirmed those facts only under count 13 and not under counts 11 and 12, as the Prosecutor had requested.²¹⁹ That notwithstanding, the Chamber pointed out that the Trial Chamber could if necessary envisage that these criminal acts undergo legal recharacterization pursuant to regulation 55 of the Regulations of the Court, preferably at the start of the trial proceedings.²²⁰

96. In her Request, the Prosecutor is now moving the Chamber to confirm alleged rapes of P-1134, P-0636 and P-1674 not only under counts 2, 4 and 5 but also under counts 11 and 12.

²¹⁵ The Chamber rejected that line of argument and found Mr Al Hassan to be responsible for the criminal acts confirmed pursuant to article 25(3)(c) and (d) of the Statute.

²¹⁶ The Chamber uses the word "probably" because it is formulating a hypothesis. When asked about this point, the Prosecutor reiterated her choice but gave no reasons for it. See Prosecutor's Final Written Submissions, paras. [REDACTED]. See also Transcript of Hearing of 17 July 2019, ICC-01/12-01/18-T-007-CONF-FRA, [REDACTED]

²¹⁷ Confirmation of Charges Decision, footnotes [REDACTED]

²¹⁸ Confirmation of Charges Decision, paras. [REDACTED]

²¹⁹ Confirmation of Charges Decision, para. [REDACTED]

²²⁰ Confirmation of Charges Decision, para. [REDACTED]

97. The Chamber notes that, as a consequence, when it comes to Victims ██████████ ██████████ who suffered a similar type of harm, their victimization is not characterized in the same way in the case *sub judice*. The Chamber would therefore once again draw the attention of the Trial Chamber to this point so that the facts thus characterized can be examined and, should the Trial Chamber think it appropriate, undergo a change in characterization pursuant to regulation 55 of the Regulations of the Court, preferably at the start of the trial proceedings.

(B) Legal conclusions common to all the cases

98. The Chamber is satisfied that all the acts described in this section were part of a widespread and systematic attack directed against the civilian population of Timbuktu and the Timbuktu Region between 1 April 2012 and 28 January 2013 and that the perpetrators of those acts, on account of their status as members of Ansar Dine or AQIM²²¹ committing that attack, had knowledge of the existence of the attack and knew that the conduct was part of it.

99. Furthermore, as stated in the Confirmation of Charges Decision, the Chamber is also satisfied that the perpetrators of those crimes could not have been unaware of the factual circumstances that established the existence of the non-international armed conflict within which those acts were occurring.

100. Lastly, the Chamber also considers that, in contrast to the Defence's assertion,²²² the alleged criminal conduct took place in the context of and was associated with the armed conflict not of an international character, as described in the Confirmation of Charges Decision.²²³ In that respect, the Chamber underscores that it has determined that all the new cases took place in Timbuktu and the Timbuktu Region, in a place under the exclusive control of the armed groups

²²¹ See Confirmation of Charges Decision, paras. 76 and 960.

²²² Response, para. 46.

²²³ See Confirmation of Charges Decision, para. 227. See also Confirmation of Charges Decision, VI. B. Contextual elements of war crimes.

Ansar Dine/AQIM; that it was precisely the armed conflict that placed the perpetrators of the crimes, who all belonged to Ansar Dine/AQIM, in a position to commit those crimes, and the crimes were committed with the same purpose as the conflict itself, that is, to institute over a territory encompassing Timbuktu and the Timbuktu Region a new apparatus of power on the basis of the religious ideology of the groups Ansar Dine/AQIM and, to compel, by the use and threat of force, the civilian population of Timbuktu to submit to it.²²⁴ The Chamber likewise considers that, on the evidence presented, all the aforementioned victims were civilians and ordinary citizens of Timbuktu, and that the perpetrators of the crimes could not have been unaware of that status.

(C) Counts 1 to 5: torture, other inhumane acts, cruel treatment and outrages upon personal dignity

1. Torture (articles 7(1)(f) and 8(2)(c)(i) of the Statute)

101. The Prosecutor is not requesting confirmation of charges under the crime of torture in relation to any of the cases contained in her Request.

102. The Chamber notes therefore that the Prosecutor is not asking for the case of P-1134 to be characterized as torture. The Chamber nevertheless determines that, on the basis of the following factors combined, the element of severe pain required to qualify as torture may be satisfied: the victim's [REDACTED] together with her vulnerability and mental state ([REDACTED])

[REDACTED] the conditions of her detention, including the fact [REDACTED]

²²⁴ See Confirmation of Charges Decision, paras. 182, 224 (“[Furthermore, it was this context of armed conflict that put AQIM and Ansar Dine in a position not only to capture the city but also to cement their power over it and to control it between 1 April 2012 and 28 January 2013, and afforded them the necessary authority and the opportunity to use force and coercion against the population of Timbuktu and the Timbuktu Region during that time”) and para. 957.

104. The Chamber would therefore draw the attention of the Trial Chamber to these points so that the facts thus characterized can be examined and, should the Trial Chamber think it appropriate, undergo a change in characterization pursuant to regulation 55 of the Regulations of the Court, preferably at the start of the trial proceedings.

2. Other inhumane acts (article 7(1)(k) of the Statute)

105. The Prosecutor requests the Chamber to confirm the charges under the legal characterization of other inhumane acts (count 2) in the cases of P-1134, P-0636, P-1707, P-1708, P-1717, P-0609 and P-0957.

106. The facts have not been established in relation to P-1707 and P-1717. Accordingly, the Chamber will not consider those cases in the following paragraphs.

107. In respect of Victim P-0957, the Chamber notes that the Prosecutor requests confirmation of the charges under counts 2, 4 and 5, even though it is a case of forced marriage. For all the other cases of forced marriage, the Prosecutor has at no time requested confirmation of the facts relating to a forced marriage under charges 1 to 5. Accordingly, the Chamber takes the view that this is a mischaracterization and, in the interests of the consistent legal characterization of similar facts, declines to confirm the charges under counts 2, 4 or 5 in relation to the forced marriage to which P-0957 was subjected.

108. Turning to the degree of suffering experienced in the cases of P-1134, P-0636 and P-0609, the Chamber finds that, in view of the accumulation and combination of the acts of violence inflicted on each victim and the facts found in relation to them taken as a whole, great suffering is established in respect of all those cases. Of particular concern here is the cumulative effect of various factors such as the age of the victims; their vulnerability as [REDACTED] (and “[TRANSLATION] at the mercy” of their assailants); the conditions of detention ([REDACTED]); the fact that they witnessed ill-treatment

inflicted on other female detainees; and the physical abuse inflicted. As regards P-1708, the Chamber notes that a great degree of suffering is found to be met because the witness describes the victim as [REDACTED]. That vulnerability criterion must have exacerbated the suffering experienced during that day in detention, [REDACTED] by Mohamed Moussa [REDACTED] even after being told about [REDACTED].²²⁷

109. The nature and gravity of those acts also establish that they were similar in character to the other acts under article 7(1) of the Statute.

110. As to the mental element of the crimes required by article 30 of the Statute, the Chamber finds it also to be established, on the evidence presented, and specifically the detailed accounts from the victims themselves, that the perpetrators of the crimes had the intent to commit those crimes, and, on account of the nature of the acts committed, that it was their intent and they had knowledge that the consequence of those acts would be great suffering to their victims.

111. Accordingly the Chamber finds that there are substantial grounds to believe that, between 1 April 2012 and 28 January 2013, in Timbuktu and the Region of the same name, members of Ansar Dine/AQIM committed, as part of a widespread and systematic attack directed against the civilian population, the acts found, at paragraphs 41 to 92 above, to be established,²²⁸ constituting the crime against humanity of other inhumane acts under article 7(1)(k) of the Statute, against the following victims:

- P-1134;
- P-0636;

²²⁷ See above, para. [REDACTED].

²²⁸ See also, above, paras. 98-100.

- P-1708; and
- P-0609.

112. In contrast, the Chamber has taken the view that the evidence adduced by the Prosecutor has not established that there are substantial grounds to believe that the acts relating to the following victim can be characterized as the crime against humanity of other inhumane acts within the meaning of article 7(1)(k) of the Statute:

- P-0957.²²⁹

113. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²³⁰

3. Cruel treatment (article 8(2)(c)(i) of the Statute)

114. The Prosecutor requests the Chamber to confirm the charges under the legal characterization of cruel treatment (count 4) in the cases of P-1134, P-0636, P-1707, P-1717, P-0609 and P-0957.

115. The facts have not been established in relation to P-1707 and P-1717 and the Chamber declines to confirm the charges under counts 2, 4 or 5 in relation to P-0957.²³¹ Accordingly, the Chamber will not consider those cases in the following paragraphs.

116. In respect of the cases of P-1134, P-0636 and P-0609, following the same reasoning as above, the Chamber finds it to be established that there was a severe degree of suffering,²³² that the perpetrators of those crimes had the intent to commit

²²⁹ The legal characterization of other inhumane acts in the form of forced marriage (article 7(1)(k) of the Statute), also under count 2, was nevertheless adopted for the facts relating to P-0957, but is discussed below. See, below, para. 158.

²³⁰ See, below, IX. Responsibility.

²³¹ See, above, para. 107.

²³² See, above, para. 108.

them and that it was their intent and they had knowledge that the consequence of those acts would be severe suffering.²³³

117. The Chamber has, above, characterized the facts relating to P-1708 as other inhumane acts.²³⁴ The Chamber points out that the Prosecutor has not, in contrast, requested confirmation of the charges under the legal characterization of cruel treatment for this case. Given its considerations on the similar degree of suffering for the crime of other inhumane acts and that of cruel treatment, as referred to in its Confirmation of Charges Decision,²³⁵ the Chamber is of the opinion that if, in relation to this case, the legal characterization of other inhumane acts is adopted, so should that of cruel treatment. Accordingly, the Chamber adopts that legal characterization in its findings and considers that, in view of the similarity between the elements of the two crimes, it is unnecessary to make use of article 61(7)(c)(ii) of the Statute for this purpose.²³⁶

118. The Chamber finds that there are substantial grounds to believe that, between 1 April 2012 and 28 January 2013, in Timbuktu and the Region of the same name, members of Ansar Dine/AQIM committed, as part of a non-international armed conflict, the acts found, at paragraphs 41 to 92 above, to be established,²³⁷ constituting the war crime of cruel treatment under article 8(2)(c)(i) of the Statute, against the following victims:

- P-1134;
- P-0636;

²³³ See, above, para. 110.

²³⁴ See, above, para. 108.

²³⁵ See Confirmation of Charges Decision, paras. 256-259.

²³⁶ See Appeals Chamber, "Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled 'Judgment pursuant to Article 74 of the Statute'", 8 March 2018, ICC-01/05-01/13-2275-Red, para. 185.

²³⁷ See also above, paras. 98-100.

- P-1708; and
- P-0609.

119. In contrast, the Chamber has taken the view that the evidence adduced by the Prosecutor has not established that there are substantial grounds to believe that the acts relating to the following victim can be characterized as cruel treatment constituting war crimes within the meaning of article 8(2)(c)(i) of the Statute:

- P-0957.

120. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²³⁸

4. Outrages upon personal dignity (article 8(2)(c)(ii) of the Statute)

121. The Prosecutor requests the Chamber to confirm the charges under the legal characterization of outrages upon personal dignity (count 5) in the cases of P-1134, P-0636, P-1728, P-1707, P-1717, P-0609 and P-0957.

122. The facts have not been established in relation to P-1707 and P-1717 and the Chamber declines to confirm the charges under counts 2, 4 or 5 in relation to P-0957.²³⁹ Accordingly, the Chamber will not consider those cases in the following paragraphs.

123. As to the cases of P-1134, P-0636, P-1728 and P-0609, the Chamber finds that the various accounts given by the victims and witnesses constitute, without exception, outrages upon personal dignity within the meaning of article 8(2)(c)(ii) of the Statute, in the light of the nature of the acts, the circumstances in which they occurred and the vulnerability of the victims vis-à-vis their assailants. To

²³⁸ See, below, IX. Responsibility.

²³⁹ See, above, para. 107.

the Chamber, all those acts constituted violations of such gravity as to be found overall to be outrages upon personal dignity.

124. Following the same reasoning as above,²⁴⁰ the Chamber finds that the perpetrators of the crimes in those cases had the intent to commit them and that it was their intent and they had knowledge that the consequence of those acts would be to violate the dignity of the victims.

125. The Chamber notes that the Prosecutor is not asking for the case of P-1708 to be characterized as outrages upon dignity. The Chamber nevertheless determines that the elements of that crime could be regarded as satisfied, in view of [REDACTED] and his assailants' conduct towards him, and that to so characterize this case would be consistent with the legal characterizations adopted for other cases considered in the Confirmation of Charges Decision.²⁴¹ The Chamber would therefore draw the attention of the Trial Chamber to this point so that the facts thus characterized can be examined and, should the Trial Chamber think it appropriate, undergo a change in characterization pursuant to regulation 55 of the Regulations of the Court, preferably at the start of the trial proceedings.

126. The Chamber therefore finds that there are substantial grounds to believe that, between 1 April 2012 and 28 January 2013, in Timbuktu and the Region of the same name, members of Ansar Dine/AQIM committed, as part of a non-international armed conflict, the acts found, at paragraphs 41 to 92 above,²⁴² to be established, constituting the war crime of outrages upon personal dignity under article 8(2)(c)(ii) of the Statute, against the following victims:

- P-1134;
- P-0636;

²⁴⁰ See, above, para. 110.

²⁴¹ See, e.g., the cases of [REDACTED] or the case [REDACTED], Confirmation of Charges Decision, see paras. [REDACTED] respectively.

²⁴² See also, above, paras. 98-100.

- P-1728; and
- P-0609.

127. In contrast, the Chamber has taken the view that the evidence adduced by the Prosecutor has not established that there are substantial grounds to believe that the acts relating to the following victim can be characterized as the war crime of outrages upon personal dignity within the meaning of article 8(2)(c)(ii) of the Statute:

- P-0957.

128. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²⁴³

(D)Count 6: passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable

129. The Prosecutor requests the Chamber to confirm the charges under the legal characterization of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable (count 6) in the cases of P-1134, P-1705, P-1706, P-0636, P-1710, P-1711, P-1712, P-1721, P-1708 and P-1717.

130. The facts have however not been established to the standard required in relation to P-1705, P-1706 and P-1717. Accordingly, the Chamber will not consider those cases in the following paragraphs.

131. In accordance with the applicable law surveyed in the Confirmation of Charges Decision,²⁴⁴ the Chamber will look first at whether a sentence was passed. The Chamber points out that, in contrast to the Defence's contention,²⁴⁵ the crime under article 8(2)(c)(iv) of the Statute may arise from the absence of previous

²⁴³ See, below, IX. Responsibility.

²⁴⁴ Confirmation of Charges Decision, paras. 357-368, in particular paras. 362-368.

²⁴⁵ Response, para. 47.

judgment and may take the form of a so-called direct sentence and it is therefore not necessary that the victim appeared before a judge or that a court or judge ordered the penalty, provided that an authority empowered, by the system in place at the material time, to pass sentence pronounced the penalty.²⁴⁶

132. As regards the cases of P-1134, P-0636, P-1710, P-1711, P-1712, P-1721 and P-1708, the Chamber finds, contrary to the Defence's contention,²⁴⁷ that the description of the circumstances and perpetrators given by each witness shows that a sentence was passed orally without previous judgment by members of the armed groups Ansar Dine/AQIM²⁴⁸ – and specifically in certain cases by Mohamed Moussa as a member of the *Hisbah*²⁴⁹ – which were the authorities then empowered, by the system in place at the material time, to pass sentence.²⁵⁰

133. Furthermore, for each case, absent documentary evidence of a sentence passed in writing, the Chamber has been able to infer the passing of a sentence from the statements of witnesses recounting it and from the fact that it was carried out. In this respect, to satisfy itself that the punishments imposed did result from the sentences, the Chamber has noted that, on account of the position or type of veil they wore,²⁵¹ P-1134, P-0636, P-1710, P-1711 and P-1712 were placed in detention and P-1721 was beaten, whereas P-1708 was placed in detention for [REDACTED].²⁵² Furthermore, the Chamber is of the view that those sentences constitute the implementation of Abou Zeid's instructions to the armed groups,

²⁴⁶ Confirmation of Charges Decision, para. 363.

²⁴⁷ Response, para. 47.

²⁴⁸ A sentence of imprisonment in respect of P-1134 and P-0636.

²⁴⁹ A sentence of imprisonment in respect of P-1134, P-1710, P-1711, P-1712 and P-1708; a sentence of corporal punishment in respect of P-1721.

²⁵⁰ For the power of law enforcement forces to decide on and apply certain punishments, see Confirmation of Charges Decision, paras. 131-140.

²⁵¹ The Chamber notes that the reason P-0636 was arrested [REDACTED].

[REDACTED] (see Statement of P-0636, [REDACTED]).

²⁵² Statement of [REDACTED].

specifically the instruction to apply discretionary penalties in the case of women repeatedly found not wearing a veil or not wearing it correctly, or in the case of violations of other rules laid down by Ansar Dine/AQIM.²⁵³

134. The Chamber finds that these sentences were passed without referral to the Islamic Court and without previous judgment. To be specific, P-1134, P-0636, P-1710, P-1711, P-1712 and P-1708 were placed in detention straightaway where they remained until their release. In addition, P-1721 was beaten, immediately [REDACTED] [REDACTED] without covering her head sufficiently.

135. As regards the mental element required of the perpetrators of crimes at article 30 of the Statute, the Chamber concludes, in particular from the use of threats and force against the victims, that the perpetrators engaged in that conduct with intent and knowledge. Furthermore, the Chamber sees that the perpetrators passed the above-identified sentences for a particular purpose and ordered them to be carried out directly, without previous judgment.

136. Lastly the Chamber notes that the Prosecutor is not asking for P-0609's first episode of detention, the result of [REDACTED], to be characterized as the passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable, under article 8(2)(c)(iv) of the Statute. The Chamber nevertheless determines that the elements for the facts to be characterized as that crime are satisfied, and that to so characterize this case would also be consistent with the legal characterization adopted for other cases considered in this decision and in the Confirmation of Charges Decision.²⁵⁴ The Chamber would therefore draw the attention of the Trial Chamber to this point so that the facts thus characterized can be

²⁵³ See [REDACTED].

²⁵⁴ See Confirmation of Charges Decision, paras. 412-415, in relation to the cases of P-0547, P-0574, P-0580's daughter, P-0570 and P-0542.

examined and, should the Trial Chamber think it appropriate, undergo a change in characterization pursuant to regulation 55 of the Regulations of the Court, preferably at the start of the trial proceedings.

137. Having regard to the foregoing, the Chamber finds that there are substantial grounds to believe that, between 1 April 2012 and 28 January 2013, in the city and Region of Timbuktu, members of Ansar Dine/AQIM committed, as part of a non-international armed conflict, the acts found, at paragraphs 41 to 92, to be established,²⁵⁵ constituting the war crime of the passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable, under article 8(2)(c)(iv) of the Statute, against the following victims:

- P-1134;
- P-0636;
- P-1710;
- P-1711;
- P-1712;
- P-1721; and
- P-1708.

138. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²⁵⁶

²⁵⁵ See also, above, paras. 98-100.

²⁵⁶ See, below, IX. Responsibility.

(E) Counts 8 to 12: rape, sexual slavery and other inhumane act in the form of forced marriage

1. Rape (articles 7(1)(g) and 8(2)(e)(vi) of the Statute)

139. The Prosecutor requests the Chamber to confirm the charges under the legal characterization of rape (counts 11 and 12) in the cases of P-1134, P-0636, P-1674, P-0609 and P-0957.

140. The Chamber considers that the facts found in the cases of P-1134,²⁵⁷ P-0636,²⁵⁸ P-0609²⁵⁹ and P-0957²⁶⁰ show invasion of the bodies of all the abovementioned victims by conduct resulting in penetration. The Chamber considers that the conditions and circumstances of the invasion of the bodies of the above-mentioned victims show that the act was committed by force (beating the victims), the threat of force against them (threatened with a weapon), and taking advantage of the coercive environment prevailing in Timbuktu. The Chamber observes in that respect that, in the cases of P-1134 and P-0636, these acts were committed while the victims were in detention, fully in their jailer's control, and notes the vulnerability of those victims, who had valid reasons to fear for their lives. In addition, the Chamber considers that the subjective elements required by article 30 of the Statute are also established since the assailants themselves inflicted, physically and psychologically, acts of violence and humiliation. Some, moreover, could not have been unaware that the victims had cried or expressed their objection verbally and physically.²⁶¹ The perpetrators were aware of the circumstances in which these victims found themselves and of the force, threats and duress they were exerting on them, as well as the prevailing coercive environment, given, as regards some of the victims, that the acts were committed

²⁵⁷ For P-1134, see above, para. 42.

²⁵⁸ For P-0636, see above, paras. 47-48.

²⁵⁹ For P-0609, see above, para. 82.

²⁶⁰ For P-0957, see above, paras. 86-91.

²⁶¹ P-0957 [REDACTED] (See above, para. 87).

while they were detained at the BMS. The perpetrators nevertheless deliberately forced those victims into having sexual relations.

141. As regards the case of P-1674, the Chamber infers the above-mentioned elements of the crime from the fact that P-1674 was detained by the “[TRANSLATION] Islamists” for nearly a week because [REDACTED]

[REDACTED] that she [REDACTED]
[REDACTED]

[REDACTED]. The Chamber notes that what [REDACTED]
[REDACTED], which appears to show [REDACTED]
[REDACTED]

[REDACTED]. In that connection the Chamber draws attention to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED].²⁶²

142. In the light of the foregoing, the Chamber finds that there are substantial grounds to believe that, between 1 April 2012 and 28 January 2013, in the city of Timbuktu and the Region of the same name, members of Ansar Dine/AQIM committed, as part of a widespread and systematic attack against the civilian population and a non-international armed conflict, the acts found, at paragraphs 41 to 92, to be established,²⁶³ constituting the crime against humanity and war crime of rape under article 7(1)(g) and article 8(2)(e)(vi) of the Statute, against the following victims:

- P-1134;

²⁶² Statement of [REDACTED].

²⁶³ See also above, paras. 98-100.

- P-0636;
- P-1674;
- P-0609; and
- P-0957.

143. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²⁶⁴

2. Sexual slavery (articles 7(1)(g) and 8(2)(e)(vi) of the Statute)

144. The Prosecutor requests the Chamber to confirm the charges under the legal characterization of sexual slavery (counts 9 and 10) in the cases of P-1134, P-0636, P-1674, P-0609 and P-0957.

145. The facts found make clear that P-0609²⁶⁵ and P-0957²⁶⁶ were deprived of liberty and control over their daily lives. Those victims were taken away by force and the threat of force. They were at the service of their "husbands" or even, in the case of P-0609, several men, and had to remain at their disposal. The Chamber considers that the way the victims were treated put them in a situation of dependence, depriving them of any form of autonomy, and that their assailants exercised over them powers attaching to the right of ownership.

146. Moreover, on the basis of its findings that each victim was raped, the Chamber considers that the second material element of the crime of sexual slavery, *viz.*, the perpetrator caused such person or persons to engage in one or more acts of a sexual nature, is met.

²⁶⁴ See, below, IX. Responsibility.

²⁶⁵ For P-0609, see above, para. 82.

²⁶⁶ For P-0957, see above, paras. 86-91.

147. Lastly, in the view of the Chamber, by taking Victims P-0609 and P-0957 away by force and the threat of force and holding them captive in a house,²⁶⁷ the perpetrators had the intent to exercise over them the powers attaching to the right of ownership or could not have been unaware that they were exercising such power over them such that they were in effect under their control and had no real freedom of movement. Furthermore, the items of evidence, taken together, establish that the perpetrators deliberately caused their victims to have sexual relations with them. Therefore, the above-mentioned perpetrators meant to reduce their victims to sexual slavery or knew that, through their acts, they were reducing them to sexual slavery.

148. The Chamber is of the view that for P-1134 and P-0636 the Prosecutor has not shown that the “right of ownership” constituent element of the crime of sexual slavery – which would distinguish those cases from rape and ill-treatment inflicted in detention (lasting ██████ in one case) – was satisfied. Accordingly, the Chamber declines to confirm the legal characterization of sexual slavery in relation to Victims P-1134 and P-0636. Lastly, as regards the case of P-1674, the Chamber finds that the evidence presented by the Prosecutor does not establish any facts other than the rape of P-1674 and therefore does not establish that the constituent elements of the crime of sexual slavery, such as the “right of ownership” element, are satisfied. Accordingly, the Chamber likewise declines to confirm the legal characterization of sexual slavery in relation to P-1674.

149. In the light of the foregoing, the Chamber finds that there are substantial grounds to believe that, between 1 April 2012 and 28 January 2013, in the city of Timbuktu and the Region of the same name, members of Ansar Dine/AQIM committed, as part of a widespread and systematic attack against the civilian population and a non-international armed conflict, the acts found at paragraphs 41

²⁶⁷ Even though P-0957 was able to leave the house she shared with ██████, she was forced to return there and to live with him. This is illustrated by ██████ (see above, para. 87).

to 92 to be established,²⁶⁸ constituting the crime against humanity and war crime of sexual slavery under article 7(1)(g) and article 8(2)(e)(vi) of the Statute, against the following victims:

- P-0609; and
- P-0957.

150. In contrast, the Chamber has taken the view that the evidence adduced by the Prosecutor has not established that there are substantial grounds to believe that the acts referred to at paragraphs 41 to 92 can be characterized as sexual slavery within the meaning of article 7(1)(g) of the Statute and within the meaning of article 8(2)(e)(vi) of the Statute, in respect of the following victims:

- P-1134;
- P-0636; and
- P-1674.

151. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²⁶⁹

3. Other inhumane acts in the form of forced marriages (article 7(1)(k) of the Statute)

152. The Prosecutor requests the Chamber to confirm the charges under the legal characterization of other inhumane acts (count 8) in the cases of P-0609 and P-0957.

153. In the view of the Chamber, several pieces of evidence go to establish that there was a marriage in the cases of P-0609²⁷⁰ and P-0957 described above,²⁷¹ in particular the fact that a marriage "[TRANSLATION] proposal" was made to the victims

²⁶⁸ See also above, paras. 98-100.

²⁶⁹ See, below, IX. Responsibility.

²⁷⁰ For P-0609, see above, para. 82.

²⁷¹ For P-0957, see above, paras. 86-91.

and the families, a marriage payment was made and solemnization of the marriage took place. In addition, the Chamber has taken into consideration the perceptions of the victims, perpetrators and third parties, as revealed above by their behaviour and the terms they used.

154. The Chamber finds furthermore that the marriages were imposed on Victims P-0609 and P-0957, who, through the words and conduct of the perpetrators, were compelled with threats that force would be used against them or members of their families. Moreover, those victims or their families stated their opposition and, aware of the risks they ran if they refused to comply, had no choice but to suffer in silence.

155. The Chamber is also of the view that all the above-mentioned conduct caused the victims great suffering and serious physical or mental harm with lasting effects, such as the physical after-effects of the blows received and of being used for sexual acts; the violation of their fundamental right to choose a spouse and found a family consensually; and the stigmatization suffered by the victims [REDACTED].

156. In addition, given the perpetrators' violent conduct, the vulnerability of the victims and the effects on their physical and mental health, the Chamber determines that the conduct described above, considered as a whole, is of the same degree of gravity as the other crimes against humanity listed in the Statute.

157. The Chamber notes that the perpetrators of the crime used force, threats and intimidation to force the victims to marry, and interacted violently with them in the course of their "marriage". The Chamber therefore finds that the perpetrators engaged in that conduct intentionally. Furthermore, in the Chamber's view, it follows from the involvement of the perpetrators in the marriage "[TRANSLATION] proposals" and their participation in the rapes and sexual slavery that they could not have been unaware of the coercive character of their "marriages".

158. The Chamber consequently finds that there are substantial grounds to believe that, between 1 April 2012 and 28 January 2013, in the city of Timbuktu and the

Region of the same name, members of Ansar Dine/AQIM committed, as part of a widespread and systematic attack against the civilian population, the acts found, at paragraphs 41 to 92, to be established,²⁷² constituting the crime against humanity of other inhumane acts in the form of forced marriages, under article 7(1)(k) of the Statute, against the following victims:

- P-0609; and
- P-0957.

159. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²⁷³

(F) Count 13: persecution

160. The Prosecutor requests the Chamber to include the criminal acts relating to P-1134, P-1705, P-1706, P-0636, P-1674, P-1728, P-1707, P-1710, P-1711, P-1712, P-1721, P-1708, P-1717, P-0641, P-0609 and P-0957 as underlying acts of persecution and to confirm those facts under the legal characterization of persecution on religious and gender grounds (count 13).

161. As underscored above, the facts have not been established in relation to P-1705, P-1706, P-1707 and P-1717. Accordingly, the Chamber will not consider those cases in the following paragraphs.

162. As to the acts that are capable of constituting acts of persecution within the meaning of article 7(1)(h) of the Statute, the Chamber refers to its determinations on the crimes set out above in counts 2, 4, 5, 6 and 8 to 12, described in paragraphs 41 to 7380 to 92²⁷⁴ in respect of P-1134, P-0636, P-1674, P-1728, P-1710, P-1711, P-1712, P-1721, P-1708, P-0609 and P-0957, and finds that those acts constitute a severe

²⁷² See also above, paras. 98-100.

²⁷³ See, below, IX. Responsibility.

²⁷⁴ See also above, paras. 98-100.

deprivation of fundamental rights contrary to international law.²⁷⁵ The Chamber also finds that the aforementioned acts of persecution were committed in connection with the crimes being prosecuted in the case *sub judice*.²⁷⁶

163. The Chamber recalls in addition that the acts which it may consider for persecution are not limited to the specific criminal acts contained in counts 1 to 12.²⁷⁷ With that in mind, the Chamber considers that the above-described acts to which P-0641 was subjected, that is to say, the harassment and the two arrests, violated individual freedoms such as the right not to be subjected to arbitrary arrest or detention and the right to freedom of expression.²⁷⁸ The Chamber notes that, according to the Defence, the acts to which P-0641 was subjected do not constitute criminal conduct.²⁷⁹ The Chamber observes nevertheless that to make a finding of grave violations of fundamental rights, it may take into account the cumulative effect of the underlying acts and that it suffices that the underlying acts were committed in connection with a crime falling within the jurisdiction of the Court.²⁸⁰ The Chamber will therefore not examine, individually or in isolation, the acts to which P-0641 was subjected, but in the light of all the other underlying acts and the crimes found in the Confirmation of Charges Decision to be made out. Accordingly, the Chamber includes the acts to which P-0641 was subjected in the category of acts that violate individual freedoms.²⁸¹

164. Regarding the discriminatory aspect of those violations, the Chamber refers, first, to its findings in which it determined that Ansar Dine/AQIM targeted the civilian population of Timbuktu and the Timbuktu Region on religious grounds because it was perceived as not adhering to their religious ideology and because

²⁷⁵ Confirmation of Charges Decision, para. 685.

²⁷⁶ Confirmation of Charges Decision, paras. 686-687.

²⁷⁷ Confirmation of Charges Decision, para. 674.

²⁷⁸ See Confirmation of Charges Decision, para. 668.

²⁷⁹ Response, para. 52.

²⁸⁰ Confirmation of Charges Decision, para. 672.

²⁸¹ See Confirmation of Charges Decision, para. 683.

their objective was to compel, if necessary by the use and threat of force, the population to submit to it.²⁸²

165. Secondly, the Chamber refers to its findings in which it determined that Ansar Dine/AQIM targeted in particular the women of Timbuktu and the Timbuktu Region on grounds of gender in so far as they imposed disproportionate penalties on women and imposed punishments that involved gender-specific violence.²⁸³

166. Lastly, as the Chamber noted in the Confirmation of Charges Decision, the violence inflicted on women may also have been motivated by considerations related to skin colour, as dark-skinned women were more affected than others by such violence.²⁸⁴ It emphasizes in that connection that, [REDACTED]

[REDACTED], [REDACTED] explained that “[TRANSLATION] [n]early all the victims of sexual violence [REDACTED] were black Tamasheqs commonly referred to as Bella, whom society regards as descendants of slaves”.²⁸⁵

167. In respect of the mental elements, the Chamber recalls that it determined there to be substantial grounds to believe that the members of Ansar Dine/AQIM committed the aforementioned acts with intent, within the meaning of article 30 of the Statute, by acting deliberately or, at the very least, were aware that that consequence would occur in the ordinary course of events. The members of Ansar Dine/AQIM worked on a daily basis for several months for the various bodies set up to impose the groups’ religious ideology on the population of Timbuktu and, as part of their duties, they themselves deliberately committed, physically and

²⁸² Confirmation of Charges Decision, paras. 688-696.

²⁸³ Confirmation of Charges Decision, paras. 697-701.

²⁸⁴ Confirmation of Charges Decision, para. 702.

²⁸⁵ [REDACTED].

verbally, the aforementioned acts of violence, oppression and intimidation against the civilian population of Timbuktu.²⁸⁶

168. The Chamber recalls that it determined that the discriminatory intent can be seen from the many statements made by the members of Ansar Dine/AQIM, the general attitude of those individuals and the circumstances surrounding the commission of the acts of persecution, and that it had particular regard to their violent treatment of elderly persons, pregnant women and even children.²⁸⁷

169. The Chamber finds that all the acts described above in paragraphs 41 to 92²⁸⁸ in respect of P-1134, P-0636, P-1674, P-1728, P-1710, P-1711, P-1712, P-1721, P-1708, P-0641, P-0609 and P-0957 constitute severe deprivations of fundamental rights contrary to international law, such as the right to freedom of expression, the right to freedom of association and freedom of assembly, the right not to be subjected to torture or to cruel, inhuman or degrading treatment, the right not to be subjected to arbitrary arrest or detention, the right to private property and the right to education. The Chamber is moreover satisfied that this persecution was directed specifically against an identifiable group or collectivity, on religious and gender grounds. The Chamber is also satisfied that these acts were committed as part of the widespread and systematic attack directed against the civilian population of Timbuktu and the Timbuktu Region from April 2012 to January 2013. The Chamber is furthermore satisfied that those acts were committed in connection with the crimes referred to in articles 7(1)(k), 7(1)(f), 7(1)(g), 8(2)(c)(i), 8(2)(c)(ii), 8(2)(c)(iv), 8(2)(e)(iv) and 8(2)(e)(vi) of the Statute. Lastly, the Chamber finds that those acts were committed by members of Ansar Dine/AQIM against civilians who were opposed to or were regarded as being opposed to the political and religious ideology of Ansar Dine/AQIM – and, in particular, against women on grounds of gender – as

²⁸⁶ Confirmation of Charges Decision, para. 703.

²⁸⁷ Confirmation of Charges Decision, para. 704.

²⁸⁸ See also above, paras. 98-100.

part of a widespread and systematic attack directed against the civilian population of Timbuktu.

170. The Chamber therefore finds that the underlying acts referred to above constitute the crime against humanity of persecution on religious and gender grounds under article 7(1)(h) of the Statute.

171. Mr Al Hassan's individual responsibility in relation to the facts found above will subsequently be considered.²⁸⁹

IX. Responsibility

172. The Prosecutor requests the Chamber to add the new criminal acts relating to P-1134, P-0636, P-1674, P-1728, P-1710, P-1711, P-1712, P-1721, P-1708, P-0641, P-0609 and P-0957²⁹⁰ that the Chamber found in section VIII under counts 2, 4 to 6 and 8 to 13 to be established, and to confirm the responsibility of Mr Al Hassan pursuant to article 25(3)(d) of the Statute²⁹¹ in respect of the counts thus amended.

(A) Responsibility of Mr Al Hassan under article 25(3)(d) of the Statute

173. The Chamber recalls that these new criminal acts have been established to the standard required, *viz.*, there are substantial grounds to believe that between 1 April 2012 and 28 January 2013, P-1134, P-0636, P-1674, P-1728, P-1710, P-1711, P-1712,

²⁸⁹ See, below, IX. Responsibility.

²⁹⁰ The Chamber recalls that in the cases of P-1705, P-1706, P-1707 and P-1717 it determined that, on the basis of the evidence submitted by the Prosecutor, it was unable to find them to be established to the standard of proof required (see above, paras. 45, 57 and 73). It will therefore not examine the responsibility of Mr Al Hassan in relation to those cases.

²⁹¹ The Chamber notes that the Prosecutor also requests that other forms of responsibility be confirmed in relation to the cases of P-1707 and [REDACTED] (Request, paras. 50 [REDACTED]). The Chamber points out however that it has not examined the case [REDACTED] because the Prosecutor was already aware of the acts to which [REDACTED] was subjected at the time her DCC was filed and has not presented any new evidence to prove those facts, and that as regards the case of P-1707 the evidence presented by the Prosecutor in support was insufficient (see above, paras. 35 and 57). In the following paragraphs the Chamber will therefore not examine the responsibility of Mr Al Hassan under article 25(3)(a) and (c) of the Statute.

P-1721, P-1708, P-0641, P-0609 and P-0957 were subjected to the acts as described in paragraphs 41 to 92. Next, the Chamber points out that it has also been established to the standard required that the perpetrators of the new criminal acts belonged to the groups Ansar Dine/AQIM and that those new criminal acts were carried out during the time frame in question.²⁹² Lastly, the Chamber notes that the legal characterizations relied on for those new acts correspond to those described under counts 1 to 13 in the Confirmation of Charges Decision. The Chamber is therefore of the view that those new criminal acts fall under counts 1 to 13, as found in the Confirmation of Charges Decision to be made out.

174. As to the responsibility of Mr Al Hassan under article 25(3)(d) of the Statute, the Chamber recalls that in the Confirmation of Charges Decision it looked at Mr Al Hassan's contributions to each crime encompassed by the common purpose – torture, cruel treatment, outrage upon dignity, other inhumane acts (including in the context of forced marriages), sentencing, attacking protected objects, rape, sexual slavery and persecution – and found the contributions to be made out, having taken the view that, given the duties which Mr Al Hassan performed *on a daily basis* in the Islamic Police, it was not necessary to explore the nexus between Mr Al Hassan's contribution and each of the criminal acts constituting those crimes.²⁹³

175. The Chamber notes in relation to the cases of P-1134, P-0636, P-1674, P-1728, P-1710, P-1711, P-1721, P-1708 and P-0609 that the dates of those acts are defined only by a date range, April 2012 to January 2013, which includes a relatively short period (before 7 May 2012) for which it has not been proven by the Prosecutor that Mr Al Hassan was working for the Islamic Police.²⁹⁴ In the Chamber's opinion, the vagueness about the exact dates of the events related to those cases does not throw doubt on the existence of substantial grounds to believe that the events occurred at

²⁹² See above, para. 92.

²⁹³ Confirmation of Charges Decision, paras. 950-951 and 962-1000.

²⁹⁴ See also Response, paras. 42-43.

the time Mr Al Hassan was performing his duties in the Islamic Police, *viz.* between 7 May 2012 and 28 January 2013.

176. The Chamber notes that P-0641's first arrest occurred in about [REDACTED] [REDACTED] Chamber has found [REDACTED] [REDACTED]. The Chamber therefore will not rely on that fact as an underlying act of persecution attributable to Mr Al Hassan under count 13.

177. Since the new criminal acts found above to be established also fall within the confirmed counts and since, [REDACTED], they were committed in the period during which Mr Al Hassan performed his duties in the Islamic Police, the Chamber does not consider it necessary to examine *de novo* the contributions of Mr Al Hassan to the crimes set out under counts 1 to 13 as found in the Confirmation of Charges Decision to be established.

178. Nevertheless, for reasons that will be discussed in the following paragraphs, the Chamber will examine separately the responsibility of Mr Al Hassan for the acts relating to P-1134, P-0636 and P-1674 in so far as concerns the crimes set out under counts 11 and 12.

(B) Responsibility of Mr Al Hassan under article 25(3)(d) of the Statute for the rapes of P-1134, P-0636 and P-1674

179. The Chamber notes that the Prosecutor wishes to add the rapes to which Victims P-1134, P-0636 and P-1674 were subjected while they were in detention under the control of members of Ansar Dine/AQIM, under counts 11 and 12.²⁹⁵ The Prosecutor refers in a footnote to the submissions she made in her DCC and to the Chamber's findings in the Confirmation of Charges Decision.²⁹⁶ However, those passages address sexual violence inflicted on women by members of Ansar Dine/AQIM in the context of forced marriages, and neither the Prosecutor nor

²⁹⁵ Request, paras. 33, 42 and 44.

²⁹⁶ See Request, footnotes 93, 117 and 125.

the Chamber has looked at the responsibility of Mr Al Hassan for other acts of sexual violence committed outside the practice of forced marriage or for the underlying acts of persecution referred to under count 13.

180. The Chamber takes the view that, in order to ensure the integrity of the proceedings, before turning to the contribution of Mr Al Hassan, it must first be determined whether the rapes committed in detention did form part of the common purpose of Ansar Dine/AQIM.

181. In that connection, the Chamber recalls that it defined the common purpose of Ansar Dine/AQIM as that of instituting in Timbuktu and the Timbuktu Region a new apparatus of power on the basis of their religious ideology and compelling, by the use and threat of force, the civilian population of Timbuktu to comply with it.²⁹⁷ The Chamber also found that the common purpose subscribed to by the members of Ansar Dine/AQIM encompassed the commission of the crimes described under counts 1 to 13.²⁹⁸

182. The Chamber emphasizes first and foremost that, when analysing the aim pursued by the members of Ansar Dine/AQIM and the scope of that aim, it must not confine itself to those groups' stated objectives and precepts, but must rely on the state of affairs as portrayed by the evidence. The forced marriages are a case in point. The Chamber recalls in this regard its finding that the introduction and promotion of a practice of forced marriage between members Ansar Dine/AQIM and women of Timbuktu served in particular as a "gatewa[y]" to "legitimize" situations of sexual abuse because Ansar Dine/AQIM imposed a blanket ban on sexual relations outside marriage, including on members of the civilian population, on pain of flogging.²⁹⁹ However, the state of affairs that emerges from the evidence reveals that the victims of forced marriages were gang raped within those supposed "marriages" by several

²⁹⁷ Request, para. 957.

²⁹⁸ Request, para. 960.

²⁹⁹ Confirmation of Charges Decision, para. 571.

Ansar Dine/AQIM combatants, to whom they could not reasonably be considered to be “married”.³⁰⁰ In the view of the Chamber, the state of affairs that emerges from this evidence reveals that, in addition to the other objectives pursued by Ansar Dine/AQIM,³⁰¹ those “marriages” also served as a cloak under which other sexual and gender-based crimes were committed³⁰² continuously and with complete impunity throughout the period from 1 April 2012 to 28 January 2013.

183. It must be noted that, in common with the abuses perpetrated in the context of the forced marriages, the rapes of P-1134, P-0636 and P-1674, whilst they did not reflect Ansar Dine/AQIM’s stated precepts, were the result of the coercive and violent environment intended to control the daily life of the population of Timbuktu, and of women in particular, that was created, fostered and perpetuated by those groups from 1 April 2012 to 28 January 2013. The Chamber refers in that respect to its findings on the persecution on gender grounds suffered by the women of Timbuktu.³⁰³ By treating women as objects³⁰⁴ and in effect placing them at the disposal of their members, Ansar Dine/AQIM allowed many instances of sexual abuse to be perpetrated against the women of Timbuktu. The Chamber highlights in that connection the case of a woman who was raped [REDACTED] by an armed member of the Islamic Police while she was [REDACTED].³⁰⁵ Even though that rape was reported to [REDACTED], who held the position of emir of the Islamic Police at [REDACTED], and although the perpetrator of the

³⁰⁰ See Confirmation of Charges Decision, para. 571. See also the account relating to P-0538, P-0553 and P-1460 (Confirmation of Charges Decision, paras. 608-615, 617-622 and 636-637). The Chamber also refers to the facts as found above in relation to P-0609, who, after her marriage, was raped by various men and never learned which of those men was “officially” her husband. See in particular Statement [REDACTED]

[REDACTED]; Statement of [REDACTED]

³⁰¹ Confirmation of Charges Decision, paras. 570-571.

³⁰² Confirmation of Charges Decision, para. 571.

³⁰³ Confirmation of Charges Decision, para. 700.

³⁰⁴ Confirmation of Charges Decision, para. 701.

³⁰⁵ Statement of P-0398, [REDACTED]; Judgment [REDACTED]

crime was punished by the Islamic Court,³⁰⁶ sexual violence remained widespread and was an integral part of daily life for the women of Timbuktu during the time frame in question and, as revealed by the witnesses and the victims, the rapes committed as a result of the activities carried out by the bodies within Ansar Dine/AQIM to control the population largely went unpunished.

184. In the paragraphs that follow, the Chamber will look solely at the sexual violence committed as the result of operations to control the population conducted by the Islamic Police or the *Hisbah* that targeted the behaviour of women in particular. The Chamber notes in this regard that the evidence confirms that the rapes of P-1134, P-0636 and P-1674 – following arrest for violating the dress code imposed by Ansar Dine/AQIM in the case of P-1134 and P-0636 – while in detention and under the control of members of those groups, were not the result of opportunism by members of those groups. On the contrary, those acts were perpetrated systematically and always according to the same modus operandi: during regular patrols by the *Hisbah* or the Islamic Police women would be arrested for the slightest deviation from the rule on the wearing of the veil and imprisoned at the BMS or elsewhere for one or more nights; during the night, the victim would be separated from the group of women detained with her and taken to a different room where she would be sexually abused at the hands of one or more members of Ansar Dine/AQIM, before eventually being released.³⁰⁷

185. The Chamber further points out that several items of evidence make reference not only to the same modus operandi followed during those rapes in detention and, as said above, their systematic character, but also to the fact that “[TRANSLATION]

³⁰⁶ Confirmation of Charges Decision, para. 738.

³⁰⁷ In relation to the modus operandi followed during the rapes in detention, the Chamber refers to the description of the facts found concerning the rapes of [REDACTED] while in detention under the control of members of Ansar Dine/AQIM (Confirmation of Charges Decision, paras. [REDACTED]). See also the description of the facts found in relation to the cases of P-1134 and P-0636, paras. 42 and 47-48.

everyone knew” about them.³⁰⁸ Mr Al Hassan’s statement that, with the exception of the rape committed by a member of the Islamic Police referred to in paragraph 183 of this decision, he had “[TRANSLATION] not heard” of other cases of rape³⁰⁹ is therefore hardly tenable in the light of the circumstances as depicted in the evidence. The Chamber observes that in October 2012 some women of Timbuktu demonstrated against the *Hisbah*’s abuses involving violence against women.³¹⁰

186. The Chamber also notes that in exactly the same way as the rapes committed in the context of the forced marriages, the rapes committed in detention ensued from an understanding within Ansar Dine/AQIM, shown by the various items of evidence,³¹¹ that, in return for joining the movement, combatants would be given a woman, over whom they would exercise all “[TRANSLATION] rights”.

187. Lastly, in the light of the decisions taken by Ansar Dine/AQIM and its actions, as described above, the Chamber has to find that those groups shared the same intent since, in pursuit of their objective of instituting in Timbuktu and the Timbuktu Region a new apparatus of power on the basis of their religious ideology and, by the use and threat of force, compelling the civilian population of Timbuktu to comply with it,³¹² they meant to cause the sexual violence which the Chamber has found to be established – and which, in its view, includes the rapes of P-1134, P-1674 and P-0636 committed at the hands of members of those groups while those women were detained at the BMS or elsewhere – or knew that such sexual violence would occur in the ordinary course of events.

188. For these reasons, the Chamber considers that the common purpose encompassed carrying out the crimes of rape, committed in detention and consisting

³⁰⁸ See Statement of [REDACTED]; Statement of [REDACTED]

³⁰⁹ Statement of P-0398, [REDACTED].

³¹⁰ Confirmation of Charges Decision, para. 568.

³¹¹ Confirmation of Charges Decision, para. 567.

³¹² Confirmation of Charges Decision, para. 957.

of the criminal acts relating to P-1134, P-1674 and P-0636, in the same way that it encompassed the sexual violence perpetrated in the context of forced marriages which, in the Confirmation of Charges Decision and in this decision, was found to be made out. Those acts must therefore be attributed to the concerted action of Ansar Dine/AQIM.

189. As regards Mr Al Hassan's contribution to the crimes referred to under counts 11 to 12, the Chamber refers first of all to its findings in paragraphs 988 to 994 of the Confirmation of Charges Decision. It refers specifically to its findings on the duties Mr Al Hassan performed and the powers he exercised in the Islamic Police from 7 May 2012 to 28 January 2013, for the duration of the events which took place in Timbuktu,³¹³ and, in particular, its findings on his contributions to the arrest and detention of young girls and women for the slightest violation of the dress code imposed by Ansar Dine/AQIM³¹⁴ and on his stated support for the implementation of those measures.³¹⁵ Seeing that both the *Hisbah* and the Islamic Police were empowered to arrest transgressors of the rules laid down by Ansar Dine/AQIM,³¹⁶ the Chamber refers also to its findings on the daily cooperation between the various bodies which Ansar Dine/AQIM set up to impose their power over the city of Timbuktu, and cooperation between the *Hisbah* and the Islamic Police in particular.³¹⁷ The Chamber underscores here that the Islamic Police and the *Hisbah* could conduct joint patrols, since the remit of the Islamic Police was to protect members of the *Hisbah*, preachers who were for the most part not armed.³¹⁸ The *Hisbah* could also contact the Islamic Police if an offence was reported.³¹⁹ The Chamber also recalls here that Mr Al Hassan worked with Mohamed Moussa in relation to the arrest of

³¹³ See Confirmation of Charges Decision, VIII. Responsibility, (A) Findings of fact.

³¹⁴ Confirmation of Charges Decision, paras. 737 and 739.

³¹⁵ Statement of [REDACTED]

³¹⁶ See Confirmation of Charges Decision, paras. 92-114, 131-140, 228-707 and 855-856.

³¹⁷ See Confirmation of Charges Decision, paras. 74-140, 228-707 and 855-856.

³¹⁸ See Confirmation of Charges Decision, paras. 98 and 110.

³¹⁹ See Confirmation of Charges Decision, paras. 98 and 110.

██████████ for being in breach of the dress code imposed by Ansar Dine/AQIM.³²⁰

190. In addition, as said above, the rapes were committed systematically by members of Ansar Dine/AQIM when women were arrested and imprisoned at the BMS or elsewhere under the control of those groups and were an integral part of the violence perpetrated on a daily basis against the young girls and women of Timbuktu.³²¹ In that connection, the Chamber considers that, even though he participated in the arrest of a member of the Islamic Police accused of rape,³²² judging from his acts and his role within the Islamic Police, Mr Al Hassan contributed to creating, fostering and perpetuating an environment that was coercive, violent and oppressive to women and which led to the commission of the crimes against the women of Timbuktu, including when women were detained and under the control of members of Ansar Dine/AQIM as described above in paragraphs 42, 47 to 48 and 52 of this decision.

191. Lastly the Chamber adverts to its findings on the existence of a practice of forced marriage, on the fact that the practice was widespread and common knowledge³²³ and on the fact that, by virtue of the duties he performed in the Islamic Police and his daily contact with the population of Timbuktu, Mr Al Hassan was familiar with the circumstances in which marriages between members of Ansar Dine/AQIM and the women of Timbuktu were entered into.³²⁴ The Chamber also refers to its findings on Mr Al Hassan's contributions to bringing about marriages between Ansar Dine/AQIM members and women of Timbuktu.³²⁵ In the view of the Chamber those factors serve to illustrate Mr Al Hassan's support for the

³²⁰ See Confirmation of Charges Decision, paras. ██████████

³²¹ See above, para. 184.

³²² Confirmation of Charges Decision, para. 738.

³²³ Confirmation of Charges Decision, paras. 564-582 and 989.

³²⁴ Confirmation of Charges Decision, paras. 726-728 and 989.

³²⁵ Confirmation of Charges Decision, paras. 990-991.

violent and coercive environment aimed at controlling the women of Timbuktu and which gave rise to the many instances of sexual violence being committed.

192. For these reasons, the Chamber determines that Mr Al Hassan contributed “in any other way” within the meaning of article 25(3)(d) of the Statute to the commission of the crimes of rape in detention set out at counts 11 and 12, including the criminal acts relating to P-1134, P-1674 and P-0636, as found to be established by this Chamber.

193. As to whether Mr Al Hassan’s contribution was intentional, the Chamber recalls that it found that Mr Al Hassan acted deliberately and was fully aware that his daily conduct contributed directly to the activities of the Islamic Police and consequently to the activities of the other bodies and, more widely, to those of Ansar Dine/AQIM in Timbuktu and the Timbuktu Region from 7 May 2012 to 28 January 2013.³²⁶

194. As to whether Mr Al Hassan’s contribution was made in the knowledge of the intention of the group to commit the crimes referred to in counts 11 and 12, the Chamber recalls that it also found that Mr Al Hassan knew of the group’s intention to commit the crimes which formed part of the common purpose.³²⁷ Regarding the crimes of rape committed in detention and consisting of the criminal acts relating to P-1134, P-0636 and P-1674, and recalling that the commission of sexual violence was widespread and common knowledge and was perpetrated systematically,³²⁸ the Chamber has to find that, by virtue of his role within the Islamic Police and his contributions to the practice of forced marriage, Mr Al Hassan knew of the conditions in which the women were detained and of the sexual abuse perpetrated continuously during those detentions. The Chamber underlines in this regard that, even after the women’s demonstration in about October 2012,

³²⁶ Confirmation of Charges Decision, paras. 1001-1002.

³²⁷ Confirmation of Charges Decision, paras. 1003-1009.

³²⁸ See Confirmation of Charges Decision, para. 1006.

Mr Al Hassan continued to perform his duties in the Islamic Police and worked with the other bodies such as the *Hisbah*, including in relation to the arrests of women and continued to promote the goals of Ansar Dine/AQIM, to which he belonged, until 28 January 2013, the date on which the city of Timbuktu was recaptured by the national authorities.

195. Therefore, the Chamber is of the view that Mr Al Hassan knew by 7 May 2012 that the members of Ansar Dine/AQIM, as groups, under the leadership of Iyad Ag Ghali and Abou Zeid, had the intention to institute in Timbuktu and the Timbuktu Region, a new apparatus of power on the basis of their religious ideology and to compel, by the use and threat of force, the civilian population of Timbuktu to comply with it, and that this common purpose encompassed the commission of each of the crimes under counts 11 and 12, including the criminal acts relating to P-1134, P-1674 and P-0636 as found to be established by the Chamber.

196. The Chamber considers that all of these findings establish to the standard of proof required at this stage of the proceedings that Mr Al Hassan did, intentionally and in the knowledge of the group's intention to commit those crimes, contribute to the crime against humanity of rape under article 7(1)(g) of the Statute and to the war crime of rape under article 8(2)(e)(vi) of the Statute.

X. The Chamber's findings

197. In the light of the foregoing, pursuant to article 61(9) of the Statute and rule 128 of the Rules, the Chamber authorizes amendment of the charges as follows: it adds the criminal acts relating to P-1134,³²⁹ P-0636,³³⁰ P-1674,³³¹ P-1728, P-1710,

³²⁹ The Chamber nevertheless does not include the criminal acts relating to P-1134 under counts 9 and 10 (see, below, para. 201).

³³⁰ The Chamber nevertheless does not include the criminal acts relating to P-0636 under counts 9 and 10 (see, below, para. 201).

P-1711, P-1712, P-1721, P-1708, P-0641,³³² P-0609 and P-0957,³³³ as found by the Chamber to be established, to the crimes set out under counts 2, 4 to 6 and 8 to 13, and finds that Mr Al Hassan bears responsibility under article 25(3)(d) of the Statute in relation to those victims.

198. In contrast, as regards the case ██████████, given that the acts to which he was allegedly subjected were already known to the Prosecutor at the time her DCC was filed and noting that the Prosecutor has not presented any new evidence in support of those acts,³³⁴ the Chamber rejects the Prosecutor's request³³⁵ to add those acts to the crimes set out under counts 6 and 13 and therefore does not find that Mr Al Hassan bears responsibility under article 25(3) of the Statute (specifically paragraphs 25(3)(c) and/or 25(3)(d)) in relation to those acts.

199. Furthermore, taking the view that the Prosecutor has not presented sufficient evidence to establish the acts relating to P-1705, P-1706, P-1707 and P-1717³³⁶ to the standard of proof required, the Chamber rejects the Prosecutor's request³³⁷ to add those acts to the crimes set out under counts 2, 4 to 6 and 13 and therefore does not find that Mr Al Hassan bears responsibility under article 25(3) of the Statute (specifically paragraphs 25(3)(a), 25(3)(c) and/or 25(3)(d)) in relation to those acts.

200. When it comes to the case of P-0957, taking the view that it has been mischaracterized by the Prosecutor, and in the interests of the consistent legal characterization of similar facts,³³⁸ the Chamber rejects the Prosecutor's

³³¹ The Chamber nevertheless does not include the criminal acts relating to P-1674 under counts 9 and 10 (see, below, para. 201).

³³² The Chamber nevertheless does not include P-0641's first arrest under count 13 (see, below, para. 202).

³³³ The Chamber nevertheless does not include the criminal acts relating to P-0957 under counts 2, 4 and 5 (See, below, para. 199).

³³⁴ See, above, para. ██████

³³⁵ Request, para. ██████

³³⁶ See, above, paras. 45, 57 and 73.

³³⁷ Request, paras. 35, 50 and 60.

³³⁸ See above, paras. 107, 112, 119 and 127.

request³³⁹ to add the acts relating to P-0957 under counts 2, 4 and 5 and therefore does not find that Mr Al Hassan bears responsibility under article 25(3)(d) of the Statute in relation to those acts under counts 2, 4 and 5.

201. As to the acts relating to P-1134, P-0636 and P-1674, considering that the elements of the crimes under counts 9 and 10 have not been established,³⁴⁰ the Chamber rejects the Prosecutor's request³⁴¹ to add those acts to the crimes set out under counts 9 and 10 and therefore does not find that Mr Al Hassan bears responsibility under article 25(3)(d) of the Statute in relation to those acts under counts 9 and 10.

202. As to P-0641's first arrest, [REDACTED]
[REDACTED]
[REDACTED],³⁴² the Chamber rejects the Prosecutor's request³⁴³ to add that act as an underlying act of persecution described under count 13, attributable to Mr Al Hassan under article 25(3)(d) of the Statute.

203. Lastly, the Chamber appends an annex to this decision containing the full set of charges confirmed against Mr Al Hassan. As stated in the Decision of 21 February 2020,³⁴⁴ whilst the Trial Chamber is bound by the factual scope of the charges confirmed as they appear in the annex, it is however not bound by the detailed description of the facts which is contained in the paragraphs mentioned in the confirmed charges and to which those charges refer.

³³⁹ Request, para. 72.

³⁴⁰ See above, paras. 148 and 150.

³⁴¹ Request, paras. 33, 42 and 44.

³⁴² See [REDACTED]

³⁴³ Request, paras. 61-62.

³⁴⁴ Decision of 20 February 2020, paras. 44-49.

XI. Confidentiality

204. The Chamber would underline that the present decision is issued as “confidential” for its reference to information contained in documents likewise classified. For the purpose of the publicity of the hearings, it will shortly issue a public version of this decision.

FOR THESE REASONS, THE CHAMBER**AUTHORIZES amendment of the charges as follows:****Count 2: other inhumane acts as a crime against humanity**

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision, for the crime against humanity of other inhumane acts under article 7(1)(k) of the Statute, as set out at paragraphs 42, 47-48, 71, 81-82, 92, 98 and 108-111, vis-à-vis the following victims:

- P-1134, as described at paragraph 42;
- P-0636, as described at paragraphs 47-48;
- P-1708, as described at paragraph 71; and
- P-0609, as described at paragraphs 81-82.

Count 4: cruel treatment as a war crime

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision, for the war crime of cruel treatment under article 8(2)(c)(i) of the Statute, as set out at paragraphs 42, 47-48, 71, 81-82, 92, 99-100 and 116-118, vis-à-vis the following victims:

- P-1134, as described at paragraph 42;
- P-0636, as described at paragraphs 47-48;
- P-1708, as described at paragraph 71; and
- P-0609, as described at paragraphs 81-82.

Count 5: outrages upon personal dignity as a war crime

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out as paragraphs 954-1010 of the Confirmation of Charges Decision, for the war crime of outrages upon personal dignity under article 8(2)(c)(ii) of the Statute, as set out at paragraphs 42, 47-48, 54, 81-82, 92, 99-100, 123-124 and 126, vis-à-vis the following victims:

- P-1134, as described at paragraph 42;
- P-0636, as described at paragraphs 47-48;
- P-1728, as described at paragraph 54; and
- P-0609, as described at paragraphs 81-82.

Count 6: passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision, for the war crime of passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable under article 8(2)(c)(iv) of the Statute, as set out at paragraphs 42, 47, 59, 63, 67, 71, 92, 99 to 100, 131-135 and 137, vis-à-vis the following victims:

- P-1134, as described at paragraph 42;
- P-0636, as described at paragraph 47;
- P-1710, as described at paragraph 59;
- P-1711, as described at paragraph 59;

- P-1712, as described at paragraph 63;
- P-1721, as described at paragraph 67; and
- P-1708, as described at paragraph 71.

Count 8: other inhumane acts in the form of forced marriages as a crime against humanity

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision, for the crime against humanity of other inhumane acts (in the form of forced marriages) under article 7(1)(k) of the Statute, as set out at paragraphs 81-82, 86-91, 92, 98 and 153-158, vis-à-vis the following victims:

- P-0609, as described at paragraphs 81-82; and
- P-0957, as described at paragraphs 86-91.

Count 9: sexual slavery as a crime against humanity

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision, for the crime against humanity of sexual slavery under article 7(1)(g) of the Statute, as set out at paragraphs 81-82, 86-91, 92, 98, 145-147 and 149, vis-à-vis the following victims:

- P-0609, as described at paragraphs 81-82; and
- P-0957, as described at paragraphs 86-91.

Count 10: sexual slavery as a war crime

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision, for the war crime of sexual slavery under article 8(2)(e)(vi) of the Statute, as set out at paragraphs 81-82, 86-91, 92, 98-100, 145-147 and 149, vis-à-vis the following victims:

- P-0609, as described at paragraphs 81-82; and
- P-0957, as described at paragraphs 86-91.

Count 11: rape as a crime against humanity

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision and at paragraphs 181-196, for the crime against humanity of rape under article 7(1)(g) of the Statute, as set out at paragraphs 42, 47-48, 81-82, 86-91, 92, 98 and 140-142, vis-à-vis the following victims:

- P-1134, as described at paragraph 42;
- P-0636, as described at paragraphs 47-48;
- P-1674, as described at paragraph 52;
- P-0609, as described at paragraphs 81-82; and
- P-0957, as described at paragraphs 86-91.

Count 12: rape as a war crime

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision and at

paragraphs 181-196 for the war crime of rape under article 8(2)(e)(vi) of the Statute, as set out at paragraphs 42, 47-48, 81-82, 86-91, 92, 99-100 and 140-142, vis-à-vis the following victims:

- P-1134, as described at paragraph 42;
- P-0636, as described at paragraphs 47-48;
- P-1674, as described at paragraph 52;
- P-0609, as described at paragraphs 80-81; and
- P-0957, as described at paragraphs 86-91.

Count 13: persecution as a crime against humanity

The Chamber finds that there are substantial grounds to believe that Mr Al Hassan is criminally responsible pursuant to article 25(3)(d) of the Statute, as set out at paragraphs 954-1010 of the Confirmation of Charges Decision, for the crime against humanity of persecution on religious and/or gender grounds under article 7(1)(h) of the Statute on account of all the acts referred to at counts 2, 4 to 6 and 8 to 12 in respect of Victims P-1134, P-0636, P-1674, P-1728, P-1710, P-1711, P-1712, P-1721, P-1708, P-0609 and P-0957 and those referred to at paragraph 163 in respect of Victim P-0641.

DECLINES to amend the charges as follows:

- In relation to all the counts presented by the Prosecutor in respect of the following victims: P-1705, P-1706, P-1707, P-1717 and [REDACTED].
- In relation to counts 9 and 10 in respect of Victims P-1134, P-0636 and P-1674.
- In relation to counts 2, 4 and 5 in respect of Victim P-0957.
- In relation to count 13 in respect of P-0641's first arrest.

APPENDS to this decision an annex containing all the charges confirmed against Mr Al Hassan in the case *sub judice*.

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

[signed]

Judge Péter Kovács
Presiding Judge

[signed]

Judge Marc Perrin de Brichambaut

[signed]

**Judge Reine Adélaïde Sophie Alapini-
Gansou**

Dated this 8 May 2020

At The Hague, Netherlands